

Title 1: Secretary of State

Part 14 Securities Regulation

Part 14 Chapter 7: Exemptions

*Rule 7.23 Invest Mississippi Crowdfunding Small Offering Exemption.* By authority delegated to the Secretary of State in Section 75-71-203 of the Act, the Division has adopted an exemption from the registration requirements of the Act for any offer or sale of securities offered or sold in compliance with Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. Section 77c(a)(11), and SEC Rule 147, 17 C.F.R. Section 230.147, or such federal laws as are enacted or rules that are adopted by the SEC that govern intrastate Internet crowdfunding offerings and any amendments thereto, which also satisfy the further conditions and limitations set forth in this Rule below.

- A. *Definitions.* This Rule incorporates the Definitions set forth in Rule 7.21.
- B. In order to comply with this Rule and be exempt from the registration requirements of the Act, the following conditions and limitations are required to be met:
  1. The securities must be sold only to persons who are residents of this state at the time of purchase. Prior to making any sale under this exemption, the issuer must obtain reasonable documentation that the investor is a Mississippi resident. Reasonable documentation includes, but is not limited to:
    - a. A current Mississippi Driver's License or personal identification card;
    - b. A document that indicates the prospective purchaser owns or occupies property in the state as his principal residence, such as a current voter registration or official business mail from a state or federal agency.
  2. The issuer of the securities is a business corporation or limited liability company with a principal place of business in this state and authorized to do business in this state.
  3. The issuer is not, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. Section 8a-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).
  4. The aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this Rule during the twelve (12) month period preceding the date of such transaction, is not more than Three Hundred Thousand Dollars (\$300,000.00).

5. The aggregate amount sold to any single investor by multiple issuers in reliance on the exemption provided in 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 Five Thousand Dollars (\$5,000.00).
  - c. For investors that are qualified purchasers, there shall be no aggregate limit on the amount the qualified purchaser investor can purchase from a single issuer or multiple issuers in offerings conducted pursuant to this Rule.
6. The number of investors in a single offering under this exemption shall not exceed five hundred (500) investors. For purposes of computing the number of investors under this Rule:
  - a. There shall be counted as one investor any corporation, partnership, association, joint stock company, trust, or unincorporated organization, unless such entity was organized for the specific purpose of acquiring the securities offered, in which case each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser;
  - b. A purchase by a husband and wife in the joint names of both husband and wife shall be deemed to be made by a single investor; and
  - c. An original member or shareholder of the issuer who purchased an interest in the entity primarily to enable the entity to be formed and whose interest will be extinguished once the offering has terminated shall not be considered to be a purchaser.
7. Securities issued under the provisions of this Rule shall be without payment of commission, compensation, or remuneration, directly or indirectly, except where it

is reported to the Division and determined by the Division that such commission or compensation is allowable. Such determination must be made prior to the initial purchase under this Rule.

8. Offerings or sales of securities pursuant to this Rule shall be made only by duly elected and acting officers of the issuer, or by a broker-dealer and its agents registered under the Act.
- C. *Required Filings.* Prior to the receipt of consideration from an investor, or the delivery of a subscription agreement or other promissory note to an investor which results from an offer being made in reliance upon this exemption, the issuer shall file with the Division:
1. A notice on a form prescribed by the Division;
  2. The prospectus, private placement memorandum, offering circular, or similar document, which shall contain a full disclosure of material information to be furnished by the issuer to offerees, including the offering limitations set forth in Subsection (B)(1-7), above. The use of the Small Corporate Offering Registration Form (SCOR), a copy of which is available upon request, may be acceptable for compliance with this subsection; and
  3. A consent to service of process.
- D. *No Bank Escrow Agent Required.* An issuer relying on this exemption shall not be required to use a bank escrow agent. If the issuer chooses to use a bank escrow agent, the provisions of Rule 7.21 govern.
- E. If the issuer elects to not use a bank escrow agent, it must use either (1) or (2) below:
1. A segregated account in a Bank. The segregated account must be exclusively for the investors' funds raised by use of this exemption and:
    - i. The total sum of investor funds shall be held in trust and shall not be deployed by the issuer until the Minimum Target Offering Amount is met by the Offering Deadline.
    - ii. The issuer shall be responsible for the prudent processing, safeguarding, and accounting for the funds entrusted to it by the investors and placed in the segregated account.
    - iii. No person who is not a duly elected and acting officer, if the issuer is a corporation, or member or manager, if the issuer is a limited liability company, of the issuer shall be a signatory on the segregated account.

- iv. The issuer shall keep and make readily available complete records of the transactions of the segregated account for inspection by the Division. The bank transaction records of an issuer under this Rule are subject to the reasonable periodic, special, or other audits, or inspections, access or review by the Division. The Division may copy, and remove for audit or inspection copies of, all records the Division reasonably considers necessary or appropriate to conduct the audit or inspection.
  - v. In the event the Minimum Target Offering Amount and/or Offering Deadline are not met, the issuer shall be responsible for the return of all investor funds upon request by the investor. The offer must provide a form for investors to request return of their investment if the Minimum Target Offering Amount and/or the Offering Deadline are not met.
  - vi. In no case, except for the very limited exception set forth below, prior to the expiration of the Offering Deadline, and the satisfaction of the Minimum Target Offering Amount, shall the investors' funds be commingled with the profits or operating or other capital of the Issuer. The only exception is the case of funds reasonably sufficient to pay for account fees, obtain a waiver of account fees, or to keep the account open. The issuer assumes the responsibility to pay for the costs of check orders, bank fees, credit card fees, insufficient fund fees and other fees that may be deducted from the account. These expenses should be anticipated in advance so a reasonable amount of money can be deposited into the account to cover the expenses prior to their deduction by the bank.
2. All funds received by the issuer from investors under this exemption shall be held in trust by an attorney licensed to practice law in Mississippi who shall deposit the funds in a depository institution authorized to do business in Mississippi until such time as the Minimum Target Offering Amount is attained or the Offering Deadline has lapsed.
- F. *No Portal Required.* An issuer exempt under this Rule may, but shall not be required to, use an Intermediary Funding Portal. If the issuer elects to not use an Intermediary Funding Portal, the issuer:
1. Shall ensure that each investor answers questions demonstrating:
    - a. An understanding of the level of risk generally applicable to investments in startups and small issuers; and
    - b. An understanding of the risk of illiquidity, including an acknowledgment that there is no ready market for the sale of the securities acquired from an offering under this Rule; it may be difficult or impossible for the investor to sell or otherwise dispose of an investment under this Rule and the investor may be required to hold and bear the financial risks of this investment indefinitely.

2. Shall perform a background and securities enforcement regulatory history check on each person holding a position listed in Subsection (S) of this Rule to determine if such person is subject to any disqualification as described in Subsection (S) of this Rule.
  3. Shall ensure that no offering proceeds are deployed as capital or otherwise used by the issuer until the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount and shall allow investors to cancel their commitments to invest and obtain a refund if the minimum target offering amount is not raised by the offering deadline.
  4. In addition to the record keeping required by Subsection (G) below, the issuer must keep a record of each deposit into the segregated account (or attorney trust account) representing the purchase of the issuer's securities for each investor. The records must be sufficient to verify that for each sale of securities the issuer made a corresponding deposit into the segregated account in the amount of the sale within two (2) business days of the sale.
- G. *Record Keeping.* The issuer shall maintain and preserve for a period of five (5) years from the date of the closing or termination of the securities offering the following records related to offers and sales made of the issuer's securities, including but not limited to:
1. Copies of information provided to prospective purchasers;
  2. All executed subscription agreements between the issuer and any purchaser;
  3. Any information used to establish the issuer's state of organization and principal place of business, and its authorization to do business in this state;
  4. Any correspondence or other communications with prospective purchasers, and/or investors, including any contracts or agreements secondary or pursuant to the subscription agreement;
  5. All advertisement or other forms of solicitation, including any information made available through the issuer's website or social media presence relating to an offering;
  6. Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts; and
  7. All banking and deposit records.
- H. *Report.* For so long as securities issued under the exemption provided in this Rule are outstanding, the issuer shall provide a quarterly report to the issuer's investors. The

report required by this Rule shall be free of charge. An issuer may satisfy the reporting requirement of this Rule if the information is made available by electronic means within forty-five (45) days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer must provide a written copy of the report to any investor upon request. The issuer shall make each such quarterly report available to the Division upon request. The report must contain each of the following:

1. Compensation received by each director, executive officer or manager, 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 balance sheet and profit and loss statement.
- I. *General Solicitation.* A general announcement of the proposed offering may be made by any means, including social media or internet websites, subject to the following restrictions:
1. Advertising or soliciting on the issuer's own social media account or website is permitted, but the issuer shall construct the website or social media page so that potential investors "click through" to a dedicated internal website page solely for the purpose of explaining the limited offering; and
    - a. The issuer shall prominently indicate on the internal website page for soliciting investors the legend set forth in Subsection (K) below;
    - b. The dedicated internal website page shall provide means of contact between the issuer and potential investors to facilitate the actual investment, including the delivery of a written subscription agreement and all offering documents to the prospective investor for his review prior to the sale; the issuer shall not allow purchase of securities through its website;
    - c. The issuer may make available to all potential investors the documents referenced in Subsection (C)(2) in downloadable and printable form but must verify receipt and review by the prospective investor prior to executing any sale;
    - d. The dedicated internal website page shall inform all prospective purchasers that a segregated account (or attorney trust account) will hold all purchasers' funds in trust until the Minimum Target Offering Amount and Offering Deadline are met;
    - e. The dedicated internal website page shall set forth the Minimum Target Offering Amount (not less than 50% of the total offering amount) and Offering Deadline date;

- f. The dedicated internal website page shall set forth the total offering amount made by the issuer in reliance on the exemption provided in this Rule, not to exceed Three Hundred Thousand Dollars (\$300,000.00);
  - g. The issuer shall also prominently display the general requirements of the exemption in some form on the dedicated internal website page:
    - i. That the offering is only made to Mississippi residents;
    - ii. That the Minimum Target Offering Amount is at least 50% of the total Target Offering Amount;
    - iii. That all investors are entitled to a refund of their investment dollars if the Minimum Target Offering Amount is not met by the Offering Deadline;
  - h. The issuer shall include a printable form for investors to request the return of their investment if the Minimum Target Offering Amount is not met by the Offering Deadline.
2. Advertising or soliciting investment on social media or internet websites other than the social media accounts or internet website of the issuer shall be strictly limited to:
- a. A general advertisement that the issuer is seeking investment;
  - b. A company name and/or logo;
  - c. A “click-through” link to the dedicated website page set forth above.
3. All other forms of general solicitation, whether print or other media, must provide the material disclosures as set forth in Subsection (C)(2) above and same disclosures and legends as set forth in Subsection (K) below; and
4. All radio, television, or other broadcast advertising or solicitation for investment shall be strictly limited to the following:
- a. The issuer may announce that it is seeking investment for its enterprise;
  - b. The issuer may seek to direct potential investors to the dedicated page of its website, or to its telephone number.
  - c. These restrictions do not infringe on an issuer’s right to advertise its products or services, and are only intend to restrict the advertisement or solicitation of investment.

- J. No offerings or sales of securities shall be made in reliance on this exemption until the issuer files the IMC Form, in writing or in electronic form with the Division, completed with specificity as required by the instructions in the IMC Form, and the issuer receives an Acknowledgment of Completed Invest Mississippi Crowdfunding Form from the Division. The issuer must also submit all exhibits to the IMC Form except as otherwise specified by the Division, and any other documents or information the Division may require. A copy of the IMC Form is available upon request.
1. The Division will issue a written Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form within five (5) business days after receiving the completed IMC Form and all other exhibits to the IMC Form except as otherwise specified by the Division. Incomplete IMC Forms, Forms with responses that are not specific as required by this Rule and the instructions or Forms with missing exhibits will be returned to the issuer for completion and/or resubmission. No offerings or sales may be made in this state until the written Acknowledgment has been issued.
  2. The completed IMC Form, including exhibits, shall be provided to the issuer or intermediary and shall be made available to potential investors after the Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form has been issued by the Division.
- K. The issuer shall inform all investors that the securities have not been registered under federal or state securities law and the securities are subject to limitations on resale. The following legend shall be printed in all capitals on the prospectus, private placement memorandum, offering circular, or similar document used in connection with an offering under this Rule:
- IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES 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. 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 GENERALLY NOT BE TRANSFERRED OR RESOLD FOR A PERIOD OF ONE (1) YEAR. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.**
- L. Prior to the consummation of a sale, the issuer shall require the prospective investor to certify in writing or electronically as follows:

1. The investor's name, address, social security number, annual income, and net worth, that each investor is a resident of this state and, if applicable, either an accredited investor or a qualified purchaser; and
  2. The aggregate amount of securities sold to the investor in reliance on the exemption provided in 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 has not exceeded the limitations set out in Subsection (B)(5) of this Rule.
  3. The issuer must obtain and maintain the certifications, in addition to other records of investors' residence as set forth in Subsection A and provide ready access to the records to the Division, upon request. The Division may access, inspect, and review such records.
- M. Offers and sales of securities pursuant to this Rule must be made in compliance with any rules adopted by the SEC that govern intrastate Internet crowdfunding offerings and any amendments thereto.
- N. Securities exempt under the provisions of this Rule may not be transferred for one (1) year after the date of purchase except in a transaction which is exempt from registration or in a transaction which complies with the registration requirements of the Act.
- O. 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.
- P. For offerings that exceed one (1) year, notification that the offering is continuing and a sales report must be filed with the Division annually.
- Q. The issuer must file a sales report with the Division within thirty (30) days of termination, expiration, abandonment, or completion of the offering in a form prescribed by the Division.
- R. All sales that are part of the same offering and are made in reliance on this exemption must meet all of the terms and conditions of this exemption, except, offers and sales to controlling persons shall not count toward the limitation in Subsection (B)(4) of this Rule. A controlling person is an officer, director, partner, manager, 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.
- S. The exemption allowed by this Rule shall not apply if an 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)).

- T. Nothing in this exemption shall be construed to alleviate any person from the antifraud provisions of the Act, nor shall such exemption be construed to provide relief from any other provisions of the Act other than as expressly stated.
- U. The Division may deny, refuse to renew, condition, limit, suspend, or revoke the issuer's Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form for any reason as determined by the Secretary of State in his sole discretion.
- V. The Secretary of State may by order waive any conditions or other requirements set forth in this Rule.

Source: *Miss. Code Ann.* § 75-71-203 (2016).