

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

032 OFFICE OF SECURITIES

Chapter 5243: RULE REGARDING RECIPROCAL SHORT-FORM SEED CAPITAL REGISTRATIONS

SUMMARY: This chapter provides a simplified, short-form registration process for companies based outside Maine that wish to offer and sell their securities to the public in limited increments per investor and where the offering is registered in another State that provides reciprocal exemptions or registrations.

Section 1. Definitions.

1. “Administrator” shall have the same meaning as is set forth in 32 M.R.S. §16102(1).
2. “Form FND-ME” means the Fund-ME Offering Circular Form as adopted by the Securities Administrator.
3. An “investor-limited public offering” is a securities offering made pursuant to a statute or rule that allows general solicitation of investors but imposes limits on the amount of securities that an investor can purchase, whether styled as a “Crowdfunding” offering or otherwise.
4. A “Reciprocal State” is a State that the Administrator determines to have in effect both (i) a statute or rule that provides for registration of investor-limited public offerings with the securities administrator of that State, and that requires public filing and delivery to investors of a prospectus, offering circular or other substantive disclosure document before sale, and (ii) a statute, rule or order that permits an issuer whose principal place of business is located in the Maine to conduct an investor-limited public offering in that State.
5. “Rule 504” means Rule 504 of SEC Regulation D, 17 CFR §230.504, promulgated pursuant to the Securities Act of 1933, 15 U.S.C. §77a et seq.
64. “Security” or “Securities” shall have the same meaning as is set forth in 32 M.R.S. §16102(28).
7. “State” means a State, District or Territory of the United States.

Section 2. Purpose.

The purpose of this rule is to facilitate public investment in small businesses, and to encourage other States to allow Maine-based companies to conduct investor-limited public offerings in those other States. ~~The Like Rule 523, this~~ rule accomplishes this purpose by (a) permitting the use of a simplified registration statement form for smaller offerings and (b) promoting uniformity with other jurisdictions that require the registration of securities.

The rule offers an alternative method of state registration for issuers of securities that are exempt from federal registration pursuant to Rule 504. The rule is intended to reduce the costs and burdens of raising capital for small business while providing relevant information to prospective investors. The rule sets forth the exclusive an alternative method of registration by qualification under 32 M.R.S.A. §16304(6-A).

Section 3. Authority.

The Securities Administrator's authority to promulgate this rule is contained in 32 M.R.S. §§ 16304, 16307~~16304(6-A)~~ and 16605.

Section 4. Eligibility to Register Securities Pursuant to This Rule.

Securities may only be registered pursuant to this rule if:

- (1) They meet the requirements set forth in Rule 504 and 32 M.R.S. § 16304(6-A) are the subject of an effective registration statement in at least one Reciprocal State; and
- (2) Neither the issuer nor any of its officers or directors (or the functional equivalents thereof for an entity having no officers or directors), beneficial owners of ten percent or more of its then outstanding voting stock or voting equity interests, promoters, or selling agents, or any officer, director or partner (or the functional equivalents thereof) of any selling agent, is disqualified as a result of one or more of the following:
 - (i) Has been convicted, within ten years before such sale (or five years, in the case of the issuer, their predecessors and affiliated issuers) of any felony or misdemeanor:
 - (A) In connection with the purchase or sale of any security;
 - (B) Involving the making of any false filing with the Administrator or the Securities and Exchange Commission; or
 - (C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchases of securities.
 - (ii) Is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within five years prior to the filing of the registration statement for the offering, that, at the time of such filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:
 - (A) In connection with the purchase or sale of any security;
 - (B) Involving the making of any false filing with the Administrator or the Securities and Exchange Commission;

- (C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchases of securities; or
 - (D) Adjudicating a United States Postal Service fraud order.
- (iii) 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 Securities and Exchange Commission or a self-regulatory organization; the United States Commodity Futures Trading Commission; or the National Credit Union Administration that:
- (A) At the time of the sale of securities, bars the person from:
 - (1) Association with an entity regulated by such commission, authority, agency, or officer;
 - (2) Engaging in the business of securities, insurance or banking; or
 - (3) Engaging in savings association or credit union activities; or
 - (B) Constitutes a final order based on a violation of law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before such sale.
- (iv) At the time of the sale 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.
- (v) Has filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or other offering statement filed with the Administrator or 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 registration or offering statement, 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.
- (vi) Is subject to a United States Postal Service false representation order entered within five years before such sale, or is, at the time of such sale, 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.

Section 5. Mechanics of Filing the Registration Statement.

For securities being registered pursuant to this rule, the registration statement required shall be either:

- (a) the Form FND-ME and accompanying subscription agreement, which are hereby incorporated by reference into this rule; or
- (b) a registration statement on file with at least one Reciprocal State, supplemented to include any additional information required to be set forth in an offering circular under Form FND-ME; and a copy of the form of subscription agreement to be used in the offering to Maine residents, shall be used as the registration statement required under 32 M.R.S. §16304(6-A).

-The registration statement filed with the Administrator must be accompanied by

- (c) fees prescribed by 32 M.R.S. §16305(2) must accompany the Form FND-ME filed with the Administrator; and
- (d) a written undertaking of the issuer (i) not to make any offers or sales of the security in Maine until the Administrator, by order, declares the registration statement effective in Maine; (ii) to deliver a copy of the associated prospectus, offering circular or substantive disclosure document to each person to whom an offer is made in Maine, before or concurrently with any subscription agreement or contractual commitment to purchase the security; (iii) to limit the maximum amount sold to each investor in Maine to the amount specified in 32 M.R.S. § 16304(6-A)(C); (iv) to file with the Administrator all amendments, changes or notices to the extent the same would be required to be filed under 32 M.R.S. § 16304 or 16305; and (v) to immediately suspend all further offers or sales of the security in Maine upon receipt of written notice of denial, suspension or revocation of the registration statement by the Administrator.

Section 6. Delivery of Offering Document.

When a security is registered pursuant to this rule, the prospectus, offering circular or other substantive disclosure document contained in the registration statement completed Form FND-ME and its related subscription agreement are the offering documents which must be delivered to each purchaser for purposes of complying with the requirements of this rule 32 M.R.S. §16304(6-A).

Section 7. Escrow and Impoundment

As a condition of registration, the issuer must set aside in a separate account held by a depository institution all funds raised as part of the offering. Except as the Administrator may otherwise provide by rule or order, the ~~The~~ escrow and impoundment of funds are subject to the following conditions:

- (1) All funds from purchasers shall be made payable to the depository impound account and shall be delivered to the depository institution within three (3) business days after receipt by the issuer, the selling agent or their respective agents. The depository shall receive at the time of deposit a copy of the subscription agreement setting forth the names,

addresses, and respective amounts paid by each investor whose funds comprise each deposit.

- (2) All funds set aside shall be held by the depository until the earliest of the following:
 - (i) The total amount deposited reaches at least the minimum offering amount;
 - (ii) The Administrator has, by order, suspended or revoked the registration; or
 - (iii) Twelve months have expired from the effective date of the offering without the minimum offering amount having been received by the depository.
- (3) If the minimum offering amount is not received by the depository within the twelve month impoundment period, the depository institution, upon notice from the issuer, shall refund to the investors the full amount of their respective investment amounts, as shown by records furnished to the depository. Such refunds shall be made not more than 30 days following receipt of notification from the issuer.
- (4) Until such time as the minimum offering amount is met and funds are released to the issuer, the issuer may not issue any securities to purchasers pursuant to the offering.
- (5) For purposes of this rule, the minimum offering amount shall be no less than 30% of the maximum offering amount set by the issuer and disclosed in the registration statement.
- (6) The Administrator ~~adopts and incorporates by reference the~~ has adopted a “Fund Impoundment Agreement” as a model form that may be used for the impoundment of funds pursuant to 32 M.R.S. § 16304(6-A)(F). The adoption of this model form does not preclude the use of another format that complies with this Section 732 M.R.S. § 16304(6-A)(F) and this rule. A copy of the fully executed fund impoundment agreement shall be filed with the Administrator by the issuer before commencement of the offering, as a condition to effectiveness of the registration statement.

Section 8. Location of Incorporated Matter

Copies of the “Form FND-ME,” the accompanying subscription agreement, and the “Fund Impoundment Agreement,” incorporated by reference in this rule, are available at no charge on the Maine Office of Securities website: <http://www.maine.gov/pfr/securities/forms.htm>.

STATUTORY AUTHORITY: 32 M.R.S. §§ 16304, 16304(6-A), 16305(7), 16307 and 16605

EFFECTIVE DATE:

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