



DELBERT HOSEMANN  
*Secretary of State*

## **Secretary of State Business Law Reform Study Groups Crowdfunding Study Group**

Mississippi Secretary of State's Office  
125 S. Congress Street  
17th Floor  
Jackson, Mississippi

Tuesday, August 12, 2014  
11:00 a.m. CT  
1-877-820-7831 | Passcode: 5962389#

### **AGENDA**

1. Welcome and Opening Remarks
2. State Crowdfunding Exemption Discussion  

Professor Mercer Bullard, MDLA Distinguished Lecturer and Associate Professor of Law at University of Mississippi

Anya Coverman, Deputy Director of Policy for the North American Securities Administration Association
3. Study Group Member Discussion
4. Next Steps
5. Other Business
6. Adjourn

### **Handouts**

Memo to Study Group Members re State Crowdfunding Exemption  
NASAA Intrastate Crowdfunding Legislation Chart  
SEC Rule 147  
Maine S.P. 568-L.D. 1512  
SEC Rule 504  
Georgia Administrative Rule 590-4-2-.08  
NASAA Letter dated January 17, 2014  
Professor Bullard's Handout  
Committee Substitute for Senate Bill 2685 (Regular Session 2014)



DELBERT HOSEMANN  
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MEMORANDUM

To: Crowdfunding Study Group  
From: Policy & Research Division  
Date: August 12, 2014  
Subject: Crowdfunding Exemption Issues

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Crowdfunding is an evolving method of raising capital that has been used outside of the securities arena to raise funds through the Internet for everything from innovative product ideas to artistic endeavors. Crowdfunding was used to raise funds for many things. But it generally had not been used as a means to offer and sell securities because offering a share of the financial returns or profits from business activities could trigger the application of the federal securities laws. An offer or sale of securities must be registered with the SEC unless an exemption is available. The 2012 Jumpstart Our Business Startups Act (“JOBS Act”) created a federal exemption for equity crowdfunding or offerings conducted through trading platforms known as intermediaries. The JOBS Act makes it easier for startups and small businesses to raise capital from a wide range of potential investors and provide additional investment opportunities for investors.

Under the JOBS Act, businesses will be able to fundraise by crowdfunding for potential investors through the internet. The Act articulates the majority of the new federal crowdfunding structure and compliance requirements; however, the U.S. Securities and Exchange Commission (“SEC”) was given 270 days to promulgate rules implementing the new offering exemption. The SEC did not meet the initial deadline, but did release its rule proposal on October 23, 2013<sup>1</sup>. The period to submit comments ended on February 3, 2014, but it is expected to take several months for the SEC to release a final rule that will authorize exempt crowdfunding deals in the U.S. markets.

In response to SEC’s delay in implementing rules, several states have proposed or enacted their own state crowdfunding exemption (see Attachment 1, NASAA State Crowdfunding Legislation Index). Most parallel the federal crowdfunding exemption from registration for intrastate offerings under Section 3(a)(11) of the Securities Act of 1933, as amended, and SEC Rule 147 (Attachment 2), which is a “safe harbor” means of compliance with Section 3(a)(11). The states that have followed this model have generally written their new crowdfunding exemptions so they work in tandem with the federal intrastate exemption.

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<sup>1</sup> See SEC Release Nos. 33-9470; 34-70741 (October 23, 2013), <http://www.sec.gov/rules/proposed/2013/33-9470.pdf>

Alternatively, Maine (Attachment 3) allows a short-form state crowdfunding registration that is tied to the federal exemption found in Rule 504 of Regulation D, 17 CFR § 230.504 (Attachment 4). Instead of adopting legislation, Georgia promulgated an administrative rule (Attachment 5). The North American Securities Administrators Association, Inc. (“NASAA”) has expressed concerns about recent state legislative efforts to adopt state crowdfunding exemptions that conflict with federal securities laws and offered recommendations to keep in mind when pursuing state crowdfunding bills (Attachment 6). NASAA’s concerns include, generally, compliance with applicable federal offering exemptions, compliance with federal broker-dealer licensing requirements, and investor protection. Release of the SEC’s final rule will authorize exempt federal crowdfunding deals in U.S. markets, and may clarify the concerns expressed by NASAA.

#### Attachments

- NASAA Intrastate Crowdfunding Legislation Chart
- SEC Rule 147
- Maine S.P. 568-L.D. 1512
- Rule 504
- Georgia Rule 590-4-2-.08
- NASAA Letter dated January 17, 2014

**INTRASTATE CROWDFUNDING LEGISLATION**  
 Prepared by the North American Securities Administrators Association (NASAA)

August 1, 2014

STATE	BILL #	DESCRIPTION	2011-12 ACTIONS	2013 ACTIONS	2014 ACTIONS
Alabama	SB 44/Act No. 2014-376	Tied to federal intrastate offering exemption.	—	—	The bill was signed into law on April 8.
Alaska	HB 303	Tied to federal intrastate offering exemption.	—	—	The bill was introduced on February 12 and referred to the House Labor & Commerce Committee. <i>The legislature adjourned on April 25.</i>
California	AB 2096	Tied to federal Reg. D, Rule 504 offering exemption.	—	—	The bill was introduced on February 20 and passed the Assembly on May 19. It has been referred to the Senate. <i>The legislature will adjourn on November 30.</i>
Connecticut	HB 5577	To study crowdfunding in other states; report due on or before 1/1/15.	—	—	The bill was introduced on March 13, passed the House on May 7, and has been referred to the Senate. <i>The legislature adjourned on May 7.</i>
District of Columbia	Proposed Rules	Tied to federal intrastate offering exemption.	—	—	Proposed rules will be issued and begin a 30 day comment period.
Florida	HB 1299/ SB1596	Tied to federal intrastate offering exemption.	—	—	HB 1299 was introduced on March 4, and SB 1596 was introduced on March 10. <i>The legislature adjourned on May 2.</i>

- ▶ The term "crowdfunding" refers to exemptions from securities registration under state law, which are tied to federal securities offering exemptions.
- ▶ This information is being provided for your convenience and is not intended as legal advice. The information is illustrative only and not an exhaustive list.
- ▶ Any questions should be directed to the appropriate state regulator(s).

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**INTRASTATE CROWDFUNDING LEGISLATION**  
 Prepared by the North American Securities Administrators Association (NASAA)

STATE	BILL #	DESCRIPTION	2011-12 ACTIONS	2013 ACTIONS	2014 ACTIONS
Georgia	Rule 590-4-2-.08	Tied to federal intrastate offering exemption.	A rule was promulgated on December 8, 2011.	—	—
Idaho	Exemption by Order	Tied to federal intrastate offering exemption.	An order was issued on January 20, 2012.	—	—
Indiana	SB 375/ Public Law 106	Tied to federal intrastate offering exemption.	—	—	The bill was signed into law on March 25.
Kansas	K.A.R. 81-5-21	Tied to federal intrastate offering exemption.	An exemption was adopted on August 12, 2011.	—	—
Maine	LD 1512 (Chapter 452)	Tied to federal Reg. D, Rule 504 offering exemption.	—	—	The bill became Public Law on March 2.
Maryland	SB 811 (Chapter 557)/HB 1243 (Chapter 558)	Exempted security tied to federal intrastate offering exemption.	—	—	Both bills were signed into law on May 15.
Michigan	HB 4996/ Public Act 264	Tied to federal intrastate offering exemption.	—	The bill was signed into law on December 26.	—
Mississippi	SB 2685	Tied to federal intrastate offering exemption.	—	—	The bill was introduced on January 20, and passed the Senate Committee on Business and Financial Institutions on January 30. The legislature adjourned on April 2.

**INTRASTATE CROWDFUNDING LEGISLATION**  
 Prepared by the North American Securities Administrators Association (NASAA)

STATE	BILL #	DESCRIPTION	2011-12 ACTIONS	2013 ACTIONS	2014 ACTIONS
Missouri	HB 1736	Tied to federal intrastate offering exemption.	—	—	The bill was introduced on February 5 and was referred to the House Financial Institutions Committee. On March 26, a public hearing was held. The legislature adjourned on May 30.
Nebraska	LB 205/ Rev Stat. 8- 1111(23)	Tied to federal intrastate offering exemption; prohibits a "public offering."	—	The bill was signed into law on May 8.	—
New Jersey	A2073/S712	Tied to federal intrastate offering exemption.	—	—	The bills were introduced on January 14, and have been referred to committees. A2073 was reported out of the Assembly Financial Institutions Committee on June 5. The legislative session ends on January 12, 2016.
New Mexico	Proposed Regulations	Tied to federal intrastate offering exemption.	—	—	Proposed regulations will be issued and begin a 60 day comment period.
North Carolina	HB 680	Tied to federal intrastate offering exemption.	—	HB 680 was introduced on April 9, passed the House on June 20 and was referred to the Senate.	A substitute bill was reported favorably in the Senate Commerce Committee and referred to the Senate Finance Committee on July 17. The legislative session will end in August.

**INTRASTATE CROWDFUNDING LEGISLATION**  
 Prepared by the North American Securities Administrators Association (NASAA)

STATE	BILL #	DESCRIPTION	2011-12 ACTIONS	2013 ACTIONS	2014 ACTIONS
Tennessee	HB 1684/ SB 1481	Tied to federal intrastate offering exemption.	—	—	The bill was signed into law on May 19.
Texas	Proposed Rules	Tied to federal intrastate offering exemption.	—	—	Proposed rules were published on May 9, and are open for public comment for 30 days.
Utah	HB 142	Tied to federal intrastate offering exemption.	—	—	The bill was introduced on February 17 and received a first and second reading. The legislature adjourned on March 13.
Virginia	HB 880/ SB 351	Tied to federal intrastate offering exemption.	—	—	Both bills were introduced on January 8. The legislature adjourned on March 8.
Washington	HB 2023/ Chapter 144	Tied to federal intrastate offering exemption.	—	—	The bill was signed into law on March 28.
Wisconsin	AB 350/ Public Act 52	Tied to federal intrastate offering exemption.	—	The bill was signed into law on November 7.	—

Code of Federal Regulations  
Title 17. Commodity and Securities Exchanges  
Chapter II. Securities and Exchange Commission  
Part 230. General Rules and Regulations, Securities Act of 1933 (Refs & Annos)  
General (Refs & Annos)

17 C.F.R. § 230.147

§ 230.147 "Part of an issue", "person resident", and "doing business within" for purposes of section 3(a)(11).

Effective: September 23, 2013

Currentness

Preliminary Notes: 1. This rule shall not raise any presumption that the exemption provided by section 3(a)(11) of the Act is not available for transactions by an issuer which do not satisfy all of the provisions of the rule.

2. Nothing in this rule obviates the need for compliance with any state law relating to the offer and sale of the securities.

3. Section 5 of the Act requires that all securities offered by the use of the mails or by any means or instruments of transportation or communication in interstate commerce be registered with the Commission. Congress, however, provided certain exemptions in the Act from such registration provisions where there was no practical need for registration or where the benefits of registration were too remote. Among those exemptions is that provided by section 3(a)(11) of the Act for transactions in any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within \* \* \* such State or Territory. The legislative history of that Section suggests that the exemption was intended to apply only to issues genuinely local in character, which in reality represent local financing by local industries, carried out through local investment. Rule 147 is intended to provide more objective standards upon which responsible local businessmen intending to raise capital from local sources may rely in claiming the section 3(a)(11) exemption.

All of the terms and conditions of the rule must be satisfied in order for the rule to be available. These are: (i) That the issuer be a resident of and doing business within the state or territory in which all offers and sales are made; and (ii) that no part of the issue be offered or sold to non-residents within the period of time specified in the rule. For purposes of the rule the definition of issuer in section 2(4) of the Act shall apply.

All offers, offers to sell, offers for sale, and sales which are part of the same issue must meet all of the conditions of Rule 147 for the rule to be available. The determination whether offers, offers to sell, offers for sale and sales of securities are part of the same issue (i.e., are deemed to be integrated) will continue to be a question of fact and will depend on the particular circumstances. See Securities Act of 1933 Release No. 4434 (December 6, 1961)(26 FR 9158). Securities Act Release No. 4434 indicated that in determining whether offers and sales should be regarded as part of the same issue and thus should be integrated any one or more of the following factors may be determinative:

- (i) Are the offerings part of a single plan of financing;
- (ii) Do the offerings involve issuance of the same class of securities;
- (iii) Are the offerings made at or about the same time;
- (iv) Is the same type of consideration to be received; and

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(v) Are the offerings made for the same general purpose.

Subparagraph (b)(2) of the rule, however, is designed to provide certainty to the extent feasible by identifying certain types of offers and sales of securities which will be deemed not part of an issue, for purposes of the rule only.

Persons claiming the availability of the rule have the burden of proving that they have satisfied all of its provisions. However, the rule does not establish exclusive standards for complying with the section 3(a)(11) exemption. The exemption would also be available if the issuer satisfied the standards set forth in relevant administrative and judicial interpretations at the time of the offering but the issuer would have the burden of proving the availability of the exemption. Rule 147 relates to transactions exempted from the registration requirements of section 5 of the Act by section 3(a)(11). Neither the rule nor section 3(a)(11) provides an exemption from the registration requirements of section 12(g) of the Securities Exchange Act of 1934, the anti-fraud provisions of the federal securities laws, the civil liability provisions of section 12(2) of the Act or other provisions of the federal securities laws.

Finally, in view of the objectives of the rule and the purposes and policies underlying the Act, the rule shall not be available to any person with respect to any offering which, although in technical compliance with the rule, is part of a plan or scheme by such person to make interstate offers or sales of securities. In such cases registration pursuant to the Act is required.

4. The rule provides an exemption for offers and sales by the issuer only. It is not available for offers or sales of securities by other persons. Section 3(a)(11) of the Act has been interpreted to permit offers and sales by persons controlling the issuer, if the exemption provided by that section would have been available to the issuer at the time of the offering. See Securities Act Release No. 4434. Controlling persons who want to offer or sell securities pursuant to section 3(a)(11) may continue to do so in accordance with applicable judicial and administrative interpretations.

(a) Transactions covered. Offers, offers to sell, offers for sale and sales by an issuer of its securities made in accordance with all of the terms and conditions of this rule shall be deemed to be part of an issue offered and sold only to persons resident within a single state or territory where the issuer is a person resident and doing business within such state or territory, within the meaning of section 3(a)(11) of the Act.

(b) Part of an issue.

(1) For purposes of this rule, all securities of the issuer which are part of an issue shall be offered, offered for sale or sold in accordance with all of the terms and conditions of this rule.

(2) For purposes of this rule only, an issue shall be deemed not to include offers, offers to sell, offers for sale or sales of securities of the issuer pursuant to the exemption provided by section 3 or section 4(a)(2) of the Act or pursuant to a registration statement filed under the Act, that take place prior to the six month period immediately preceding or after the six month period immediately following any offers, offers for sale or sales pursuant to this rule, Provided, That, there are during either of said six month periods no offers, offers for sale or sales of securities by or for the issuer of the same or similar class as those offered, offered for sale or sold pursuant to the rule.

Note: In the event that securities of the same or similar class as those offered pursuant to the rule are offered, offered for sale or sold less than six months prior to or subsequent to any offer, offer for sale or sale pursuant to this rule, see Preliminary Note 3 hereof as to which offers, offers to sell, offers for sale, or sales are part of an issue.

(c) Nature of the issuer. The issuer of the securities shall at the time of any offers and the sales be a person resident and doing business within the state or territory in which all of the offers, offers to sell, offers for sale and sales are made.

(1) The issuer shall be deemed to be a resident of the state or territory in which:

(i) It is incorporated or organized, if a corporation, limited partnership, trust or other form of business organization that is organized under state or territorial law;

(ii) Its principal office is located, if a general partnership or other form of business organization that is not organized under any state or territorial law;

(iii) His principal residence is located if an individual.

(2) The issuer shall be deemed to be doing business within a state or territory if:

(i) The issuer derived at least 80 percent of its gross revenues and those of its subsidiaries on a consolidated basis.

(A) For its most recent fiscal year, if the first offer of any part of the issue is made during the first six months of the issuer's current fiscal year; or

(B) For the first six months of its current fiscal year or during the twelve-month fiscal period ending with such six-month period, if the first offer of any part of the issue is made during the last six months of the issuer's current fiscal year from the operation of a business or of real property located in or from the rendering of services within such state or territory; provided, however, that this provision does not apply to any issuer which has not had gross revenues in excess of \$5,000 from the sale of products or services or other conduct of its business for its most recent twelve-month fiscal period;

(ii) The issuer had at the end of its most recent semi-annual fiscal period prior to the first offer of any part of the issue, at least 80 percent of its assets and those of its subsidiaries on a consolidated basis located within such state or territory;

(iii) The issuer intends to use and uses at least 80 percent of the net proceeds to the issuer from sales made pursuant to this rule in connection with the operation of a business or of real property, the purchase of real property located in, or the rendering of services within such state or territory; and

(iv) The principal office of the issuer is located within such state or territory.

(d) Offerees and purchasers: Person resident. Offers, offers to sell, offers for sale and sales of securities that are part of an issue shall be made only to persons resident within the state or territory of which the issuer is a resident. For purposes of determining the residence of offerees and purchasers:

(1) A corporation, partnership, trust or other form of business organization shall be deemed to be a resident of a state or territory if, at the time of the offer and sale to it, it has its principal office within such state or territory.

(2) An individual shall be deemed to be a resident of a state or territory if such individual has, at the time of the offer and sale to him, his principal residence in the state or territory.

(3) A corporation, partnership, trust or other form of business organization which is organized for the specific purpose of acquiring part of an issue offered pursuant to this rule shall be deemed not to be a resident of a state or territory unless all of the beneficial owners of such organization are residents of such state or territory.

(e) Limitation of resales. During the period in which securities that are part of an issue are being offered and sold by the issuer, and for a period of nine months from the date of the last sale by the issuer of such securities, all resales of any part of the issue, by any person, shall be made only to persons resident within such state or territory.

Notes: 1. In the case of convertible securities resales of either the convertible security, or if it is converted, the underlying security, could be made during the period described in paragraph (e) only to persons resident within such state or territory. For purposes of this rule a conversion in reliance on section 3(a)(9) of the Act does not begin a new period.

2. Dealers must satisfy the requirements of Rule 15c2-11 under the Securities Exchange Act of 1934 prior to publishing any quotation for a security, or submitting any quotation for publication, in any quotation medium.

(f) Precautions against interstate offers and sales.

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(1) The issuer shall, in connection with any securities sold by it pursuant to this rule:

(i) Place a legend on the certificate or other document evidencing the security stating that the securities have not been registered under the Act and setting forth the limitations on resale contained in paragraph (e) of this section;

(ii) Issue stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities make a notation in the appropriate records of the issuer; and

(iii) Obtain a written representation from each purchaser as to his residence.

(2) The issuer shall, in connection with the issuance of new certificates for any of the securities that are part of the same issue that are presented for transfer during the time period specified in paragraph (e), take the steps required by paragraphs (f)(1)(i) and (ii) of this section.

(3) The issuer shall, in connection with any offers, offers to sell, offers for sale or sales by it pursuant to this rule, disclose, in writing, the limitations on resale contained in paragraph (e) and the provisions of paragraphs (f)(1)(i) and (ii) and paragraph (f)(2) of this section.

**Credits**

[39 FR 2356, Jan. 21, 1974; 78 FR 44770, July 24, 2013]

SOURCE: 62 FR 24573, May 6, 1997; 63 FR 6384, Feb. 6, 1998; 63 FR 13943, 13984, March 23, 1998; 64 FR 61449, Nov. 10, 1999; 65 FR 47284, Aug. 2, 2000; 66 FR 8896, 9017, Feb. 5, 2001; 67 FR 230, Jan. 2, 2002; 67 FR 13536, March 22, 2002; 67 FR 19673, April 23, 2002; 68 FR 57777, Oct. 6, 2003; 72 FR 20414, April 24, 2007; 72 FR 71566, Dec. 17, 2007; 76 FR 4243, Jan. 25, 2011; 76 FR 46617, Aug. 3, 2011; 76 FR 71876, Nov. 21, 2011; 76 FR 81805, Dec. 29, 2011; 78 FR 44769, July 24, 2013; 78 FR 44804, July 24, 2013, unless otherwise noted.

AUTHORITY: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll (d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub.L. 112-106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

Notes of Decisions (56)

Current through July 21, 2014; 79 FR 42402

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**590-4-2-.08 Invest Georgia Exemption.**

(1) The offer or sale of a security by an issuer shall be exempt from the requirements of Article 3 and Section 10-5-53 of the Act, and each individual who represents an issuer in an offer or sale shall be exempt from the requirements of Section 10-5-30, if the offer or sale is conducted in accordance with each of the following requirements:

(a) The issuer of the security shall be a for-profit business entity formed under the laws of the state of Georgia and registered with the Secretary of State.

(b) The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147.

(c) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.

(d) The issuer shall not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501.

(e) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Georgia, and all the funds shall be used in accordance with representations made to investors.

(f) Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer shall file a notice with the Commissioner in writing or in electronic form. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of the following persons:

1. The issuer;
2. All persons who will be involved in the offer or sale of securities on behalf of the issuer; and
3. The bank or other depository institution in which investor funds will be deposited.

(g) The issuer shall not be, 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 U.S.C. § 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).

(h) The issuer shall inform all purchasers that the securities have not been registered under the Act and that the securities are subject to the limitation on resales contained in subsection (e) of SEC Rule 147, 17 C.F.R. 230.147(e).

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(2) Offers and sales to controlling persons. This exemption shall not be used in conjunction with any other exemption under these rules or the Act, except for offers and sales to the following persons, who shall not count toward the limitation in paragraph (1)(c):

(a) An officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or

(b) A person owning 10 percent or more of the outstanding shares of any class or classes of securities

(3) Disqualifications. This exemption shall not be available if the issuer is subject to a disqualifying event specified in Rule 590-4-2-.06.

(4) The exemption authorized by this section shall be known and may be cited as the "Invest Georgia Exemption.

(5) "Individual," for the purpose of paragraph (1) of this Rule, means a natural person residing in the State of Georgia, or a corporation, trust, partnership, association, or any other legal entity duly organized under the laws of the State of Georgia, that does not:

(a) offer investment advice or recommendations;

(b) solicit purchases, sales, or offers to purchase the securities exempted by this Rule;

(c) compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to purchase the securities exempted by this Rule; or

(d) take custody of investor funds or securities.

Authority O.C.G.A. Secs. 10-5-3, 10-5-10, 10-5-11, 10-5-12, 10-5-30, 10-5-70. **History.** Original Rule entitled "Supervision of Salesmen, Limited Salesmen, and Employees" adopted. F. Dec. 9, 1980; eff. Dec. 29, 1980. **Repealed:** New Rule of same title adopted. F. Apr. 13, 1983; eff. May 3, 1983. **Amended:** F. Feb. 24, 1987; eff. Mar. 16, 1987. **Repealed:** New Rule entitled "Criminal History Access" adopted. F. Dec. 21, 2004; eff. Jan. 10, 2005. **Repealed:** New Rule entitled "Invest Georgia Exemptions" adopted. F. Nov. 18, 2011, Dec. 8, 2011. **Amended:** F. Mar. 9, 2012; eff. Mar. 29, 2012. **Amended:** F. Dec. 7, 2012; eff. Dec. 27, 2012.

Code of Federal Regulations

Title 17. Commodity and Securities Exchanges

Chapter II. Securities and Exchange Commission

Part 230. General Rules and Regulations, Securities Act of 1933 (Refs & Annos)

Regulation D. Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933 (Refs & Annos)

17 C.F.R. § 230.504

§ 230.504 Exemption for limited offerings and sales of securities not exceeding \$1,000,000.

Currentness

(a) Exemption. Offers and sales of securities that satisfy the conditions in paragraph (b) of this § 230.504 by an issuer that is not:

(1) Subject to the reporting requirements of section 13 or 15(d) of the Exchange Act;

(2) An investment company; or

(3) A development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person, shall be exempt from the provision of section 5 of the Act under section 3(b) of the Act.

(b) Conditions to be met--

(1) General conditions. To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502(a), (c) and (d), except that the provisions of § 230.502(c) and (d) will not apply to offers and sales of securities under this § 230.504 that are made:

(i) Exclusively in one or more states that provide for the registration of the securities, and require the public filing and delivery to investors of a substantive disclosure document before sale, and are made in accordance with those state provisions;

(ii) In one or more states that have no provision for the registration of the securities or the public filing or delivery of a disclosure document before sale, if the securities have been registered in at least one state that provides for such registration, public filing and delivery before sale, offers and sales are made in that state in accordance with such provisions, and the disclosure document is delivered before sale to all purchasers (including those in the states that have no such procedure); or

(iii) Exclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to "accredited investors" as defined in § 230.501(a).

(2) The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed \$1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504, in reliance on any exemption under section 3(b), or in violation of section 5(a) of the Securities Act.

Note 1: The calculation of the aggregate offering price is illustrated as follows:

If an issuer sold \$900,000 on June 1, 1987 under this § 230.504 and an additional \$4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the \$1,000,000 limit within the preceding twelve months.

Note 2: If a transaction under § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold \$1,000,000 worth of its securities on January 1, 1988 under this § 230.504 and an additional \$500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

#### Credits

[57 FR 36473, Aug. 13, 1992; 61 FR 30402, June 14, 1996; 64 FR 11094, March 8, 1999]

SOURCE: Sections 230.501 through 230.506 appear at 47 FR 11262, March 16, 1982; 62 FR 24573, May 6, 1997; 63 FR 6384, Feb. 6, 1998; 63 FR 13943, 13984, March 23, 1998; 64 FR 61449, Nov. 10, 1999; 65 FR 47284, Aug. 2, 2000; 66 FR 8896, 9017, Feb. 5, 2001; 67 FR 230, Jan. 2, 2002; 67 FR 13536, March 22, 2002; 67 FR 19673, April 23, 2002; 68 FR 57777, Oct. 6, 2003; 72 FR 20414, April 24, 2007; 72 FR 71566, Dec. 17, 2007; 76 FR 4243, Jan. 25, 2011; 76 FR 46617, Aug. 3, 2011; 76 FR 71876, Nov. 21, 2011; 76 FR 81805, Dec. 29, 2011; 76 FR 81806, Dec. 29, 2011; 78 FR 44769, July 24, 2013; 78 FR 44804, July 24, 2013, unless otherwise noted.

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AUTHORITY: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll (d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub.L. 112-106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

Notes of Decisions (5)

Current through July 31, 2014, 79 FR 44317.

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End of Document

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STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND FOURTEEN

S.P. 568 - L.D. 1512

An Act To Increase Funding for Start-ups

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation promotes and encourages the growth of Maine small businesses by facilitating the ability of a business to raise capital by selling small amounts of securities to a wider pool of small investors with fewer restrictions; and

Whereas, the enactment of this legislation will provide immediate access to capital and streamline regulations for Maine small businesses without diminishing the regulatory protections for investors; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

**Sec. 1.** 32 MRSA §16304, sub-§6-A is enacted to read:

6-A. Short-form registration statement. The administrator may adopt by rule a form to be used as a short-form registration statement for securities being registered under this section and sold in offerings in which:

A. The issuer of the security is a corporation or other entity having its principal place of business in this State and registered with the Secretary of State as an entity formed under the laws of this State or authorized to transact business within this State;

B. The aggregate amount of securities sold to all investors by the issuer within any 12-month period is not more than \$1,000,000;

C. The aggregate amount of securities sold to any investor by the issuer, including any amount sold during the 12-month period preceding the date of the transaction, does not exceed \$5,000, or a greater amount as the administrator may provide by rule

or order, unless the investor is an accredited investor as defined in 17 Code of Federal Regulations, Section 230.501 (2013);

D. The offering meets the requirements of the federal exemption for limited offerings and sales of securities not exceeding \$1,000,000 in 17 Code of Federal Regulations, Section 230.504 (2013);

E. The issuer files with the administrator, provides to investors and makes available to potential investors an offering document setting forth the following:

- (1) The name, legal status, physical address and website address of the issuer;
- (2) The names of the directors, officers and any persons occupying a similar status or performing similar functions;
- (3) The name of each person holding more than 20% of the shares of the issuer;
- (4) A description of the business of the issuer and the anticipated business plan of the issuer;
- (5) A description of the financial condition of the issuer, including the following:
  - (a) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of \$100,000 or less:
    - (i) The income tax returns filed by the issuer for the most recently completed year, if any; and
    - (ii) The financial statements of the issuer certified by the principal executive officer of the issuer to be true and complete in all material respects;
  - (b) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of more than \$100,000 but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for the review or standards and procedures established by the administrator by rule; or
  - (c) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of more than \$500,000, audited financial statements;
- (6) A description of the stated purpose and intended use of the proceeds of the offering sought by the issuer;
- (7) The offering amount, the deadline to reach the offering amount and regular updates regarding the progress of the issuer in meeting the offering amount;
- (8) The price to the public of the securities or, if the price has not been determined, the method for determining the price as long as prior to the sale each investor is provided in writing the final price and all required disclosures with a reasonable opportunity to rescind the commitment to purchase the securities; and
- (9) A description of the ownership and capital structure of the issuer, including:

(a) The terms of the securities being offered and all other classes of security of the issuer, including how those terms may be modified, and a summary of the differences between the classes of securities, including how the rights of the securities being offered may be materially limited, diluted or qualified by the rights of any other class of security of the issuer;

(b) A description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

(c) The name and ownership level of each existing shareholder who owns more than 20% of any class of the securities of the issuer;

(d) How the securities being offered are being valued and examples of methods for how those securities may be valued by the issuer in the future, including during subsequent corporate actions; and

(e) The risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer and transactions with related parties; and

F. The issuer sets aside in a separate bank account all funds raised as part of the offering to be held until such time as the minimum offering amount is reached. If the minimum offering amount is not met within one year of the effective date of the offering, the issuer must return all funds to investors.

An issuer who elects to use a short-form registration statement pursuant to this subsection must comply with other requirements set forth by rule adopted or order issued under this chapter.

Notwithstanding section 16304, subsection 3, the administrator may provide by rule that a short-form registration statement filed under this subsection is immediately effective upon filing or becomes effective within some other stated period after filing, conditionally or otherwise.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

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NASAA

**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

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202/737-0900  
Fax: 202/783-3571  
www.nasaa.org

January 17, 2014

Mr. William T. Pound  
National Conference of State Legislatures  
444 North Capitol Street, N.W., Suite 515  
Washington, D.C. 20001

Dear Mr. Pound:

On behalf of the North American Securities Administrators Association,<sup>1</sup> I am writing to call your attention to recent state legislative efforts to adopt state crowdfunding exemptions. NASAA does not support or oppose state efforts to craft a state crowdfunding alternative, but wants to make sure your members are aware of some preliminary concerns emanating from the bills that have been introduced or passed to date,<sup>2</sup> most notably state bill conflicts with federal securities laws.

To the extent your members are interested in pursuing their own state crowdfunding bills, NASAA would like to offer a few key recommendations for you to share in an effort to protect your state's small businesses and crowdfunding intermediaries from unanticipated federal securities law violations and to protect their investors, particularly mom and pop retail investors, from undue risk and loss in this emerging space.

## I. BACKGROUND

Title III of the Jumpstart Our Business Startups Act ("JOBS Act"), enacted on April 5, 2012, created a federal exemption for equity crowdfunding or offerings conducted through trading platforms known as intermediaries, including a new breed of securities firms known as funding portals. Crowdfunding is typically done on-line with fundraisers collecting relatively small amounts from large numbers of donors, i.e., the crowd. In recent years, crowdfunding has become a popular tool for artistic ventures and start-ups to receive public donations of money through online websites such as Kickstarter and indiegogo. Through the JOBS Act, businesses will be able to raise money by crowdfunding for investors through the internet. Issuers can raise no more than \$1,000,000 per year through the new crowdfunding exemption and individual investors may

<sup>1</sup> The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for investor protection and efficient capital formation.

<sup>2</sup> References to the word "bill" include state exemptions adopted by legislation, regulation or order.

President: Andrea Seidt (Ohio)  
President-Elect: William Beatty (Washington)  
Past-President: A. Heath Abshire (Arkansas)  
Executive Director: Russel Iuculano

Secretary: Judith Shaw (Maine)  
Treasurer: Melanie Senter Lubin (Maryland)  
Ombudsman: Fred Joseph (Colorado)

Directors: Joe Borg (Alabama)  
Douglas R. Brown (Manitoba)  
Michael Rothman (Minnesota)  
Daphne D. Smith (Tennessee)

Attachment  
6

generally invest no more than \$2,000 or 5-10% of their annual income, whichever is greater, per year based on applicable net worth and income thresholds.<sup>3</sup>

Prior to enactment of the JOBS Act, states such as Kansas and Georgia had already enacted their own securities offering exemptions pursuant to the federal intrastate exemption found in Section 3(a)(11) of the Securities Act of 1933 and further interpreted by SEC Rule 147, 17 CFR § 230.147, in an effort to stimulate local, community-based offerings.<sup>4</sup> Due to the federal overlay of general solicitation prohibitions and federal licensing requirements, however, the states were restrained from allowing broad, commission-based internet offerings.

While much of the new federal crowdfunding structure and compliance requirements were articulated by Congress in the JOBS Act itself, the U.S. Securities and Exchange Commission (SEC) was given 270 days to promulgate rules to implement the new offering exemption. Due to competing priorities, the SEC did not meet the established deadline, but has since released the rule proposal. SEC Release Nos. 33-9470; 34-70741 (October 23, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9470.pdf>. NASAA will be providing its formal comments regarding the rule proposal by the February 3, 2014 deadline, but expects it will take several months for the SEC to release a final rule that will finally authorize exempt crowdfunding deals in the U.S. markets.

Due to the SEC's delay in rule implementation and, in some cases, industry dissatisfaction with the federal crowdfunding exemption itself, several states have proposed or enacted their own state crowdfunding bills as an alternative. All bills except for a discussion draft currently being considered in Maine contemplate a state crowdfunding exemption from registration that parallels the federal exemption in some fashion. The alternative approach being considered in Maine is to allow a short-form state crowdfunding registration that is tied to the federal exemption found in Rule 504 of Regulation D, 17 CFR § 230.504. Two bills, those coming out of the states of Michigan and Wisconsin, have already been signed into law.

State securities regulators are not always consulted in the drafting of these exemptions. As a result, some provisions of these state-level crowdfunding exemptions do not align with federal securities requirements and may create unanticipated registration violations for both the small business issuers and internet platforms who utilize the new state exemptions. In view of the complicated interplay between state and federal securities law in the crowdfunding context, NASAA respectfully requests that state legislatures interested in pursuing a state crowdfunding alternative to the federal exemption carefully consider the following policy issues.

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<sup>3</sup> The United States Securities and Exchange Commission has proposed further restricting the five percent (5%) and ten percent (10%) individual investor limitation to a \$100,000 total cap in its crowdfunding rule proposal. See SEC Release Nos. 33-9470; 34-70741 (October 23, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9470.pdf>. The SEC proposed expanded the restriction in another sense, however, by allowing investors to utilize the higher of either net worth or income standards in applying the 5% and 10% limitations. *Id.*

<sup>4</sup> Section 3(a)(11) of the Securities Act of 1933 provides: "Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and business within or, if a corporation, incorporated by and doing business within, such State or Territory." 15 USC § 77c(a)(11). SEC Rule 147 provides a "safe harbor" that guarantees compliance with Section 3(a)(11) if the conditions set forth in the rule are met. 17 CFR § 230.147.

### (1) Compliance with applicable federal offering exemptions

While most of the state crowdfunding bills introduced to date exempt the securities offering from state registration, the approaches taken to address federal registration requirements vary. The majority of states include an explicit reference to the federal intrastate offering exemption found under Section 3(a)(11) of the Securities Act and the corresponding Rule 147. Inclusion of this reference is helpful as it indicates sophistication from a drafting standpoint as well as recognition that compliance with federal securities requirements is necessary. For bills that do not refer to federal statutes directly, quoting the applicable language of Section 3(a)(11) would suffice.

Even where a state bill, explicitly or implicitly, references the federal intrastate exemption, it is critical that the bill complies with the substantive requirements associated with the applicable federal exemption. Bills referencing Section 3(a)(11), for example, can only be offered intrastate to residents of the member jurisdiction. SEC guidance suggests that internet-based offerings would be deemed interstate, not intrastate, in nature if out-of-state investors are given access to such offerings.<sup>5</sup> At a minimum, a state would be well advised to require issuer implementation of basic precautionary measures that would avoid targeting and sales to out-of-state residents.<sup>6</sup> Such measures could include prominent disclaimer text that the offering is limited to home state residents, password access upon residency verification, or other attestations or certifications of investor residency prior to sale. State crowdfunding bills that purport to allow unrestricted offerings via the internet would not appear to comply with Section 3(a)(11) and Rule 147. Under such circumstances, all sales made by issuers pursuant to the unrestricted internet solicitation would constitute illegal, unregistered transactions under federal law.

### (2) Compliance with federal broker-dealer licensing requirements

Generally, any person acting as a “broker” or “dealer” as defined by Section 3(4), and 3(a)(5) of the Securities Exchange Act of 1934, respectively, must be registered with the SEC and join a self-regulatory organization—the Financial Industry Regulatory Authority (FINRA), a national securities exchange, or both. Broker-dealers must also comply with state law registration requirements. Broker-dealers that conduct their business on a purely intrastate basis are not

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<sup>5</sup> The SEC Guide to Broker-Dealer Registration, available at <http://www.sec.gov/divisions/marketreg/bdguide.htm> states that “information posted on the Internet that is accessible by persons in another state would be considered an interstate offer of securities or investment services that would require Federal broker-dealer registration.” That guidance is consistent with SEC pronouncements going back as far as 1937 in which the SEC’s General Counsel stated: “In any consideration of the exemption it is essential to appreciate that its application is . . . expressly limited to cases in which the entire issue of securities is offered and sold exclusively to residents of the state in question.” Sec. Act. Rel. 1459 (1937); accord Louis Loss, Joel Seligman & Troy Paredes, *Fundamentals of Sec. Reg.*, Vol. 1, at 520-25 (6th ed. 2011); Sec. Act Rel. 4434 (1961).

<sup>6</sup> In evaluating its own jurisdiction regarding U.S. investors’ exposure to foreign offerings posted on the internet, the SEC has indicated foreign issuers and financial service providers would need to implement precautionary measures reasonably designed to ensure U.S. investors are not being targeted and that no sales to U.S. investors are ultimately made. See SEC Release no. 33-7516 (March 23, 1998), available at <https://www.sec.gov/rules/interp/33-7516.htm>.

required to register at the federal level,<sup>7</sup> but applicable SEC guidance is clear that the intrastate exemption is narrowly construed and offerings advertised through the internet are deemed interstate, not intrastate, in nature:

The exception provided for intrastate broker-dealer activity is very narrow. To qualify, all aspects of all transactions must be done within the borders of one state. This means that, without SEC registration, a broker-dealer cannot participate in any transaction executed on a national securities exchange or NASDAQ. Also, information posted on the Internet that is accessible by persons in another state would be considered an interstate offer of securities or investment services that would require Federal broker-dealer registration.<sup>8</sup>

Most of the state crowdfunding bills introduced to date fail to address these overarching federal broker-dealer registration requirements, relying perhaps on the faulty premise that an intrastate label on the offering alone is enough to bypass federal licensing requirements. For example, bills enacted in Wisconsin and New Jersey purport to allow unregistered internet platforms to be compensated for facilitating the sale of securities without a broker-dealer license. As defined, the activity requires registration with the SEC and FINRA. Unregistered internet platforms relying on the state exemption will be engaging in unlicensed sales subject to SEC action and potentially other adverse consequences.

Other state crowdfunding bills provide that crowdfunding transactions be conducted through an “intermediary” as is required by the JOBS Act, but may not appreciate the federal registration requirements associated with the intermediary status. Intermediaries are required to first register with the SEC as either a broker or “funding portal” and with any applicable SRO before they engage in crowdfunding occurring over the internet. The SEC has issued guidance that no intermediaries, not even registered broker-dealers, should be engaging in crowdfunding transactions pursuant to the exemption created in the JOBS Act until the SEC’s crowdfunding rules are finalized:

Please keep in mind that the SEC still has to write rules to implement the crowdfunding provisions of the JOBS Act. Until the SEC has completed this rulemaking, you cannot act as a crowdfunding intermediary, even if you are already a registered broker.<sup>9</sup>

Even once SEC rules are finalized, it is not clear that registered intermediaries will be able to complete intrastate crowdfunding offerings given the JOBS Act directive that a broker-dealer

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<sup>7</sup> Section 15(a)(1) of the Exchange Act provides an exemption from broker-dealer registration for a broker-dealer whose business is “exclusively intrastate and who does not make use of any facility of a national securities exchange.” 15 U.S.C. 78o(a)(1).

<sup>8</sup> SEC Guide to Broker-Dealer Registration, available at <http://www.sec.gov/divisions/marketreg/bdguide.htm> (emphasis added).

<sup>9</sup> SEC FAQs About Crowdfunding Intermediaries (Division of Trading and Markets May 7, 2012), available at <https://www.sec.gov/divisions/marketreg/tmjobsact-crowdfundingintermediariesfaq.htm>.



exemption is available only where the business is conducted solely in compliance with the federal crowdfunding rules.<sup>10</sup> Moreover, at this time, there are no registered crowdfunding intermediaries approved at the federal level because the SEC rules are still not finalized. Unregistered internet portals or other intermediaries who complete intrastate crowdfunding offerings on a commission or other transactional basis over the internet will be doing so illegally. A better state legislative approach may be to prohibit transaction-based compensation unless the intermediary is a registered broker-dealer.

### (3) Investor Protection

Given the potential for large numbers of unsophisticated and unaccredited investors<sup>11</sup> to participate in state-level crowdfunding offerings, NASAA recommends a balanced approach that reflects smarter regulation when consulted on state crowdfunding bills. We encourage state legislatures to employ a maximum annual offering limit as well as an individual investor limit that takes into account the type of investors participating in these offerings. The first state to adopt an exemption targeted at community investors, Kansas, set the limits at \$1 million and \$5,000 (unless the investor is accredited), respectively. The JOBS Act crowdfunding provisions also utilized a \$1 million offering limit and imposed similar individual limits of \$2,000 or 5-10% of applicable net worth or income.

NASAA discourages state legislatures from pursuing bills that do not take into account the unsophisticated nature of many of these investors. For example, the Wisconsin law creates a new classification of “certified investors” who are allowed to invest unlimited sums in these high-risk offerings without sufficient income or net worth to meet even the outdated accredited investor definition. Creating new investor classes that conflict with the federal standards may also result in unanticipated registration violations for both small business issuers and crowdfunding intermediaries.

NASAA encourages state legislatures to consider other investor protection provisions that have been included in some state crowdfunding bills, including a short notice filing to states that includes information about the company, its officers, directors and agents involved in the offering, and the amount being raised. A few states have also required that a basic disclosure document be provided to investors with information about the use of proceeds, financial condition of the issuer,

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<sup>10</sup> Section 3(a)(80) of the Exchange Act states that the term “funding portal” means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act, or the federal crowdfunding rules. Section 3(h) sets forth the limited exemption for funding portal registration as broker-dealers. In order to be exempt from broker-dealer registration, funding portals must be subject to SEC authority and be a member of a registered national securities association (i.e., FINRA). It also states that the national securities association “shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.” The practical effect of these provisions is that a registered funding portal is exempt from broker-dealer registration if it conducts its business solely in compliance with the federal crowdfunding rules.

<sup>11</sup> The definition of an “accredited investor” includes “[a]ny natural person whose individual net worth, or joint net worth with that person’s spouse [exclusive of the person’s primary residence], exceeds \$1,000,000” and “[a]ny natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.” 17 CFR § 230.501.

risk profile of the offering. Another good addition in a few bills is a disqualification provisions for "bad actors." Finally, a few bills contemplate investor attestations or certificates of acknowledgement regarding the risks disclosed in the offering. We caution states from limiting investor recourse against an issuer that fails to meet the standards set forth in the exemptions.

Thank you for your attention to these concerns. Should you or any of your members have questions or require additional information, please do not hesitate to contact myself, Anya Coverman, NASAA's Deputy Director of Policy, or Rick Fleming, NASAA's Deputy General Counsel, at (202) 737-0900.

Sincerely,

Russ Iuculano  
NASAA Executive Director

## State Crowdfunding

Mercer Bullard  
MDLA Lecturer and Professor of Law  
University of Mississippi School of Law

## State Crowdfunding

<p>Enacted:</p> <ol style="list-style-type: none"> <li>1. Alabama</li> <li>2. Colorado</li> <li>3. Georgia</li> <li>4. Idaho</li> <li>5. Indiana</li> <li>6. Kansas</li> <li>7. Maine</li> <li>8. Maryland</li> <li>9. Michigan</li> <li>10. Tennessee</li> <li>11. Washington</li> <li>12. Wisconsin</li> </ol>	<p>Proposed:</p> <ul style="list-style-type: none"> <li>• Alaska</li> <li>• Arkansas</li> <li>• California</li> <li>• Connecticut</li> <li>• District of Columbia</li> <li>• Florida</li> <li>• Illinois</li> <li>• Missouri</li> <li>• North Carolina</li> <li>• New Jersey</li> <li>• Pennsylvania</li> <li>• South Carolina</li> <li>• Texas</li> <li>• Utah</li> <li>• Virginia</li> </ul>
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Source: www.crowdcheck.com (current as of July 2014). Arkansas and Pennsylvania may be considering only notice filing for federal crowdfunding offerings.

## State Crowdfunding

### Federal Preemption

States cannot raise or lower standards

- 506, 505 & 701
- When effective: 4(6) crowdfunding
- As proposed: Reg A+

## State Crowdfunding

### Room for State Action

- Regulation A
- Securities Act Section 3(a)(11) & Rule 147 (intrastate offerings)
- Rule 504

## State Crowdfunding

### Two Approaches

- Create state crowdfunding exemption within Rule 147 intrastate offering exemption (11/12 enacted states)
- Create state crowdfunding exemption under Rule 504 (Maine)

## State Crowdfunding

	Offering Amount	Investor Req's	Registration Statement	Issuer Restrictions	GS&A	Resale Limits
Rule 147	No limit	In-state*	No	In-state**	In-state*	Yes
Rule 504	≤ \$1m/year	None	Yes***	Not: public co., investment co., blank check co.	Yes	No

Worth higher \$\$ limit? {

- \* Residents only (offers & sales; pre-cleared web access)
- \*\* Organized and principal place of business; 80% revenues, assets & use of proceeds
- \*\*\* Registration is not required under a state 504 exemption limiting sales to accredited investors.

### State Crowdfunding

#### Key Issues

- Annual Offering Limit (\$1m? \$2m?)
- Investment Limit (\$5k? \$10k?)
- Investor Qualifications (\$\$? sophistication?)
- Disclosure (scope? registration?)
- Sale Through Portal (req'd?)
- Audited Financials (req'd? \$\$ trigger?)

### State Crowdfunding

#### Range of Options



By: Senator(s) Tollison

To: Business and Financial  
Institutions

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2685

1 AN ACT TO AMEND SECTION 75-71-202, MISSISSIPPI CODE OF 1972,  
2 TO EXEMPT CERTAIN SMALL SECURITIES OFFERINGS FROM SECURITIES  
3 REGISTRATION REQUIREMENTS; TO CREATE NEW SECTION 75-17-202.1,  
4 MISSISSIPPI CODE OF 1972, TO CREATE THE INVEST MISSISSIPPI  
5 EXEMPTION TO ALLOW EQUITY CROWDFUNDING FOR CERTAIN SMALL SECURITY  
6 OFFERINGS; TO REQUIRE CERTAIN DISCLOSURES TO INVESTORS; TO REQUIRE  
7 PERIODIC REPORTING TO INVESTORS; TO AUTHORIZE THE SECRETARY OF  
8 STATE TO ADOPT RULES TO IMPLEMENT THE PROVISIONS OF THIS ACT AND  
9 TO PROTECT INVESTORS WHO PURCHASE SECURITIES UNDER THIS ACT; TO  
10 ESTABLISH A FILING FEE TO PAY THE COSTS INCURRED IN ADMINISTERING  
11 THE ACT; AND FOR RELATED PURPOSES.

12 WHEREAS, start-up companies play a critical role in creating  
13 new jobs and sources of revenue; and

14 WHEREAS, crowdfunding, or raising money through small  
15 contributions from a large number of investors, allows smaller  
16 enterprises in Mississippi to have access to the capital they need  
17 to initiate new business ventures; and

18 WHEREAS, by promoting crowdfunding, the Legislature can give  
19 new businesses access to additional financing tools, can assist in  
20 democratizing start-up capital, and can facilitate investment by  
21 Mississippi residents in Mississippi start-ups; and



22 WHEREAS, by facilitating investment with appropriate  
23 restrictions to protect the interests of Mississippi investors,  
24 the Legislature can promote the formation and growth of smaller  
25 Mississippi enterprises, along with additional job formation, and  
26 can permit businesses to raise capital using crowdfunding  
27 unencumbered by excessive government regulation; NOW, THEREFORE,

28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

29 **SECTION 1.** Section 75-71-202, Mississippi Code of 1972, is  
30 amended as follows:

31 75-71-202. The following transactions are exempt from the  
32 requirements of Sections 75-71-301 through 75-71-306 and  
33 75-71-504. The transactions listed below are self-actuating, are  
34 not conditioned by rule and require no pre-approval of the  
35 administrator, unless otherwise indicated below:

36 (1) An isolated nonissuer transaction, whether effected  
37 by or through a broker-dealer or not;

38 (2) A nonissuer transaction by or through a  
39 broker-dealer registered, or exempt from registration under this  
40 chapter, and a resale transaction by a sponsor of a unit  
41 investment trust registered under the Investment Company Act of  
42 1940, in a security of a class that has been outstanding in the  
43 hands of the public for at least ninety (90) days, if, at the date  
44 of the transaction:

45 (A) The issuer of the security is engaged in  
46 business, the issuer is not in the organizational stage or in



47 bankruptcy or receivership, and the issuer is not a blank check,  
48 blind pool, or shell company that has no specific business plan or  
49 purpose or has indicated that its primary business plan is to  
50 engage in a merger or combination of the business with, or an  
51 acquisition of, an unidentified person;

52 (B) The security is sold at a price reasonably  
53 related to its current market price;

54 (C) The security does not constitute the whole or  
55 part of an unsold allotment to, or a subscription or participation  
56 by, the broker-dealer as an underwriter of the security or a  
57 redistribution;

58 (D) A nationally recognized securities manual or  
59 its electronic equivalent designated by rule adopted or order  
60 issued under this chapter or a record filed with the Securities  
61 and Exchange Commission that is publicly available contains:

62 (i) A description of the business and  
63 operations of the issuer;

64 (ii) The names of the issuer's executive  
65 officers and the names of the issuer's directors, if any;

66 (iii) An audited balance sheet of the issuer  
67 as of a date within eighteen (18) months before the date of the  
68 transaction or, in the case of a reorganization or merger when the  
69 parties to the reorganization or merger each had an audited  
70 balance sheet, a pro forma balance sheet for the combined  
71 organization; and



72 (iv) An audited income statement for each of  
73 the issuer's two (2) immediately previous fiscal years or for the  
74 period of existence of the issuer, whichever is shorter, or, in  
75 the case of a reorganization or merger when each party to the  
76 reorganization or merger had audited income statements, a pro  
77 forma income statement; and

78 (E) Any one (1) of the following requirements is  
79 met:

80 (i) The issuer of the security has a class of  
81 equity securities listed on a national securities exchange  
82 registered under Section 6 of the Securities Exchange Act of 1934  
83 or designated for trading on the National Association of  
84 Securities Dealers Automated Quotation System;

85 (ii) The issuer of the security is a unit  
86 investment trust registered under the Investment Company Act of  
87 1940;

88 (iii) The issuer of the security, including  
89 its predecessors, has been engaged in continuous business for at  
90 least three (3) years; or

91 (iv) The issuer of the security has total  
92 assets of at least Two Million Dollars (\$2,000,000.00) based on an  
93 audited balance sheet as of a date within eighteen (18) months  
94 before the date of the transaction or, in the case of a  
95 reorganization or merger when the parties to the reorganization or





96 merger each had such an audited balance sheet, a pro forma balance  
97 sheet for the combined organization;

98 (3) A nonissuer transaction by or through a  
99 broker-dealer registered or exempt from registration under this  
100 chapter in a security of a foreign issuer that is a margin  
101 security defined in regulations or rules adopted by the Board of  
102 Governors of the Federal Reserve System;

103 (4) A nonissuer transaction by or through a  
104 broker-dealer registered or exempt from registration under this  
105 chapter in an outstanding security if the guarantor of the  
106 security files reports with the Securities and Exchange Commission  
107 under the reporting requirements of Section 13 or 15(d) of the  
108 Securities Exchange Act of 1934 (15 USC 78m or 78o(d));

109 (5) A nonissuer transaction by or through a  
110 broker-dealer registered or exempt from registration under this  
111 chapter in a security that:

112 (A) Is rated at the time of the transaction by a  
113 nationally recognized statistical rating organization in one (1)  
114 of its four (4) highest rating categories; or

115 (B) Has a fixed maturity or a fixed interest or  
116 dividend, if:

117 (i) A default has not occurred during the  
118 current fiscal year or within the three (3) previous fiscal years  
119 or during the existence of the issuer and any predecessor if \* \* \*



120 fewer than three (3) fiscal years, in the payment of principal,  
121 interest, or dividends on the security; and

122 (ii) The issuer is engaged in business, is  
123 not in the organizational stage or in bankruptcy or receivership,  
124 and is not and has not been within the previous twelve (12) months  
125 a blank check, blind pool, or shell company that has no specific  
126 business plan or purpose or has indicated that its primary  
127 business plan is to engage in a merger or combination of the  
128 business with, or an acquisition of, an unidentified person;

129 (6) A nonissuer transaction by or through a  
130 broker-dealer registered or exempt from registration under this  
131 chapter effecting an unsolicited order or offer to purchase;

132 (7) A nonissuer transaction executed by a bona fide  
133 pledgee without the purpose of evading this chapter;

134 (8) A nonissuer transaction by a federal covered  
135 investment adviser with investments under management in excess of  
136 One Hundred Million Dollars (\$100,000,000.00) acting in the  
137 exercise of discretionary authority in a signed record for the  
138 account of others;

139 (9) The following transaction requires approval of the  
140 administrator: a transaction in a security, whether or not the  
141 security or transaction is otherwise exempt, in exchange for one  
142 or more bona fide outstanding securities, claims, or property  
143 interests, or partly in such exchange and partly for cash, if the  
144 terms and conditions of the issuance and exchange or the delivery



145 and exchange and the fairness of the terms and conditions have  
146 been approved by the administrator after a hearing;

147 (10) A transaction between the issuer or other person  
148 on whose behalf the offering is made and an underwriter, or among  
149 underwriters;

150 (11) A transaction in a note, bond, debenture, or other  
151 evidence of indebtedness secured by a mortgage or other security  
152 agreement if:

153 (A) The note, bond, debenture, or other evidence  
154 of indebtedness is offered and sold with the mortgage or other  
155 security agreement as a unit;

156 (B) A general solicitation or general  
157 advertisement of the transaction is not made; and

158 (C) A commission or other remuneration is not paid  
159 or given, directly or indirectly, to a person not registered under  
160 this chapter as a broker-dealer or as an agent;

161 (12) A transaction by an executor, administrator of an  
162 estate, sheriff, marshal, receiver, trustee in bankruptcy,  
163 guardian, or conservator;

164 (13) A sale or offer to sell to:

165 (A) An institutional investor;

166 (B) A federal covered investment adviser; or

167 (C) Any other person exempted by rule adopted or  
168 order issued under this chapter;



169           (14) A sale or offer to sell securities by or on behalf  
170 of an issuer, if the transaction is part of a single issue in  
171 which:

172                   (A) Not more than ten (10) purchasers are present  
173 in this state during any twelve (12) consecutive months, other  
174 than those designated in paragraph (13);

175                   (B) A general solicitation or general advertising  
176 is not made in connection with the offer to sell or sale of the  
177 securities;

178                   (C) A commission or other remuneration is not paid  
179 or given, directly or indirectly, to a person other than a  
180 broker-dealer registered under this chapter or an agent registered  
181 under this chapter for soliciting a prospective purchaser in this  
182 state; and

183                   (D) The issuer reasonably believes that all the  
184 purchasers in this state, other than those designated in paragraph  
185 (13), are purchasing for investment;

186           (15) A transaction under an offer to existing security  
187 holders of the issuer, including persons that at the date of the  
188 transaction are holders of convertible securities, options, or  
189 warrants, if a commission or other remuneration, other than a  
190 standby commission, is not paid or given, directly or indirectly,  
191 for soliciting a security holder in this state;

192           (16) An offer to sell, but not a sale, of a security  
193 not exempt from registration under the Securities Act of 1933 if:



194 (A) A registration or offering statement or  
195 similar record as required under the Securities Act of 1933 has  
196 been filed, but is not effective, or the offer is made in  
197 compliance with Rule 165 adopted under the Securities Act of 1933  
198 (17 CFR 230.165); and

199 (B) A stop order of which the offeror is aware has  
200 not been issued against the offeror by the administrator or the  
201 Securities and Exchange Commission, and an audit, inspection, or  
202 proceeding that is public and that may culminate in a stop order  
203 is not known by the offeror to be pending;

204 (17) An offer to sell, but not a sale, of a security  
205 exempt from registration under the Securities Act of 1933 if:

206 (A) A registration statement has been filed under  
207 this chapter, but is not effective;

208 (B) A solicitation of interest is provided in a  
209 record to offerees in compliance with a rule adopted by the  
210 administrator under this chapter; and

211 (C) A stop order of which the offeror is aware has  
212 not been issued by the administrator under this chapter and an  
213 audit, inspection, or proceeding that may culminate in a stop  
214 order is not known by the offeror to be pending;

215 (18) A transaction involving the distribution of the  
216 securities of an issuer to the security holders of another person  
217 in connection with a merger, consolidation, exchange of  
218 securities, sale of assets, or other reorganization to which the



219 issuer, or its parent or subsidiary and the other person, or its  
220 parent or subsidiary, are parties;

221 (19) A rescission offer, sale, or purchase under  
222 Section 75-71-510;

223 (20) An offer or sale of a security to a person not a  
224 resident of this state and not present in this state if the offer  
225 or sale does not constitute a violation of the laws of the state  
226 or foreign jurisdiction in which the offeree or purchaser is  
227 present and is not part of an unlawful plan or scheme to evade  
228 this chapter;

229 (21) Employees' stock purchase, savings, option,  
230 profit-sharing, pension, or similar employees' benefit plan,  
231 including any securities, plan interests, and guarantees issued  
232 under a compensatory benefit plan or compensation contract,  
233 contained in a record, established by the issuer, its parents, its  
234 majority-owned subsidiaries, or the majority-owned subsidiaries of  
235 the issuer's parent for the participation of their employees  
236 including offers or sales of such securities to:

237 (A) Directors; general partners; trustees, if the  
238 issuer is a business trust; officers; consultants; and advisors;

239 (B) Family members who acquire such securities  
240 from those persons through gifts or domestic relations orders;

241 (C) Former employees, directors, general partners,  
242 trustees, if the issuer is a business trust, officers,  
243 consultants, and advisors if those individuals were employed by or



244 providing services to the issuer when the securities were offered;  
245 and

246 (D) Insurance agents who are exclusive insurance  
247 agents of the issuer, or the issuer's subsidiaries or parents, or  
248 who derive more than fifty percent (50%) of their annual income  
249 from those organizations;

250 (22) A transaction involving:

251 (A) A stock dividend or equivalent equity  
252 distribution, whether the corporation or other business  
253 organization distributing the dividend or equivalent equity  
254 distribution is the issuer or not, if nothing of value is given by  
255 stockholders or other equity holders for the dividend or  
256 equivalent equity distribution other than the surrender of a right  
257 to a cash or property dividend if each stockholder or other equity  
258 holder may elect to take the dividend or equivalent equity  
259 distribution in cash, property, or stock;

260 (B) An act incident to a judicially approved  
261 reorganization in which a security is issued in exchange for one  
262 or more outstanding securities, claims, or property interests, or  
263 partly in such exchange and partly for cash; or

264 (C) The solicitation of tenders of securities by  
265 an offeror in a tender offer in compliance with Rule 162 adopted  
266 under the Securities Act of 1933 (17 CFR 230.162); \* \* \*

267 (23) A nonissuer transaction in an outstanding security  
268 by or through a broker-dealer registered or exempt from



269 registration under this chapter, if the issuer is a reporting  
270 issuer in a foreign jurisdiction designated by this paragraph or  
271 by rule adopted or order issued under this chapter; has been  
272 subject to continuous reporting requirements in the foreign  
273 jurisdiction for not \* \* \* fewer than one hundred eighty (180)  
274 days before the transaction; and the security is listed on the  
275 foreign jurisdiction's securities exchange that has been  
276 designated by this paragraph or by rule adopted or order issued  
277 under this chapter, or is a security of the same issuer that is of  
278 senior or substantially equal rank to the listed security or is a  
279 warrant or right to purchase or subscribe to any of the foregoing.  
280 For purposes of this paragraph, Canada, together with its  
281 provinces and territories, is a designated foreign jurisdiction  
282 and The Toronto Stock Exchange, Inc., is a designated securities  
283 exchange. After an administrative hearing in compliance with  
284 Section 75-71-604, the administrator, by rule adopted or order  
285 issued under this chapter, may revoke the designation of a  
286 securities exchange under this paragraph, if the administrator  
287 finds that revocation is necessary or appropriate in the public  
288 interest and for the protection of investors \* \* \*; or

289 (24) Any offer or sale of a security by an issuer if  
290 the offer or sale is conducted in accordance with Section  
291 75-71-202.1.

292 **SECTION 2.** The following shall be codified as Section  
293 75-17-202.1, Mississippi Code of 1972:





294           75-17-202.1.   **Invest Mississippi exemption.**   (a) Exemption.  
295 Except as otherwise provided in this chapter, an offer or sale of  
296 a security by an issuer is exempt from Section 75-71-301 if the  
297 offer or sale is conducted in accordance with each of the  
298 following requirements:

299           (1) The issuer of the security is a business entity  
300 formed under the laws of the state, with a principal place of  
301 business in the state and authorized to do business in the state.

302           (2) The transaction meets the requirements of the  
303 federal exemption for intrastate offerings in Section 3(a)(11) of  
304 the Securities Act of 1933, 15 USC Section 77c(a)(11), and SEC  
305 Rule 147, 17 CFR Section 230.147. As such, securities must be  
306 offered to and sold only to persons who are residents of the state  
307 at the time of purchase.

308           (3) The sum of all cash and other consideration to be  
309 received for all sales of the security in reliance upon this  
310 exemption does not exceed the cap provided in this subsection.

311           (A) One Million Dollars (\$1,000,000.00), less the  
312 aggregate amount received for all sales of securities by the  
313 issuer within the twelve (12) months before the first offer or  
314 sale made in reliance upon this exemption, if the issuer has not  
315 made available to each prospective purchaser and the administrator  
316 audited financial statements or reviewed financial statements for  
317 the issuer's most recently completed fiscal year, prepared by a  
318 certified public accountant, in accordance with the Statements on



319 Auditing Standards of the American Institute of Certified Public  
320 Accountants or the Statements on Auditing Standards for Accounting  
321 and Review Services of the American Institute of Certified Public  
322 Accountants, as applicable.

323 (B) Two Million Dollars (\$2,000,000.00), less the  
324 aggregate amount received for all sales of securities by the  
325 issuer within the twelve (12) months before the first offer or  
326 sale made in reliance upon this exemption, if the issuer has made  
327 available to each prospective purchaser and the administrator  
328 audited financial statements or reviewed financial statements for  
329 the issuer's most recently completed fiscal year, prepared by a  
330 certified public accountant, in accordance with the statements on  
331 auditing standards of the American Institute of Certified Public  
332 Accountants or the statements on standards for accounting and  
333 review services of the American Institute of Certified Public  
334 Accountants, as applicable.

335 (4) The aggregate amount sold by the issuer to any  
336 investor does not exceed Two Thousand Dollars (\$2,000.00) unless  
337 the purchaser is an accredited investor as defined by Rule 501 of  
338 SEC Regulation D, 17 CFR Section 230.501 and the aggregate amount  
339 sold by the issuer to any accredited investor does not exceed ten  
340 percent (10%) of the annual income or net worth of such investor.

341 (5) The issuer must reasonably believe that all  
342 purchasers of the securities are purchasing for investment and not  
343 for sale in connection with a distribution of the security.



344           (6) A commission or remuneration shall not be paid or  
345 given, directly or indirectly, for any person's participation in  
346 the offer or sale of the securities for the issuer unless the  
347 person is registered as a broker-dealer or agent under this  
348 chapter.

349           (7) All funds received from investors shall be  
350 deposited into a bank or depository institution authorized to do  
351 business in the state and all the funds shall be used in  
352 accordance with the representations made to investors and in  
353 accordance with the terms of an escrow agreement as provided in  
354 subsection (a) (8) (C) of this section.

355           (8) No fewer than ten (10) days prior to the  
356 commencement of an offering of securities in reliance on this  
357 exemption, including any general solicitation of the offering, the  
358 issuer shall file a notice with the administrator, in writing or  
359 in electronic form as specified by the administrator, containing  
360 the following:

361           (A) A notice specifying the issuer's name,  
362 address, principal place of business in the state and contact  
363 information and that the issuer will be conducting an offering in  
364 reliance upon this exemption, accompanied by the filing fee as  
365 specified in this section. The notice shall also include evidence  
366 that the issuer of the security is a business entity formed under  
367 the laws of the state, and authorized to do business in the state.



368 (B) A copy of the disclosure statement to be  
369 provided to investors in connection with the offering, containing  
370 information material to the offering, including, but not limited  
371 to, the following subjects:

372 (i) A description of the company, its form of  
373 business organization, the address and telephone number of its  
374 principal office, its history, its business plan, and the intended  
375 use of the offering proceeds, including any amounts to be paid, as  
376 compensation or otherwise to any owner, executive officer,  
377 director, managing member, or other person occupying a similar  
378 status or performing similar functions on behalf of the issuer;

379 (ii) The identity of all persons owning more  
380 than ten percent (10%) of the ownership interests of any class of  
381 securities of the company;

382 (iii) The identity of the executive officers,  
383 directors, managing members, and other persons occupying a similar  
384 status or performing similar functions in the name of and on  
385 behalf of the issuer, including their titles and their prior  
386 experience;

387 (iv) The terms and conditions of the  
388 securities being offered and of any outstanding securities of the  
389 company, the minimum and maximum amount of securities being  
390 offered, if any, and either the percentage ownership of the  
391 company represented by the offered securities or the valuation of  
392 the company implied by the price of the offered securities;



393 (v) The minimum target offering amount  
394 specified in the business plan that is necessary to implement the  
395 business plan, and a notice that the funds will only be released  
396 to the issuer if the target offering amount is reached;

397 (vi) A description of the terms of the escrow  
398 agreement required by subsection (8)(C) and that all purchasers  
399 will receive a return of the subscription funds if the target  
400 offering amount is not raised by the time stated in the disclosure  
401 statement;

402 (vii) The identity of any person who has been  
403 or will be retained by the issuer to assist the issuer in  
404 conducting the offering and sale of the securities, including any  
405 Internet website operator, but excluding persons acting solely as  
406 accountants or attorneys and employees whose primary job  
407 responsibilities involve the operating business of the issuer,  
408 rather than assisting the issuer in raising capital;

409 (viii) A description of the consideration  
410 being paid for assistance to each person identified under  
411 subsection (7) of this section;

412 (ix) Any litigation or legal proceedings  
413 involving the company or its management;

414 (x) Any additional information material and  
415 specific to the offering, including, if appropriate, a discussion  
416 of significant factors that make the offering speculative or  
417 enhances risk to the prospective investor;



418 (xi) The risk factors and any other material  
419 information, either adverse or favorable, that will or could  
420 affect the company or its business, or any material information  
421 which would tend to make any representations about the company or  
422 investment misleading or incomplete.

423 (C) A copy of the escrow agreement with a bank,  
424 savings bank, savings and loan association, or credit union  
425 located in this state, in which the purchaser funds will be  
426 deposited, that provides that all offering proceeds will be  
427 released to the issuer only when the aggregate capital raised from  
428 all purchasers is equal to or greater than the minimum target  
429 offering amount specified in the disclosure statement as necessary  
430 to implement the business plan and that all purchasers will  
431 receive a return of their subscription funds if that target  
432 offering amount is not raised by the time stated in the disclosure  
433 statement. The bank or other depository institution may contract  
434 with the issuer to collect reasonable fees for its escrow services  
435 regardless of whether the target offering amount is reached.

436 (9) The issuer is not, either before or as a result of  
437 the offering, an investment company, as defined in Section 3 of  
438 the Investment Company Act of 1940, 15 USC Section 8a-3, or  
439 subject to the reporting requirements of Section 13 or 15(d) of  
440 the Securities Exchange Act of 1934, 15 USC Section 78m and  
441 78o(d).



442 (10) The issuer shall inform all purchasers under this  
443 section that the securities have not been registered under federal  
444 or state securities law and that the securities are subject to  
445 limitations on resale. The issuer shall display the following  
446 legend conspicuously on the cover page of the disclosure document:

447 **"IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON**  
448 **THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING,**  
449 **INCLUDING THE MERITS AND RISKS INVOLVED.** THESE SECURITIES HAVE  
450 NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION  
451 OR REGULATORY AUTHORITY INCLUDING THE MISSISSIPPI SECRETARY OF  
452 STATE. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED  
453 THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY  
454 REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE  
455 SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND  
456 RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY  
457 SUBSECTION (E) OF SEC RULE 147, 17 CFR SECTION 3.147(E) AS  
458 PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE  
459 APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR  
460 EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE  
461 REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN  
462 INDEFINITE PERIOD OF TIME."

463 (11) Offers and sales of securities pursuant to this  
464 section may be made through the Internet provided the following  
465 requirements, in addition to the other requirements in this  
466 section, are met:



467 (A) The offers and sales of securities shall be  
468 made through only one (1) single website.

469 (B) Prior to the offer of an investment  
470 opportunity to residents of this state through the website, the  
471 issuer shall provide to the website operator evidence that the  
472 issuer is organized under Mississippi law and that the insurer is  
473 authorized to do business within the state.

474 (C) Prior to the consummation of a purchase, an  
475 issuer shall:

476 (i) require the purchaser to certify in  
477 writing or electronically as follows:

478 "I UNDERSTAND AND ACKNOWLEDGE THAT:

479 I am investing in what may be a high-risk speculative  
480 business venture.

481 This offering has not been reviewed or approved by any state  
482 or federal securities regulatory authority, including the  
483 Mississippi Secretary of State and no person or authority has  
484 confirmed the accuracy or determined the adequacy of any  
485 disclosure made to me relating to this offering.

486 The securities I am acquiring in this offering are illiquid,  
487 and there is no ready market for the sale of the securities; it  
488 may be difficult or impossible for me to sell or otherwise dispose  
489 of this investment, and accordingly, I may be required to hold  
490 this investment indefinitely.





491 I may be subject to tax on my share of the taxable income and  
492 losses of the company, whether or not I have sold or otherwise  
493 disposed of my investment or received any dividends or other  
494 distributions from the company"; and

495 (ii) Obtain from each purchaser of a security  
496 under this section evidence that the purchaser is a resident of  
497 the state and, if applicable, an accredited investor and must  
498 provide ready access to the evidence to the administrator, upon  
499 request. The administrator may access, inspect, and review such  
500 evidence.

501 (D) The issuer shall provide to the administrator  
502 evidence that the website operator is a business entity that is  
503 organized and operating the website in the United States and that  
504 it is authorized to do business within the state and that the  
505 website is being utilized to offer and sell securities pursuant to  
506 this exemption. The issuer shall notify the administrator of the  
507 website operator's identity, location and contact information.

508 (E) The issuer must keep and maintain records of  
509 the offers and sales of securities effected through the website  
510 and the issuer must provide ready access to the records to the  
511 administrator, upon request. The administrator may access,  
512 inspect and review the website and the website operator's records  
513 related to the website.

514 (F) All payments for purchase of securities must  
515 be directed to and held by the bank or depository institution



516 subject to the provisions of the agreement as set forth in  
517 subsection (a) (8) (C) of this section.

518 (12) The website operator shall not be subject to the  
519 registration provisions of Sections 75-71-401, 75-71-402,  
520 75-71-403, 75-71-404, 75-71-405 and 75-71-406, provided that all  
521 of the following apply:

522 (A) It does not offer investment advice or  
523 recommendations.

524 (B) It does not solicit purchases, sales, or  
525 offers to buy the securities offered or displayed on the website.

526 (C) It does not compensate employees, agents, or  
527 other persons for the solicitation of the securities offering or  
528 compensate such employees, agents or other persons based on the  
529 sale of securities displayed or referenced on the website.

530 (D) It does not hold, manage, possess, or  
531 otherwise handle investor funds or securities.

532 (E) It does not engage in such other activities as  
533 the administrator, by rule, determines to be inappropriate.

534 (13) An executive officer, director, managing member,  
535 or person occupying a similar status or performing similar  
536 functions in the name of and on behalf of the issuer shall be  
537 exempt from the registration provisions of Sections 75-71-401,  
538 75-71-402, 75-71-403, 75-71-404, 75-71-405 and 75-71-406, provided  
539 that the person does not receive, directly or indirectly, any



540 commission or remuneration for offering and selling securities of  
541 the issuer pursuant to this exemption.

542 (b) [Reserved]

543 (c) Report. An issuer of a security, the offer and sale of  
544 which is exempt under this section, shall provide a quarterly  
545 report to the issuer's investors until no securities issued under  
546 this section are outstanding. The report required by this  
547 subsection shall be free of charge. An issuer may satisfy the  
548 reporting requirement of this subsection by making the information  
549 available on an Internet website address if the information is  
550 made available within forty-five (45) days of the end of each  
551 fiscal quarter and remains available until the succeeding  
552 quarterly report is issued. An issuer must provide a written copy  
553 of the report to any investor upon request. The report must  
554 contain each of the following:

555 (1) Compensation received by each director and  
556 executive officer, including cash compensation earned since the  
557 previous report and on an annual basis and any bonuses, stock  
558 options, other rights to receive securities of the issuer or any  
559 affiliate of the issuer, or other compensation received.

560 (2) An analysis by management of the issuer of the  
561 business operations and financial condition of the issuer. The  
562 issuer shall file each such quarterly report with the  
563 administrator as required by rule.



564 (d) Offers and sales to controlling persons. The exemption  
565 provided in this section shall not be used in conjunction with any  
566 other exemption under this chapter, except offers and sales to  
567 controlling persons shall not count toward the limitation in  
568 subsection (a)(3) of this section. A controlling person is an  
569 officer, director, partner, trustee, or individual occupying  
570 similar status or performing similar functions with respect to the  
571 issuer or to a person owning ten percent (10%) or more of the  
572 outstanding shares of any class or classes of securities of the  
573 issuer.

574 (e) Disqualification. The exemption allowed by this section  
575 shall not apply if an issuer or person affiliated with the issuer  
576 or offering is subject to any disqualification contained in Rule  
577 262 as promulgated under the Securities Act of 1933 (17 CFR  
578 Section 230.262).

579 (f) Rules. The administrator may adopt rules to implement  
580 the provisions of this section and to protect investors who  
581 purchase securities under this section.

582 (g) Fee. The administrator shall charge a nonrefundable  
583 filing fee and an annual renewal fee of Three Hundred Dollars  
584 (\$300.00) for filing an exemption notice and for annual renewal  
585 filings required by subsection (a) of this section.

586 (h) Nothing in this exemption shall be construed to  
587 alleviate any person from the antifraud provisions of this  
588 chapter, nor shall such exemption be construed to provide relief



589 from any other provisions of this chapter other than as expressly  
590 stated.

591           **SECTION 4.** This act shall take effect and be in force from  
592 and after January 1, 2015, and shall stand repealed on December  
593 31, 2014.

