

Title 1: Secretary of State

Part 14: Securities Regulation

Part 14 Chapter 2: Notice Filing and Registration of Securities

Subchapter 1: REGISTRATION BY COORDINATION AND QUALIFICATION

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

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

1. **Accredited investor** is defined in 17 C.F. R. Section 230.501(a) as currently enacted or as amended, and a non-accredited investor means an investor who does not meet the definition of an accredited investor.
2. **Annual Income** means:
 - a. For individuals, income is determined as the sum of the individual's:
 - i. Wages, salaries, commissions, bonuses, and tips from all jobs before deductions for taxes, dues, or other items;
 - ii. Self-employment net income (after business expenses);
 - iii. Retirement pensions from companies and unions; federal, state, and local governments; and the U.S. military;
 - iv. Monthly income from annuities, IRAs, or KEOGH retirement plans;
 - v. Interest, dividends, and rental income; and
 - vi. Partner, shareholder, and beneficiary income as reported to the Internal Revenue Service on Schedule K-1 (Form 1065) (a reported loss on Schedule K-1 is counted against the sum of income).

- b. For entities, income is determined as the revenue in excess of expenses, including depreciation, determined before taxes and as filed with the Mississippi Department of Revenue or the Internal Revenue Service on the entity's last tax return.
3. **Bank** means a depository institution that is organized or chartered under the laws of this state or of the United States, is authorized to do business in this state, and is located in this state. For purposes of this Rule, a credit union is included in the definition of bank.
 4. **IMC Statement** means the document, as adopted by the Division, entitled "Invest Mississippi Crowdfunding Simplified Registration Statement."
 5. **Intermediary** means a person that is registered with the Division pursuant to this Rule as an intermediary who has been or will be retained by the issuer in conducting the offering and sales of securities through an Internet website. An intermediary can be a broker-dealer or agent that is registered with the Division or a bank or an intermediary funding portal.
 6. **Intermediary Funding Portal** is a person operating an Internet website that is not a bank, broker-dealer, or agent registered under the Act.
 7. **Intermediary Registration Form** means the document, as adopted by the Division, entitled "Invest Mississippi Crowdfunding Intermediary Registration Form." A person registering as an Intermediary pursuant to this Rule must select on the form whether it is registering as a Bank, Broker-Dealer, or Intermediary Funding Portal.
 8. **Issuer** means a limited liability company or business corporation formed under the laws of this state that seeks to conduct an offering of securities in reliance on this Rule.
 9. **Minimum Target Offering Amount** means fifty percent (50%) of the total offering amount of an offering made by the issuer in reliance on this Rule which amount shall be set out on the IMC Statement.
 10. **Net Worth** means the amount by which an investor's assets exceed liabilities, excluding the investor's primary residence, as defined in 17 C.F.R. Section 230.501(a)(5)(i).
 11. **Offering Deadline** means the date stated in the IMC Statement by which the sum of the offering proceeds held in escrow will equal the minimum target offering amount or investors may request a refund of their investment.

12. **Qualified Purchaser** is defined in Section 2(a)(51) of the Investment Company Act of 1940, as currently enacted or as amended.
 13. **Rule 504** means Rule 504 of the SEC Regulation D, 17 C.F.R. Section 230.504, promulgated pursuant to the Securities Act of 1933, 15 U.S.C. Sections 77a, *et seq.*, and any amendments thereto.
- B. *Short-form registration statement.* For any offer or sale of securities offered or sold in compliance with Rule 504, the IMC Statement shall be used as the registration statement required to be filed with the Division under this Rule. A copy of the IMC Statement is available upon request. Any offer or sale of securities offered or sold in compliance with this Rule must satisfy the following conditions and limitations:
1. The issuer of the securities is a business corporation or limited liability company formed under the laws of this state, with a principal place of business in this state, and authorized to do business in this state;
 2. The issuer is not, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. Section 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. Sections 78m and 78o(d);
 3. The aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the simplified registration provided under this Rule during the twelve (12) month period preceding the date of such transaction, is not more than Five Million Dollars (\$5,000,000.00).
 - a. If the issuer has been in existence for twelve (12) months or more the issuer must provide to each prospective investor a balance sheet and statement of income and expense of its most recently completed fiscal year and interim quarterly financial statements if the issuer's fiscal year ended more than ninety (90) days prior to the date of the IMC Statement.
 - b. If the issuer has been in existence for less than twelve (12) months, the issuer must provide to each prospective investor a balance sheet and statement of income and expense for the time period since its existence.
 - c. The issuer shall include the issuer's financial projections of income and expense for two (2) years from the date of the IMC Statement.
 - d. The financial statements, which may be unaudited, shall be signed by the principal executive officer of the issuer who shall certify under penalties of perjury that the statements therein are true, complete, and correct in all material respects to the best of the signer's knowledge.

4. The aggregate amount sold to any single investor by multiple issuers in reliance on this Rule during the twelve (12) month period preceding the date of such transaction:
 - a. For accredited investors, the aggregate amount sold by multiple issuers to any single accredited investor does not exceed the greater of:
 - i. If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or
 - ii. If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00).
 - b. For non-accredited investors, the aggregate amount sold to a single non-accredited investor by multiple issuers does not exceed the greater of:
 - i. Five Thousand Dollars (\$5,000.00);
 - ii. If the investor has had an annual income of less than Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or less than Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married), five percent (5%) of the investor's annual income; or
 - iii. If the investor's net worth is less than One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth.
 - c. For investors that are qualified purchasers, there shall be no aggregate limit on the amount the qualified purchaser investor can purchase from a single issuer or multiple issuers in offerings conducted pursuant to this Rule.
5. No remuneration shall be paid or given, directly or indirectly, for any person's participation in the offer or sale of the securities for the issuer unless the person is registered as an intermediary as such term is defined in Subsection (A)(5) of this Rule.
6. All funds received from investors shall be deposited into a Bank and all the funds shall be used in accordance with the representations made to investors and in accordance with the terms of an escrow agreement which provides that:
 - a. The investor funds will be deposited into an escrow account in a Bank, with the Bank acting as escrow agent;

- b. For each investment, the issuer will provide to the escrow agent a copy of the subscription agreement setting forth the names, addresses, and respective amounts paid by each investor whose funds comprise each deposit;
 - c. The issuer must raise the minimum target offering amount specified as necessary to implement the business plan by the offering deadline before the escrow agent may release the offering proceeds to the issuer upon joint written notice from the issuer and the intermediary;
 - d. If the issuer does not raise the minimum target offering amount by the offering deadline, investors will have the option to obtain a refund of their investment by providing written notice, including electronic mail, to the intermediary, which shall provide written notice to the issuer and the escrow agent at which time the escrow agent shall return the investor's amount contributed;
 - e. All offering proceeds not returned to the investor by the escrow agent after the offering deadline, as provided above, will be released to the issuer when the escrow agent has received written notice from the issuer or the intermediary to release the remaining proceeds to the issuer, or they may be returned to the investors at the issuer's option if the issuer or the intermediary provides written notice to the escrow agent authorizing and instructing the escrow agent to return the remaining investors amounts contributed;
 - f. All offering proceeds not returned to the investor or released to the issuer after twelve (12) months from date of receipt may be returned to the investor by the escrow agent to the last known address of the investor, or if not, shall be submitted to the State Treasurer in accordance with the unclaimed property laws; and
 - g. The escrow agent may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the minimum target offering amount is reached.
7. No offerings or sales of securities shall be made in reliance on this Rule until the issuer files the IMC Statement in writing or in electronic form with the Division, completed with specificity as required by the instructions in the Statement, and as required by the Division, in writing or in electronic form as specified by the Division and the issuer is issued a Certification of Invest Mississippi Crowdfunding Registration from the Division. The issuer must also include in such filing a copy of the escrow agreement as required by Subsection (B)(6) above, all other exhibits to the IMC Statement as otherwise specified by the Division, and any other documents or information the Division may require to administer and enforce the requirements of this Rule. .
8. Registration by this Rule shall become effective on the issuance of a Certification of Invest Mississippi Crowdfunding Registration by the Division which shall be

issued within five (5) business days of receiving the completed IMC Statement and all other exhibits to the IMC Statement, except as otherwise specified by the Division.

9. The completed IMC Statement, including exhibits, shall be provided to the relevant intermediary and shall be made available to potential investors after the Certification of Invest Mississippi Crowdfunding Registration has been issued by the Division.
10. The issuer shall inform all investors under this Rule that the securities have not been registered under federal securities law.
11. Prior to the consummation of a sale, the issuer shall require the prospective investor to certify in writing or electronically as follows:
 - a. The investor's name, address, social security number, annual income, net worth, and state of residency; and, if applicable, that the investor is either an accredited investor or a qualified purchaser;
 - b. The aggregate amount of securities sold to the investor in reliance on this Rule during the twelve (12) month period preceding the date of the purchase, together with the securities to be sold by the issuer to the investor:
 - i. For accredited investors that are not qualified purchasers the investor has not invested more than the greater of:
 - (a) If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or
 - (b) If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00).
 - ii. For non-accredited investors, that the investor has not invested more than the greater of:
 - (a) Five Thousand Dollars (\$5,000.00);
 - (b) If the investor has had an annual income of less than Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or less than Three Hundred Thousand Dollars (\$300,000.00) together

with a spouse if married), five percent (5%) of the investor's annual income; or

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

c. The issuer must maintain the above certifications and provide ready access to the records to the Division upon request. The Division may access, inspect, and review such records.

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

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

1. Before any offer or sale of securities, the issuer must provide evidence to the intermediary that the issuer is organized under the laws of this state with a principal place of business in this state and is authorized to do business in this state.
2. An intermediary is not required to register as a broker-dealer under the Act if all the following apply with respect to the Internet website and its operator:
 - a. They do not offer investment advice or recommendations;
 - b. They do not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;
 - c. They do not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website;
 - d. They do not hold, manage, possess, or otherwise handle investor funds or securities, unless it is a bank operating as an escrow agent for the offering;
 - e. They do not identify, promote, or otherwise refer to any individual security offered on the Internet website in any advertising for the Internet website; and
 - f. Neither the intermediary, nor any director, executive officer, general partner, twenty percent (20%) or greater beneficial owner, managing member, or other person with management authority over the intermediary, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)(1)) that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(a)-(c)).

3. Subject to Subsection (13) below, persons desiring to be an Intermediary must register as an Intermediary with the Division.
 - a. Registered broker-dealers may register to be an intermediary by filing the Intermediary Registration Form with the Division, a copy of which is available upon request. No filing fee shall be required for registered broker-dealers acting as intermediaries. The Form shall include the following information:
 - i. The identity, contact information, and location for the broker-dealer, including the broker-dealer's CRD number;
 - ii. Confirmation that the broker-dealer is authorized to do business in this state; and
 - iii. Confirmation that the broker-dealer is using an Internet website to offer and sell securities pursuant to this Rule.
 - b. A bank may register to be an Intermediary by filing the Intermediary Registration Form with the Division, a copy of which is available upon request. No filing fee shall be required for banks acting as intermediaries. The Form shall include the following information:
 - i. The identity, contact information, and location for the bank;
 - ii. The bank is authorized to do business in this state;
 - iii. The bank is using an Internet website to offer and sell securities pursuant to this Rule; and
 - iv. The bank meets the requirements set forth in Subsection (C)(2) of this Rule.
 - c. An Internet website operator may register to be an intermediary by filing the Intermediary Registration Form, a copy of which is available upon request, accompanied by a nonrefundable filing fee of Two Hundred Dollars (\$200.00), that includes the following information:
 - i. The identity, contact information, and location for the intermediary funding portal;
 - ii. Confirmation that the intermediary funding portal is authorized to do business in this state;
 - iii. Confirmation that the intermediary funding portal is using an Internet website to offer and sell securities pursuant this Rule;
 - iv. Confirmation that the intermediary funding portal meets the requirements set forth in Subsection (C)(2) of this Rule; and

- v. Any other information the Division considers necessary or appropriate in the public interest and for the protection of investors, including the financial responsibility, business repute or qualifications of the Internet website operator and to determine whether the operator can carry out the requirements of this Rule and will comply with this Rule.
4. The intermediary funding portal is not required to register as a broker-dealer under Subsection (4) above if the intermediary funding portal is a funding portal registered under the Securities Act of 1933 (15 U.S.C. 77d-1) and the SEC rules under authority of Section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(h)) and P.L.112-106, Section 304, governing funding portals.
5. Registration as an intermediary expires at the close of the calendar year, but subsequent registration for the succeeding year shall be issued upon filing of a renewal form, a copy of which is available upon request and upon payment of the appropriate filing fee.
6. The issuer must maintain records of all offers and sales of securities effected through the intermediary and must provide the Division, upon request, ready access to the records.
7. The intermediary shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made of the issuer's securities effected by the intermediary through the intermediary's Internet website and related to transactions in which the intermediary receives compensation from the issuer for such services, including but not limited to:
 - a. Records of compensation received for acting as an intermediary for an issuer, including the name of the payor, the date of payment, and name of the issuer;
 - b. For each offering effected by the intermediary through the intermediary's Internet website, the issuer's name and the name, address, and amount of purchase for each investor in such offering;
 - c. Copies of information provided by the intermediary to investors, prospective purchasers, and issuers offering securities through the intermediary;
 - d. Any agreements and/or contracts between the intermediary and an issuer, prospective purchaser, or investor;
 - e. Any information used to establish that an issuer is a resident of this state;
 - f. Any information used to establish the residency of a prospective purchaser or investor;

the investor may be required to hold and bear the financial risks of this investment indefinitely.

10. The intermediary shall not purchase or receive more than fifteen percent (15%) of the securities in the offering and shall prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services as an intermediary, unless the financial interest in the aggregate does not exceed fifteen percent (15%) of the ownership of the issuer.
 11. All communications between the issuer, prospective purchasers, or investors taking place during the offer of securities pursuant to this Rule must occur through the intermediary's Internet website. Notwithstanding the foregoing, the issuer or the intermediary may distribute a notice limited to the statement that the issuer is conducting an offering, the name of the intermediary through which the offering is being conducted, and a link directing the potential investor to the intermediary's website.
 12. If any change occurs that affects the intermediary's registration, the intermediary must notify the Division within thirty (30) days after the change occurs. Within thirty (30) days of the delivery of the notice to the Division, the intermediary shall, unless otherwise permitted or directed by the Division, cease and desist from operating as an intermediary pursuant to this Rule and shall, within five (5) business days, notify each issuer for which it is conducting offerings that the intermediary's registration has been revoked.
- D. *Report.* For so long as securities registered under this Rule are outstanding, the issuer shall provide a quarterly report to the issuer's investors. The report required by this Rule shall be free of charge. An issuer may satisfy the reporting requirement of this Rule if the information is made available within forty-five (45) days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. The issuer must provide a written copy of the report to any investor upon request. The issuer shall make each such quarterly report available to the Division upon request. The report must contain each of the following:
1. Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and
 2. An analysis by management of the issuer of the business operations and financial condition of the issuer, such as a recent financial statement and profit and loss statement.
- E. The Division and every investor or prospective purchaser shall be notified within thirty (30) days of any material change in the issuer's information submitted in accordance with this Rule.

- F. A Certificate of Invest Mississippi Crowdfunding Registration is effective for one (1) year after its effective date. Applicants for registration under this Rule may re-register a security by submitting a report for sales of the securities sold in this state for the preceding twelve (12) month period.
- G. The issuer must file a sales report with the Division within thirty (30) days of termination, expiration, abandonment, withdrawal, or completion of the offering in a form prescribed by the Division.
- H. Offers and sales to controlling persons shall not count toward the limitation in Subsection (B)(4) of this Rule. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.
- I. *Disqualification.* The simplified registration allowed by this Rule shall not apply if the issuer, any of its executive officers, directors, managing members, persons with twenty percent (20%) or greater beneficial ownership, persons with management authority over the issuer, promoters, or selling agents, or any officer, director or partner of any selling agent has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)(1)) that would disqualify the person under Rule 506(d) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(a)-(c)).
- J. Nothing in this Rule shall be construed to alleviate any person from the antifraud provisions of the Act, nor shall such simplified registration be construed to provide relief from any other provisions of the Act other than as expressly stated.
- K. The Division may deny, refuse to renew, condition, limit, suspend, or revoke the registration of an intermediary for any reason as determined by the Secretary of State in his sole discretion.
- L. The Secretary of State may by order waive any of the conditions of registration of the offering or the intermediary or other requirements set forth in this Rule.

Source: *Miss. Code Ann.* §75-71-307 (2016).