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)
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. 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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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)

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

- 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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<tbody>
<tr>
<td>Georgia</td>
<td>Rule 590-4-2-.08</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>A rule was promulgated on December 8, 2011.</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Idaho</td>
<td>Exemption by Order</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>An order was issued on January 20, 2012.</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Indiana</td>
<td>SB 375/ Public Law 106</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>—</td>
<td>—</td>
<td>The bill was signed into law on March 25.</td>
</tr>
<tr>
<td>Kansas</td>
<td>K.A.R. 81-5-21</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>An exemption was adopted on August 12, 2011.</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Maine</td>
<td>LD 1512 (Chapter 452)</td>
<td>Tied to federal Reg. D, Rule 504 offering exemption.</td>
<td>—</td>
<td>—</td>
<td>The bill became Public Law on March 2.</td>
</tr>
<tr>
<td>Maryland</td>
<td>SB 811 (Chapter 557)/HB 1243 (Chapter 558)</td>
<td>Exempted security tied to federal intrastate offering exemption.</td>
<td>—</td>
<td>—</td>
<td>Both bills were signed into law on May 15.</td>
</tr>
<tr>
<td>Michigan</td>
<td>HB 4996/ Public Act 264</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>—</td>
<td>—</td>
<td>The bill was signed into law on December 26.</td>
</tr>
<tr>
<td>Mississippi</td>
<td>SB 2685</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>—</td>
<td>—</td>
<td>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.</td>
</tr>
<tr>
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<tr>
<td>Missouri</td>
<td>HB 1736</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>—</td>
<td>—</td>
<td>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.</td>
</tr>
<tr>
<td>Nebraska</td>
<td>LB 205/Rev Stat. 8-1111(23)</td>
<td>Tied to federal intrastate offering exemption; prohibits a &quot;public offering.&quot;</td>
<td>—</td>
<td>The bill was signed into law on May 8.</td>
<td>—</td>
</tr>
<tr>
<td>New Jersey</td>
<td>A2073/S712</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>—</td>
<td>—</td>
<td>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.</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Proposed Regulations</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>—</td>
<td>—</td>
<td>Proposed regulations will be issued and begin a 60 day comment period.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>HB 680</td>
<td>Tied to federal intrastate offering exemption.</td>
<td>—</td>
<td>—</td>
<td>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.</td>
</tr>
<tr>
<td>STATE</td>
<td>BILL #</td>
<td>DESCRIPTION</td>
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</tr>
<tr>
<td>Tennessee</td>
<td>HB 1684/ SB 1481</td>
<td>Tied to federal intrastate offering exemption.</td>
<td></td>
<td></td>
<td>The bill was signed into law on May 19.</td>
</tr>
<tr>
<td>Texas</td>
<td>Proposed Rules</td>
<td>Tied to federal intrastate offering exemption.</td>
<td></td>
<td></td>
<td>Proposed rules were published on May 9, and are open for public comment for 30 days.</td>
</tr>
<tr>
<td>Utah</td>
<td>HB 142</td>
<td>Tied to federal intrastate offering exemption.</td>
<td></td>
<td></td>
<td>The bill was introduced on February 17 and received a first and second reading. <em>The legislature adjourned on March 13.</em></td>
</tr>
<tr>
<td>Virginia</td>
<td>HB 880/ SB 351</td>
<td>Tied to federal intrastate offering exemption.</td>
<td></td>
<td></td>
<td>Both bills were introduced on January 8. <em>The legislature adjourned on March 8.</em></td>
</tr>
<tr>
<td>Washington</td>
<td>HB 2023/ Chapter 144</td>
<td>Tied to federal intrastate offering exemption.</td>
<td></td>
<td></td>
<td>The bill was signed into law on March 28.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>AB 350/ Public Act 52</td>
<td>Tied to federal intrastate offering exemption.</td>
<td></td>
<td></td>
<td>The bill was signed into law on November 7.</td>
</tr>
</tbody>
</table>
§ 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
(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.
§ 230.147 “Part of an issue”, “person resident”, and “doing...”, 17 C.F.R. § 230.147

(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:
§ 230.147 “Part of an issue”, “person resident”, and “doing..., 17 C.F.R. § 230.147

(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.

(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.
§ 230.147 "Part of an issue", "person resident", and "doing...", 17 C.F.R. § 230.147

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


AUTHORITY: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 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

End of Document

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).
(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.

§ 230.504 Exemption for limited offerings and sales of..., 17 C.F.R. § 230.504

(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--

(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).
§ 230.504 Exemption for limited offerings and sales of..., 17 C.F.R. § 230.504

(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]


AUTHORITY: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77i, 77s, 77s–3, 77ss, 78c, 78d, 78j, 78l, 78m, 78n, 78o–7 note, 78r, 78w, 78l (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)

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.
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, 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, 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, crowdfundings 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

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1 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.

2 References to the word “bill” include state exemptions adopted by legislation, regulation or order.
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.\footnote{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.}

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.\footnote{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 doing 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.} 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.
(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. 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. 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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5 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. I, at 520-25 (6th ed. 2011); Sec. Act Rel. 4434 (1961).

6 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, 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.  

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.

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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exemption is available only where the business is conducted solely in compliance with the federal crowdfunding rules. 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 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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10 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(i) 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.

11 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

Enacted:
1. Alabama
2. Colorado
3. Georgia
4. Idaho
5. Indiana
6. Kansas
7. Maine
8. Maryland
9. Michigan
10. Tennessee
11. Washington
12. Wisconsin

Proposed:
- Alaska
- Arkansas
- California
- Connecticut
- District of Columbia
- Florida
- Illinois
- Missouri
- North Carolina
- New Jersey
- Pennsylvania
- South Carolina
- Texas
- Utah
- Virginia

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

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Investor Req's

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Registration Statement

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Issuer Restrictions

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ES&A Resale Limits

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Worth higher $5 limits?
* 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

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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

Mirror
Federal
Crowdfunding

Mississippi-
Specific
Exemption

Temporary

Permanent
To: Business and Financial Institutions

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2014
By: Senator(s) Tollison

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2685

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

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

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

WHEREAS, by promoting crowdfunding, the Legislature can give new businesses access to additional financing tools, can assist in democratizing start-up capital, and can facilitate investment by Mississippi residents in Mississippi start-ups; and
WHEREAS, by facilitating investment with appropriate restrictions to protect the interests of Mississippi investors, the Legislature can promote the formation and growth of smaller Mississippi enterprises, along with additional job formation, and can permit businesses to raise capital using crowdfunding unencumbered by excessive government regulation; NOW, THEREFORE, BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

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

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

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

(A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in
bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

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

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

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

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

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

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
(iv) An audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

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

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

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

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

(iv) The issuer of the security has total assets of at least Two Million Dollars ($2,000,000.00) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger
merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

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

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

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

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

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

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

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

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

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

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

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

(9) The following transaction requires approval of the administrator: a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery
and exchange and the fairness of the terms and conditions have
been approved by the administrator after a hearing;

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

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

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

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

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

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

(13) A sale or offer to sell to:

(A) An institutional investor;

(B) A federal covered investment adviser; or

(C) Any other person exempted by rule adopted or

order issued under this chapter;
(14) A sale or offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

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

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

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

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

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

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:
(A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165); and

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

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

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

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

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

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the
issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

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

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

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

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

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

(C) Former employees, directors, general partners, trustees, if the issuer is a business trust, officers, consultants, and advisors if those individuals were employed by or
providing services to the issuer when the securities were offered;

and

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

(22) A transaction involving:

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

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

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

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from
registration under this chapter, if the issuer is a reporting
issuer in a foreign jurisdiction designated by this paragraph or
by rule adopted or order issued under this chapter; has been
subject to continuous reporting requirements in the foreign
jurisdiction for not fewer than one hundred eighty (180)
days before the transaction; and the security is listed on the
foreign jurisdiction's securities exchange that has been
designated by this paragraph or by rule adopted or order issued
under this chapter, or is a security of the same issuer that is of
senior or substantially equal rank to the listed security or is a
warrant or right to purchase or subscribe to any of the foregoing.
For purposes of this paragraph, Canada, together with its
provinces and territories, is a designated foreign jurisdiction
and The Toronto Stock Exchange, Inc., is a designated securities
exchange. After an administrative hearing in compliance with
Section 75-71-604, the administrator, by rule adopted or order
issued under this chapter, may revoke the designation of a
securities exchange under this paragraph, if the administrator
finds that revocation is necessary or appropriate in the public
interest and for the protection of investors; or
(24) Any offer or sale of a security by an issuer if
the offer or sale is conducted in accordance with Section
75-71-202.1.

SECTION 2. The following shall be codified as Section
75-17-202.1, Mississippi Code of 1972:
75-17-202.1. **Invest Mississippi exemption.** (a) Exemption.

Except as otherwise provided in this chapter, an offer or sale of a security by an issuer is exempt from Section 75-71-301 if the offer or sale is conducted in accordance with each of the following requirements:

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

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

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

   (A) One Million Dollars ($1,000,000.00), less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer or sale made in reliance upon this exemption, if the issuer has not made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, in accordance with the Statements on
Auditing Standards of the American Institute of Certified Public Accountants or the Statements on Auditing Standards for Accounting and Review Services of the American Institute of Certified Public Accountants, as applicable.

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

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

(5) The issuer must reasonably believe that all purchasers of the securities are purchasing for investment and not for sale in connection with a distribution of the security.
(6) A commission or remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of the securities for the issuer unless the person is registered as a broker-dealer or agent under this chapter.

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

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

(A) A notice specifying the issuer's name, address, principal place of business in the state and contact information and that the issuer will be conducting an offering in reliance upon this exemption, accompanied by the filing fee as specified in this section. The notice shall also include evidence that the issuer of the security is a business entity formed under the laws of the state, and authorized to do business in the state.
(B) A copy of the disclosure statement to be provided to investors in connection with the offering, containing information material to the offering, including, but not limited to, the following subjects:

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

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

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

   (iv) The terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities;
(v) The minimum target offering amount specified in the business plan that is necessary to implement the business plan, and a notice that the funds will only be released to the issuer if the target offering amount is reached;

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

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

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

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

(x) Any additional information material and specific to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or enhances risk to the prospective investor;
(xi) The risk factors and any other material information, either adverse or favorable, that will or could affect the company or its business, or any material information which would tend to make any representations about the company or investment misleading or incomplete.

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

(9) The issuer is not, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940, 15 USC Section 8a-3, or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 USC Section 78m and 78o(d).
(10) The issuer shall inform all purchasers under this section that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

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

(11) Offers and sales of securities pursuant to this section may be made through the Internet provided the following requirements, in addition to the other requirements in this section, are met:
(A) The offers and sales of securities shall be made through only one (1) single website.

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

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

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

      "I UNDERSTAND AND ACKNOWLEDGE THAT:

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

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

      The securities I am acquiring in this offering are illiquid, and there is no ready market for the sale of the securities; it may be difficult or impossible for me to sell or otherwise dispose of this investment, and accordingly, I may be required to hold this investment indefinitely."
I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company”; and

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

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

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

(F) All payments for purchase of securities must be directed to and held by the bank or depository institution
subject to the provisions of the agreement as set forth in subsection (a)(8)(C) of this section.

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

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

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

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

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

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

(13) An executive officer, director, managing member, or person occupying a similar status or performing similar functions in the name of and on behalf of the issuer shall be exempt from the registration provisions of Sections 75-71-401, 75-71-402, 75-71-403, 75-71-404, 75-71-405 and 75-71-406, provided that the person does not receive, directly or indirectly, any
commission or remuneration for offering and selling securities of
the issuer pursuant to this exemption.

(b) [Reserved]

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

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

(2) An analysis by management of the issuer of the
business operations and financial condition of the issuer. The
issuer shall file each such quarterly report with the
administrator as required by rule.
(d) Offers and sales to controlling persons. The exemption provided in this section shall not be used in conjunction with any other exemption under this chapter, except offers and sales to controlling persons shall not count toward the limitation in subsection (a)(3) of this section. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.

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

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

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

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

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