

**SOLICITATION OF PUBLIC COMMENT
MASSACHUSETTS CROWDFUNDING EXEMPTION**

Comments Due: March 24, 2015

Public Hearing for Comments: March 24, 2015

On January 15, 2015, the Massachusetts Securities Division promulgated a crowdfunding exemption by means of an emergency regulation. The exemption appears in the Code of Massachusetts Regulations at 950 C.M.R. 14.402(B)(13)(o) (the “Crowdfunding Exemption” or the “Exemption”). The Crowdfunding Exemption is intended to help small and early-stage businesses raise capital from a broad base of investors, each of whom would typically invest a limited amount of money. The Securities Division anticipates that most crowdfunding offerings will be offered and sold, at least in part, via the Internet.

The Securities Division requests comments on all aspects of the Exemption. The Securities Division requests comments from business people, potential users of the Crowdfunding Exemption, attorneys, investor advocates, professional organizations, and interested members of the public, among others.

The Securities Division also requests comments on other potential ways, besides the current Crowdfunding Exemption, to make crowdfunding a practical and effective means for companies to raise capital.

SPECIFIC QUESTIONS REGARDING THE CROWDFUNDING EXEMPTION

1) Relationship to the Federal Intrastate Offering Exemption. The Crowdfunding Exemption is tied to the federal intra-state offering exemption under section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147. That exemption is available for a security which is part of an issue offered and sold only to persons resident within a single state where the issuer of such security has been formed and is doing business in that state.

It is anticipated that most crowdfunding issuers will wish to offer securities via the Internet. Does the federal requirement that offers and sales be made only to persons resident within a single state limit the usefulness of the Exemption? Should the Securities Division consider adopting alternative or additional regulations that would work with other federal rules that permit offerings not strictly limited to a single state (for example, Rule 504 of SEC Regulation D or SEC Regulation A)?

2) Alternatives to Single-State Offering Exemption. Should the Securities Division consider adopting rules to facilitate offerings made in more than one state? If so, would regulatory cooperation and coordination among the states be desirable with respect to such offerings?

3) Limitation on Forms of Security: Equity or Debt. The Exemption is limited to equity or debt securities. Should the Securities Division consider making the Exemption available for other forms of securities? If so, what other types of securities should be specified in the Crowdfunding Regulation? Will permitting the offer and sale of other forms of securities require issuers to provide special disclosures to investors in order to accurately disclose the characteristics of the

investment?

4) Offering Amount Limit. The Crowdfunding Exemption permits an issuer to offer and sell up to \$1,000,000 of securities in a 12-month period. (See Sec. 4 of the Exemption.) This limit increases to \$2,000,000 if the issuer has audited GAAP financial statements. The Securities Division requests comments on these offering size limits. If the offering limits were raised, would the Exemption, which applies only limited requirements to crowdfunding offerings, provide adequate protections for investors and local markets?

The Securities Division also seeks comments on the requirement for issuers to obtain audited statements in order to raise between \$1,000,000 and \$2,000,000. The Division solicits information about the costs and/or potential benefits of requiring that audited financial statements be included in a securities offering document.

5) Investment Limitations. Under Sec. 5 of the Crowdfunding Exemption, most investors may invest up to the greater of \$2,000 or 5% of income or net worth. The percentage investment limit is higher for investors with higher incomes or net worths. The limitation included in the Exemption substantially resembles the limit included in the SEC's proposed regulations for the federal crowdfunding exemption. Is this investment limit an effective way to control the risk of an investor over-investing in a crowdfunding offering? Should the limit be higher or lower?

The Exemption will be lost if the issuer sells securities to any investor in excess of the investment limitations. Should the issuer be permitted to meet this standard based on a good faith reasonable belief about the purchaser's income and/or net worth? If the issuer can meet the requirement based on good faith reasonable belief, should the issuer be required to take reasonable steps to verify the income and/or net worth of purchasers?

Unlike the SEC's proposed crowdfunding rule, the Crowdfunding Exemption does not attempt to limit the amount an investor may invest in crowdfunding offerings as a category. Should the Securities Division consider adding a limit that would apply to investors' investments in crowdfunding offerings as a category?

6) Excluded Types of Issuers. Under sec. 6, the Exemption is not available to: blank check/blind pool offerings; investment companies; hedge funds or similar investment vehicles; '34 Act reporting companies; companies engage in oil, mining, or other extractive industries. The Securities Division solicits comments on these limitations.

7) Minimum Offering Amount requirement. Sec. 8 of the Crowdfunding Exemption requires the issuer to establish a minimum offering amount that is needed to accomplish the business plan. The minimum offering amount shall be not less than 30% of the maximum offering amount. The Securities Division requests comments on all aspects of this requirement, including the 30% standard for a minimum offering amount.

8) Escrow of Funds until Minimum Offering Amount is Reached. Pursuant to Sec. 9 of the Crowdfunding Exemption, funds raised in a crowdfunding offering must be placed in an escrow account at an insured bank until the minimum offering amount is reached. The Securities

Division requests comments on the practicability of this escrow requirement. Should the Securities Division consider any alternatives to requiring that escrowed funds be held in an insured bank account?

9) Bad Actor Disqualification. The disqualification language in Sec. 10 of the Exemption is modeled on the bad actor disqualification under Rule 506 of SEC Regulation D. The Securities Division requests comments on this provision.

10) Required Disclosures. Under Sec. 11 of the Crowdfunding Exemption, issuers are required to provide certain disclosures. The regulation also reminds issuers of their obligation to provide full and fair disclosure of all material facts relating to the offering.

Would it be appropriate for the Exemption to spell out more details about required disclosures? Would such disclosure requirements provide useful guidance to issuers? Should the Securities Division consider requiring the use of a disclosure form? Are the specified items of disclosure sufficient to protect investors' interests in crowdfunding transactions?

11) Specific Required Risk Disclosures. Section 12 of the Exemption requires that specific risks of crowdfunded securities be disclosed, particularly the risks that there will probably be no ready market for the securities and that the securities will be illiquid. The Securities Division requests comments regarding these disclosures.

12) Annual Reporting by the Issuer. Sec. 14 of the Exemption requires that issuers provide a report to the Securities Division after 12 months, or when the offering has been completed or terminated. The Securities Division requests comments on this requirement.

13) Ongoing Company Reporting. The Crowdfunding Exemption does not mandate that issuers provide ongoing reports to investors about the business and financial condition of the company. Should the Exemption require such reports? If the Exemption does not require such reports, will there be any way for investors to receive ongoing information about the issuer?

14) Sellers of Crowdfunding Securities. Unlike the proposed SEC rules for crowdfunding, the Crowdfunding Regulation does not require the use of a crowdfunding portal to offer and sell crowdfunded securities. Only broker-dealers may receive compensation for offering and selling securities. At this time, it is anticipated that issuers would sell their own crowdfunding offerings or that they would be sold through licensed broker-dealers.

The Securities Division seeks information about how it is anticipated that these offerings will be sold. Should the Crowdfunding Exemption require or permit the use of a crowdfunding portal to offer and sell the securities? If so, what would be the characteristics of such a portal? What kinds of regulation and registration should apply to such a portal?

15) Investor Feedback – The “Wisdom of the Crowd.” The Crowdfunding Exemption currently does not require that there be an Internet-based forum for potential investors to comment on and discuss these offerings. Should such a forum be required under the Exemption?