

MASSACHUSETTS CROWDFUNDING EXEMPTION - 950 CMR 14.402(B)(13)(o)

(o) Massachusetts Crowdfunding Exemption. An offer or sale of a security meeting the following requirements:

- (1) The issuer is a business entity:
  - (a) Formed under the laws of the Commonwealth;
  - (b) Having its principal place of business in the Commonwealth; and
  - (c) Authorized to do business in the Commonwealth.
  
- (2) The offering is sold only to residents of the Commonwealth in compliance with the requirements of §3(a)(11) of the Securities Act of 1933 (15 U.S.C. §77c(a)(11)) and S.E.C. Rule 147 (17 C.F.R. 230.147);
  
- (3) The securities offered and sold pursuant to 950 CMR 14.402(B)(13)(o) are equity or debt securities of the issuer.
  
- (4) The sum of all cash and other consideration to be received for all securities sold in reliance upon the exemption provided under 950 CMR 14.402(B)(13)(o) shall not exceed:
  - (a) One million dollars (\$1,000,000), if the issuer has not undergone and made available to each prospective investor and the Secretary the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles; or
  
  - (b) Two million dollars (\$2,000,000), if the issuer has undergone and made available to each prospective investor and the Secretary the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.

An offer or sale to an officer, director, partner, trustee, person owning 10 percent or more of outstanding shares of the issuer or a person occupying similar status with respect to the issuer shall not be subject to the limitation in 950 CMR 14.402(B)(13)(o)(4).

- (5) The aggregate amount of securities sold to any investor by an issuer in reliance on 950 CMR 14.402(B)(13)(o) shall not exceed the greater of:
  - (a) \$2,000 or 5 percent of annual income or net worth of the investor, whichever is greater, if both the annual income and net worth are less than \$100,000; and
  
  - (b) 10 percent of annual income or net worth of the investor, whichever is greater (not to exceed an amount sold of \$100,000) if either the annual income or net worth of the investor is equal to or more than \$100,000;

*Note:* To determine the investment limit for a natural person, the person's annual income and net worth shall be calculated as those values are calculated for purposes of determining

accredited investor status in accordance with Rule 501 of SEC Regulation D, 17 CFR 230.501. The person's annual income and net worth may be calculated jointly with the annual income and net worth of the person's spouse.

(6) The issuer shall not, before or as a result of the offering, be:

- (a) An investment company as defined by 15 U.S.C. §80a-3;
- (b) A hedge fund, commodity pool, or similar investment vehicle;
- (c) Subject to the reporting requirements of the Securities Exchange Act of 1934;
- (d) A development stage company without a specific business plan or purpose, or which has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds to sufficiently identifiable properties or objectives (i.e., "blind pool" or "blank check" offerings); or
- (e) A business involving petroleum exploration or production, mining, or other extractive industries.

(7) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser for a transaction in reliance upon the exemption provided by 950 CMR 14.402(B)(13)(o) unless such person is registered as a broker-dealer or agent under the Act.

(8) The issuer shall establish a minimum offering amount, which shall be set at a level sufficient to implement the plan of business disclosed in the offering materials. Such minimum offering amount shall be no less than 30% of the maximum offering amount set by the issuer and disclosed in the offering materials. If the minimum offering amount is not met within one year of the earlier of the commencement of the offering or the first posting of the offering on the internet, the issuer shall return all funds to investors.

(9) The issuer shall place all funds received from investors in an escrow account at an insured bank or depository institution authorized to do business in the Commonwealth.

(10)(1) The exemption under 950 CMR 14.402(B)(13)(o) shall not be available if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner, or managing member of the issuer; any beneficial owner of twenty percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of making an exemption filing under 950 CMR 14.402(B)(13)(o); any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the offering of securities; or any director, executive officer or other officer participating in the offering of any such solicitor, general partner, or managing member of such solicitor:

(a) Has been convicted, within ten years before making an exemption filing under 950 CMR 14.402(B)(13)(o) or five years, in the case of issuers, their predecessors, and affiliated issuers, of any felony or misdemeanor:

- (i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Securities and Exchange Commission or a state securities commission (or an agency or officer of a state performing like functions); or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(b) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before making an exemption filing under 950 CMR 14.402(B)(13)(o), that, at the time of filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Securities and Exchange Commission or a state securities commission (or an agency or officer of a state performing like functions); or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(c) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of making an exemption filing under 950 CMR 14.402(B)(13)(o), bars the person from:

(A) Association with an entity regulated by such commission, authority, agency, or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before making an exemption filing under 950 CMR 14.402(B)(13)(o);

(d) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Massachusetts Uniform Securities Act, M.G.L. c.110A, or any other state's securities law, within five years prior to making an exemption filing for an offering under 950 CMR 14.402(B)(13)(o);

(e) Is currently subject to any state administrative enforcement order or judgment entered by the Secretary or any other state's securities administrator within five years prior to making an exemption filing for an offering under 950 CMR 14.402(B)(13)(o) or is subject to any state's administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to making an exemption filing for an offering under 950 CMR 14.402(B)(13)(o);

(f) Is subject to an order of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C.

78o(b) or 78o-4(c)) or section 203 (e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e) or (f)) that, at the time of making an exemption filing under 950 CMR 14.402(B)(13)(o):

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(g) Is subject to any order of the Securities and Exchange Commission entered within five years before making an exemption filing under 950 CMR 14.402(B)(13)(o) that, at the time of filing, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17 (a)(1) of the Securities Act of 1933 (15 U.S.C. 77q (a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 C.F.R. 240.10b-5, section 15 (c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(h) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(i) Has filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Securities and Exchange Commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(j) Is subject to a United States Postal Service false representation order entered within five years before the making of an exemption filing under 950 CMR 14.402(B)(13)(o), or is, at the time of such filing, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(10)(2) For purposes of subsection (10)(1) of 950 CMR 14.402(B)(13)(o), "final order" shall mean a written directive or declaratory statement issued by a federal or state agency described in subsection (10)(1)(c) of 950 CMR 14.402(B)(13)(o) under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

(10)(3) Subsection (10)(1) of 950 CMR 14.402(B)(13)(o) shall not apply:

(a) Upon a showing of good cause and without prejudice to any other action by the Secretary, if the Secretary determines that it is not necessary under the circumstances that an exemption be denied;

(b) If, before the relevant filing, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Secretary or his staff) that disqualification under subsection (10)(1) of 950 CMR 14.402(B)(13)(o) should not arise as a consequence of such order, judgment, or decree; or

(c) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under subsection (10)(1) of 950 CMR 14.402(B)(13)(o). An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(4) For purposes of subsection (10)(1) of 950 CMR 14.402(B)(13)(o), events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(a) In control of the issuer; or

(b) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such event.

(11) The issuer shall disclose to each prospective purchaser all of the following:

(a) A description of the issuer and its business, and the address, telephone number, and website address of its principal office;

(b) A description of the intended use of the offering proceeds;

(c) A description of any current or pending litigation, legal proceedings, or pending regulatory action involving the issuer or its management;

(d) The identity of all persons owning ten percent (10%) or more of the ownership interests of any class of securities of the issuer;

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

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

(g) The names and addresses of each Internet web site that will be used by the issuer to offer or sell securities under 950 CMR 14.402(B)(13)(o); and

(h) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or of high risk.

Note: The issuer is required to provide full and fair disclosure to offerees and investors of all material facts relating to the issuer and the securities being offered, in accordance with Section 101 of M.G.L. c.110A,.

(12) Among other risk disclosures, the issuer must provide the following disclosures to all prospective purchasers and investors:

- There is no ready market for the sale of the securities acquired in this offering; it may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely.
- The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.
- 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.
- No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosures provided.

*Note:* Since 950 CMR 14.402(B)(13)(o) requires that the offering be in compliance with SEC Rule 147, the issuer must also provide written disclosures concerning the limitations on resale of the securities contained in SEC Rule 147(e) and(f) (17 CFR §230.147). Additionally, an issuer must place a required legend disclosing such limitations on resale on the securities certificate or other document evidencing the securities issued in the offering.

(13) The exemption provided under 950 CMR 14.402(B)(13)(o) shall be effective for up to 12 months, subject to annual renewal.

(14) Upon the first to occur of: (i) the completion of the offering, (ii) the termination of the offering, or (iii) 12 months from the commencement of the offering, the issuer shall file with the Secretary a sales report indicating the number and value of securities sold in the offering, and the number of purchasers in the offering.

(15) The issuer shall file with the Secretary no later than 15 days after the first sale made in reliance upon the exemption provided under 950 CMR 14.402(B)(13)(o): (a) a notice specifying that the issuer is conducting an offering in reliance on the exemption provided under 950 CMR 14,402(B)(13)(o) and providing the names and addresses of: (i) officers, directors and control persons of the issuer; (ii) all persons who will be involved in the offer or sale of securities on behalf of the issuer; (iii) the bank or depository institution in which the issuer will deposit investment funds; (b) a copy of all materials used in connection with the solicitation, offer, or sale of the issuer's securities, including the disclosure required in Section 11 and 12, above; and (c) a consent to service of process on Form U-2.