

# THE STATE ANSWER TO FLAWED FEDERAL CROWDFUNDING

BRITNEY OCAMPO\*

## TABLE OF CONTENTS

|  |    |
|--|----|
| INTRODUCTION .....   | 2  |
| I. THE CURRENT FEDERAL REGULATORY ENVIRONMENT FOR CROWDFUNDING .....   | 2  |
| A. <i>The Individual Investment Limits Are Too High</i> .....  | 4  |
| B. <i>The Exemption Requirements Are Too Expensive and Complicated</i> .....                                     | 4  |
| C. <i>There Is No Required Open, Public Communication Channel on Crowdfunding Sites</i> .....                    | 7  |
| D. <i>There Is No “Substantial Compliance” Rule for Requirements Imposed on Issuers and Intermediaries</i> ..... | 8  |
| E. <i>There Are Several Ambiguities Within the JOBS Act’s Crowdfunding Exemption</i> .....                       | 8  |
| II. THE PROPOSED SECURITIES AND EXCHANGE COMMISSION RULES.....   | 10 |
| A. <i>The Crowdfunding Investor Limitations Remain Unmoved</i> .....   | 10 |
| B. <i>Requirements for Issuers and Intermediaries Remain Expensive and Complex</i> .....                         | 11 |
| C. <i>Open, Public Communication Channels on Crowdfunding Sites Are Provided</i> .....                           | 12 |
| D. <i>A “Substantial Compliance” Rule Is Provided</i> .....  | 12 |
| E. <i>Ambiguities Are Mainly Clarified</i> .....   | 13 |
| III. STATE EXEMPTIONS FOR CROWDFUNDING REGISTRATION .....  | 14 |
| IV. CROWDFUNDING MOVING FORWARD .....  | 17 |
| V. APPENDIX A: STATE CROWDFUNDING EXEMPTIONS .....   | 18 |

---

\* Britney Ocampo holds a B.A. in Political Science from Brigham Young University—Idaho and received her Juris Doctor in May 2015 from the University of Idaho College of Law.

## INTRODUCTION

Equity crowdfunding is a new way to raise capital to support a wide variety of ideas and business ventures using the Internet.<sup>1</sup> Usually, crowdfunding seeks small contributions from many individuals, or “the crowd.”<sup>2</sup> Then, individuals interested in the campaign can share information on the project, cause, idea, or business to decide whether or not to fund the campaign based on the fundraising goal and the given use of the funds provided by the issuer.<sup>3</sup> Therefore, crowdfunding fosters the idea of the collective “wisdom of the crowd.”<sup>4</sup> Entrepreneurs in search of capital to create a revenue-producing product or service and small businesses that are seeking to finance or grow their business have the most to gain from equity crowdfunding.<sup>5</sup> Helping entrepreneurs and small businesses, in turn, helps the economy and stimulates job growth; small businesses alone are accountable for “creating 65% of the net new jobs over the past 17 years.”<sup>6</sup>

Unfortunately, the federal crowdfunding exemption is fatally flawed for several reasons, including its cost-prohibitive nature.<sup>7</sup> Moreover, the rules that the Securities and Exchange Commission (“SEC”) proposed under the flawed federal legislation would only remedy some of those problems.<sup>8</sup> Meanwhile, states have used the inertia from the passage of the federal crowdfunding exemption to pass their own intrastate crowdfunding exemptions.<sup>9</sup> These intrastate crowdfunding exemptions, which, in some instances, are more responsive to the interests of entrepreneurs, small businesses, and investors, should inform the revision of the federal crowdfunding exemption.<sup>10</sup> This article seeks to draw from the intrastate crowdfunding exemptions to propose revisions to the federal crowdfunding exemption.

Part I of this article analyzes the current federal regulatory environment for crowdfunding and explains why the current federal framework fails to promote the potential of equity crowdfunding. Part II discusses the SEC’s proposed rules and argues that these proposals fail to solve the fundamental regulatory flaws. Part III discusses what legislative and regulatory action states have taken regarding intrastate crowdfunding. Part IV suggests how federal equity crowdfunding should move forward in order to achieve its full benefits.

## I. THE CURRENT FEDERAL REGULATORY ENVIRONMENT FOR CROWDFUNDING

Federal and state securities laws make it illegal to offer or sell securities unless they are registered or exempt from registration.<sup>11</sup> To use a registration exemption, an issuer must comply

---

<sup>1</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 64428-29 (Sec. & Exch. Comm’n Nov. 5, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Andrew C. Fink, *Protecting the Crowd and Raising Capital Through the Crowdfund Act*, 90 U. DET. MERCY L. REV. 1, 15 (2012).

<sup>6</sup> Tanya Prive, *Inside the JOBS Act: Equity Crowdfunding*, FORBES, (Nov. 6, 2012, 11:57 AM), <http://www.forbes.com/sites/tanyaprive/2012/11/06/inside-the-jobs-act-equity-crowdfunding-2/>.

<sup>7</sup> *Infra* Part I.

<sup>8</sup> *Infra* Part II.

<sup>9</sup> *Infra* Part III.

<sup>10</sup> *Infra* Part IV.

<sup>11</sup> *Intrastate Crowdfunding Resource Center*, NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, <http://www.nasaa.org/industry-resources/corporation-finance/intrastate-crowdfunding-resource-center/> (last visited Feb. 25, 2015).

with both federal and state laws and regulations.<sup>12</sup> In our federalist system, each state has its own separate registration requirements.<sup>13</sup> This means that an offering exempt under federal law may not be exempt under state law.<sup>14</sup> Registration is expensive, and once an issuer has a registered offering, it must file extensive periodic reports with the SEC.<sup>15</sup> On April 5, 2012, the Jumpstart Our Business Startups (“JOBS”) Act was signed by President Barack Obama to amend federal securities law “in ways *intended* to benefit small to medium-sized business.”<sup>16</sup> Title III of the JOBS Act created a federal registration exemption for securities sold in certain crowdfunding transactions.<sup>17</sup> Title III is called the “Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012” or the “CROWDFUND Act,” and it most notably amended § 4 of the Securities Act of 1933 by adding § 4(a)(6).<sup>18</sup> First, § 4(a)(6) exempts offerings of \$1 million or less, provided that no investor exceeds an individual investment cap based on the annual income and net worth of the investor.<sup>19</sup> Additionally, issuers must sell securities according to the new requirements of section 4A(b) of the Securities Act.<sup>20</sup> The JOBS Act also creates a “funding portal”—a crowdfunding intermediary that is not a broker—and it preempts most state regulation of crowdfunded offerings and funding portals.<sup>21</sup> Yet, despite the JOBS Act’s attempt to help crowdfunding, there are still many problems with the current regulatory structure,<sup>22</sup> particularly when compared to other forms of private placement available to business-issuers.<sup>23</sup>

Before the JOBS Act was enacted, issuers willing to sell securities through crowdfunding were unable to do so due to the expense involved for such small offerings to which crowdfunding appeals and because none of the traditional exemptions from registration seems to clearly permit crowdfunding.<sup>24</sup>

<sup>12</sup> *Small Business and the SEC*, U.S. SECURITIES AND EXCHANGE COMMISSION, <http://www.sec.gov/info/smallbus/qasbsec.htm#statelaw> (last visited Jan. 14, 2015).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Fink, *supra* note 5, at 11–12.

<sup>16</sup> C. Steven Bradford, *The New Federal Crowdfunding Exemption: Promise Unfulfilled*, 40 SEC. REG. L. J. 195, 195–96 (emphasis added) (2012).

<sup>17</sup> Bradford, *supra* note 16, at 196.

<sup>18</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4(6), 126 Stat. 306 (2012). *See* Crowdfunding, 78 Fed. Reg. 66428-01, 64430 n. 14 (Nov. 5, 2013) (“Title III amended Securities Act Section 4 to add Section 4(6); however, Title II of the JOBS Act also amended Securities Act Sec. 4 and inserted subsections (a) and (b). The U.S. Code implemented the amended by adding paragraph (6) at the end of subsection (a).”).

<sup>19</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4(6), 126 Stat. 306 (2012) (codified as amended as 15 U.S.C. § 77d (2012)).

<sup>20</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b), 126 Stat. 306, 317 (2012) (codified as amended as 15 U.S.C. § 77d-1 (2012)). *See infra* Part II.B.

<sup>21</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat 306 (2012).

<sup>22</sup> Bradford, *supra* note 16, at 198; Fink, *supra* note 5; Stuart R. Cohn, *The New Crowdfunding Registration Exemption: Good Idea, Bad Execution*, 64 FLA. L. REV. 1433 (2012).

<sup>23</sup> Brian Korn, *The Trouble with Crowdfunding*, FORBES (4/17/2013), <http://www.forbes.com/sites/deborahljacobs/2013/04/17/the-trouble-with-crowdfunding/> (chart comparing CROWDFUND Act with Rule 506 of Regulation D and Regulation A+).

<sup>24</sup> None of the traditional exemptions for securities clearly apply to crowdfunding because no exemption clearly fits the goal of obtaining small donations from a large number of people. *See* Securities Act of 1933, ch. 38, 48 Stat. 74 (codified as amended at 15 U.S.C. § 77c (2012)) (exempted securities include 1) reserved securities; 2) securities issued by the U.S. or any territory of the U.S.; 3) securities for organizations or operations exclusively for religious, educational, or charitable purposes; 4) certificates issued by receiver or trustee in bankruptcy, etc.). Nor do any of the traditional exempted transactions clearly fit the purposes that crowdfunding is trying to fulfill. *See* Securities Act

To avoid these regulatory issues, most crowdfunding sites used fundraising techniques in which securities were not involved—donating and receiving nothing in return, pre-purchases of the product being developed, or other non-financial rewards to contributors.<sup>25</sup> Such limitations on crowdfunding only attracted a limited number of investors because crowdfunding can only work as a capital formation tool if issuers can offer financial returns to their investors.<sup>26</sup>

#### A. *The Individual Investment Limits Are Too High*

First, the individual investment limits in § 4(a)(6) are too high.<sup>27</sup> The exemption statute allows anyone to invest \$2,000 per year in a single crowdfunded offering, regardless of his or her net worth or annual income.<sup>28</sup> If the investor's annual income or net worth is higher, then the investor can invest 5-10% of his or her annual income or net worth per year, capped at \$100,000.<sup>29</sup>

However, even \$2,000 is more than some investors can afford to lose on an annual basis, particularly those in lower income categories.<sup>30</sup> The purpose of an individual investment limit is to eliminate any catastrophic loss so as to limit losses to what an investor can bear.<sup>31</sup> Small business offerings are risky and losses are likely, and an unsophisticated investor may not know how to evaluate the risk involved.<sup>32</sup> Moreover, the very definition of crowdfunding suggests the idea of a low individual investment limit since it does mean “leveraging the democratic power of the masses so that many people contribute small amounts—and thereby risk little—to make a large collective impact.”<sup>33</sup> Consequently, although there is no “magic number,” it can reasonably be said that the investment limit in this instance is excessive.<sup>34</sup>

#### B. *The Exemption Requirements Are Too Expensive and Complicated*

Second, the exemption requirements are too expensive and complicated. Many crowdfunding offerings will be for much less than the \$1 million cap, and it would not take much regulatory cost to eliminate crowdfunding as a viable option for such small offerings.<sup>35</sup> The

---

of 1933, ch. 38, 48 Stat. 74 (codified as amended at 15 U.S.C. § 77d (2012)) (exempted transactions included 1) transactions by any person other than the issuer; 2) transactions by issuers not involving public offerings; 3) certain transactions by the dealer, etc.). Additionally, § 3(a)(11) of the 1933 Act exempted intrastate offerings from registration, yet the narrowing of crowdfunding to state-by-state crowds severely restricts the capital power by limiting the crowd. Fink, *supra* note 5, at 14. The key exemptions available to entrepreneurs and small business through Regulation A and Regulation D are also either cost-prohibitive or severely limit the potential crowd. Fink, *supra* note 5, at 14.

<sup>25</sup> Bradford, *supra* note 16, at 197.

<sup>26</sup> Bradford, *supra* note 16, at 197.

<sup>27</sup> Bradford, *supra* note 16, at 198.

<sup>28</sup> Bradford, *supra* note 16, at 200; Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, 126 Stat. 306, 315 (2012).

<sup>29</sup> Bradford, *supra* note 16, at 200.

<sup>30</sup> Bradford, *supra* note 16, at 200; John S. Wroldsen, *The Crowdfund Act's Strange Bedfellows: Democracy and Start-up Company Investing*, 62 U. KAN. L. REV. 357, 391 (2013) (empirical evidence suggests that the average investor amount will remain substantially lower than the CROWDFUND Act caps even though investors may invest more in a for-profit entity that offers monetary return)

<sup>31</sup> Bradford, *supra* note 16, at 202.

<sup>32</sup> *Id.*

<sup>33</sup> John S. Wroldsen, *The Crowdfund Act's Strange Bedfellows: Democracy and Start-up Company Investing*, 62 U. KAN. L. REV. 357, 390 (2013).

<sup>34</sup> Bradford, *supra* note 16, at 200.

<sup>35</sup> Bradford, *supra* note 16, at 203; Steven Davidoff Solomon, *S.E.C.'s Delay on Crowdfunding May Just Save It*, NEW YORK TIMES (Nov. 18, 2014), <http://dealbook.nytimes.com/2014/11/18/s-e-c-s-delay-on-crowdfunding-may->

exemption is costly because the imposed filing and disclosure requirements inevitably call for the assistance of lawyers and accountants, which drive up the issuer's expense of using the exemption.<sup>36</sup> Issuers under the new disclosure requirements of the crowdfunding exemption must also furnish full financial statements for even the smallest offering.<sup>37</sup> These financial statements must then "be reviewed by an independent public accountant if the offering is \$100,000 or more, and audited if the offering is more than \$500,000 or more."<sup>38</sup> "And, unlike other small business exemptions, the crowdfunding exemption imposes continued, annual reporting requirements even after the offering is completed."<sup>39</sup> The estimated costs of compliance with exemption requirements can be several thousand to several hundred thousand dollars, and many expenses are expected to be made up front.<sup>40</sup> The SEC estimated that 12.9% to 39% would be spent in exemption compliance costs to crowdfund a mere \$100,000.<sup>41</sup> For instance, if Sue wanted to use equity crowdfunding the raise \$100,000 for her new company, then \$39,000 could be spend on exemption compliance costs; leaving only \$61,000 left over to fulfill the actual purposes of the crowdfunding campaign.

Besides regulatory costs on issuers, the requirements should be "relatively simple and easy to comply with," because the entrepreneurs behind these small business "often lack legal and financial sophistication."<sup>42</sup> However, the exemption requirements are neither simple nor easy.<sup>43</sup> The crowdfunding exemption is complicated as it calls for the issuer to have a "rather sophisticated understanding of corporate law and finance."<sup>44</sup> Sections 4A(b)(1)(H)(iv) and (v) of the Act are examples of such sophisticated requirements.<sup>45</sup> Subsection (H)(iv) requires the issuer to describe "how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions."<sup>46</sup> Subsection (H)(v) additionally requires that issuers describe "the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties."<sup>47</sup>

In order to comply with these two requirements alone, "a budding entrepreneur must have the foresight to predict the future transactions in which the business might engage and the knowledge of corporate finance needed to describe how securities might be valued in those

---

just-save-it-2/?\_r=0 (it has been estimated that compliance with the annual reporting requirement alone will consume more than 15 percent of the offering).

<sup>36</sup> Bradford, *supra* note 16, at 203.

<sup>37</sup> Bradford, *supra* note 16, at 203.

<sup>38</sup> Bradford, *supra* note 16, at 217; Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(D), 126 Stat. 306, 317 (2012).

<sup>39</sup> Bradford, *supra* note 16, at 217.

<sup>40</sup> Kendall Almerico, *Has the SEC Made Equity Crowdfunding Economically Unfeasible?*, CROWDFUND INSIDER (Nov. 21, 2013), <http://www.crowdfundinsider.com/2013/11/26291-sec-made-equity-crowdfunding-economically-unfeasible/> (contains a breakdown and estimated cost for meeting the JOBS Act exemption requirements).

<sup>41</sup> Sherwood Neiss, *It Might Cost You \$39K to Crowdfund \$100K Under the SEC's New Rules*, VENTUREBEAT (Jan. 2, 2014), <http://venturebeat.com/2014/01/02/it-might-cost-you-39k-to-crowdfund-100k-under-the-secs-new-rules>.

<sup>42</sup> Bradford, *supra* note 16, at 217.

<sup>43</sup> Bradford, *supra* note 16, at 217.

<sup>44</sup> Bradford, *supra* note 16, at 217.

<sup>45</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(H), 126 Stat. 306, 318 (2012); Bradford, *supra* note 16, at 217.

<sup>46</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(H), 126 Stat. 306, 318 (2012).

<sup>47</sup> *Id.*

transactions and the risks those future transactions could present to security holders.”<sup>48</sup> In addition, the issuer would need the legal knowledge necessary to explain the disadvantages of being a minority shareholder.<sup>49</sup>

Requirements put on issuers are likewise too “detailed and substantial.”<sup>50</sup> The issuer must disclose its capital structure to possible investors, including: (1) the “terms of the securities. . . and how the rights may be materially limited, modified or diluted;”<sup>51</sup> (2) “a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;”<sup>52</sup> and (3) “the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer.”<sup>53</sup> Some of these requirements are so substantial that they “are not present in other registration exemptions that are not intended to be as user friendly as the crowdfunding exemption.”<sup>54</sup> For instance, no other federal or state registration exemption requires financial reports from the issuer.<sup>55</sup> The target amount requirement found in § 4A(b)(1)(F) is yet another requirement not found in any other registration exemption.<sup>56</sup> Congress then limited issuers further by specifying that they could “not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker,”<sup>57</sup> that the issuer cannot compensate promoters without meeting the proper disclosures to be set out by the SEC,<sup>58</sup> and that issuers must file financial filings with the SEC and investors no less than annually as to be determined by the SEC rules.<sup>59</sup>

The requirements that intermediaries must meet are also complicated by an extensive amount of specific rules.<sup>60</sup> The list of obligations that an intermediary must perform include: (1) ensure that each investor receives disclosures—even those pertaining to risk and investor educational material—as prescribed by the SEC;<sup>61</sup> (2) ensure that the investor reviews the educational material;<sup>62</sup> (3) affirm that the investor understands any potential risk of losing the investment and that the investor can bear that entire loss;<sup>63</sup> and (4) that the investor “answers questions demonstrating (i) an understanding of the level of risk generally applicable to investments in startups, emerging business, and small issuers; (ii) an understanding of the risk of

<sup>48</sup> Bradford, *supra* note 16, at 217.

<sup>49</sup> Bradford, *supra* note 16, at 217.

<sup>50</sup> Cohn, *supra* note 22, at 1441–43.

<sup>51</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(H)(i), 126 Stat. 306, 318 (2012).

<sup>52</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(H)(ii), 126 Stat. 306, 318 (2012).

<sup>53</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(H)(iii), 126 Stat. 306, 318 (2012).

<sup>54</sup> Cohn, *supra* note 22, at 1441.

<sup>55</sup> Cohn, *supra* note 22, at 1442 (financial statements are not required by Rule 504 small business exemption for offerings up to one million dollars).

<sup>56</sup> Cohn, *supra* note 22, at 1442; Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(F), 126 Stat. 306, 317 (2012) (states that the issuer must disclose to potential investors “the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target amount.”).

<sup>57</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(2), 126 Stat. 306, 318 (2012).

<sup>58</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(3), 126 Stat. 306, 318 (2012).

<sup>59</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(4), 126 Stat. 306, 318 (2012).

<sup>60</sup> Cohn, *supra* note 22, at 1441–42.

<sup>61</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(3), 126 Stat. 306, 316 (2012).

<sup>62</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(4)(A), 126 Stat. 306, 316 (2012).

<sup>63</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(4)(B), 126 Stat. 306, 316 (2012).

illiquidity; and (iii) an understanding of such other matters as the Commission determines appropriate, by rule.”<sup>64</sup>

On top of these responsibilities, an intermediary must do “a background and securities enforcement regulatory history check on each officer, director and person holding more than 20 percent of the outstanding equity of every issuer”;<sup>65</sup> send issuer disclosure information to the SEC and potential investors no later than 21 days prior to the first sale;<sup>66</sup> “ensure that all offering proceeds are only provided to the issuer when. . .the target offering amount” has been met;<sup>67</sup> “allow investors to cancel their commitments”;<sup>68</sup> “ensure that no investor exceeds the maximum allowable investment limit from all crowdfunding investments within a 12-month period”;<sup>69</sup> “protect the privacy of information collected from investors”;<sup>70</sup> and “take such further measures as the SEC will determine to reduce the risk of fraud regarding the transaction.”<sup>71</sup>

It remains to be seen what intermediaries would be willing to undertake these extensive amount of specific obligations, especially in light of any additional requirements that the SEC may impose.<sup>72</sup> If an intermediary does take on these requirements, then the costs of staying compliant will simply be passed on to the issuer; therefore, even more costs will be shifted to the issuer than what is necessary to cover their own substantial exemption requirement.<sup>73</sup> Ironically, the exemption requirements are detailed and substantial due to the fact that Congress set the aggregate crowdfunding limit at \$1 million dollars, thereby compelling Congress to create exemption requirements that might not have been necessary if an exemption for smaller offerings was created in addition to or instead of the one set in place.<sup>74</sup> Such an additional exemption may be of benefit to issuers as it would provide registration exemption options for business to choose the best exemption option for them depending on the amount of capital the business was wanting to raise. Replacing the current crowdfunding registration exemption with one that has a lower aggregate amount would simply being staying more true to the traditional notion of crowdfunding.

### *C. There Is No Required Open, Public Communication Channel on Crowdfunding Sites*

Open, public communication is at the heart of the idea of crowdfunding as it allows crowdfunding sites to take advantage of the wisdom of the crowds, and is a way to help protect investors from both fraud and poor investment decisions.<sup>75</sup> Yet, the JOBS Act only permits crowdfunding sites to be open to the public— it does not require them to be.<sup>76</sup>

<sup>64</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(4)(C), 126 Stat. 306, 316 (2012).

<sup>65</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(5), 126 Stat. 306, 316 (2012).

<sup>66</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(6), 126 Stat. 306, 316 (2012).

<sup>67</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(7), 126 Stat. 306, 316 (2012).

<sup>68</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(7), 126 Stat. 306, 316 (2012).

<sup>69</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(8), 126 Stat. 306, 316 (2012).

<sup>70</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(9), 126 Stat. 306, 316 (2012).

<sup>71</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a)(12), 126 Stat. 306, 317 (2012).

<sup>72</sup> Cohn, *supra* note 22, at 1440–41.

<sup>73</sup> Alexander J. Davie, *Implications of the Pending Startup Crowdfunding Bill*, STRICTLY BUSINESS (Dec. 10, 2011), <http://www.strictlybusinesslawblog.com/2011/12/10/implications-of-the-pending-startup-crowdfunding-bill>.

<sup>74</sup> Cohn, *supra* note 22, at 1438.

<sup>75</sup> Bradford, *supra* note 16, at 219.

<sup>76</sup> Bradford, *supra* note 16, at 219–20; Crowdfunding, 78 Fed. Reg. 66428-01, 66471–72 (proposed Nov. 5, 2013).

*D. There Is No “Substantial Compliance” Rule for Requirements Imposed on Issuers and Intermediaries*

As discussed above, the crowdfunding exemption found in § 4(a)(6) requires issuers and intermediaries to comply with several detailed requirements under § 4A(b) and § 4A(a) respectively.<sup>77</sup> Under the statute, if any requirement is not met, even if reasonably believed to be in compliance, the exemption is unavailable, and the issuer will not be allowed to sell securities unless a registration statement is in effect under § 5(a)(1) of the Securities Act.<sup>78</sup> Not only would the exemption then be unavailable, but the loss of the exemption might be retroactive if § 4(a)(6) were to be read literally.<sup>79</sup>

The unavailability and possible retroactive loss of the exemption is a drastic consequence for such minor violations, especially considering that the CROWDFUND Act is intended to be friendly toward small businesses and entrepreneurs.<sup>80</sup> Other exemption regulations, such as Regulation A and Regulation D, include “substantial compliance” rules.<sup>81</sup> Section 4(a)(6) similarly needs a substantial compliance rule like these other exemptions.<sup>82</sup> Otherwise, the requirements imposed on relatively inexperienced issuers could prove fatal to the purpose of the crowdfunding exemption, since the slightest violation would invalidate the contribution under the exemption.<sup>83</sup>

*E. There Are Several Ambiguities Within the JOBS Act’s Crowdfunding Exemption*

The JOBS Act contains a number of ambiguities.<sup>84</sup> The first ambiguity can be seen in the individual investment limits.<sup>85</sup> “Sections 4(a)(6)(B)(i) and (ii) technically subject some investors to two potential investment limits.”<sup>86</sup> Subsection 4(a)(6)(B) states:

[T]he aggregate amount sold to any investor by the issuer, including any amount sold in reliance on the exemption. . . during the 12-month period preceding the date of such transaction, does not exceed (i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable if either the annual income or the net worth of the investor is less than \$100,000; and (ii) 10 percent of the annual income or net worth. . . of the investor is equal to or more than \$100,000.<sup>87</sup>

<sup>77</sup> Bradford, *supra* note 16, at 218. See *supra* Part I.B.

<sup>78</sup> Bradford, *supra* note 16, at 218-19 (Section 4(6) is an exemption from the section 5 of the Act); Securities Act of 1933 § 5(a)(1), 15 U.S.C. § 77e(a)(1) (2014) (“(a) Sale or delivery after sale of unregistered securities. Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise.”).

<sup>79</sup> Bradford, *supra* note 16, at 218.

<sup>80</sup> Bradford, *supra* note 16, at 218.

<sup>81</sup> Bradford, *supra* note 16, at 219 (“Both the Regulation A exemption and the Regulation D exemption now include ‘substantial compliance’ rules that protect an issuer even if the issuer failed to comply with the exemption in certain insignificant ways. Regulation D also includes several provisions that protect the issuer if it reasonably believed the requirements of the rule were met, even if they actually were not.”).

<sup>82</sup> Bradford, *supra* note 16, at 219.

<sup>83</sup> Bradford, *supra* note 16, at 219.

<sup>84</sup> Bradford, *supra* note 16, at 219.

<sup>85</sup> Bradford, *supra* note 16, at 198.

<sup>86</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66433 (proposed Nov. 5, 2013).

<sup>87</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4(a)(6)(B), 126 Stat. 306, 315 (2012).



However, the language in both subsections can be read to be applicable if “either” annual income or net worth meets the stated monetary requirement.<sup>88</sup> Under such an interpretation, if an investor’s annual income is less than \$100,000 and net worth is equal to or more than \$100,000, the language of the statute would make both subsections applicable.<sup>89</sup> Further, the subsection does not specify whether the 10 percent limit on the wealthier investors is the greater or the lesser of the investor’s annual income or net worth.<sup>90</sup>

Second, a statutory ambiguity exists between § 4(a)(6) and § 4A(g). Section 4(a)(6) states that the \$1 million limitation applies to the “aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under [that] paragraph.”<sup>91</sup> On the other hand, § 4A(g) provides that “[n]othing in the exemption shall be construed as preventing an issuer from raising capital through means other than [S]ection 4[(a)](6).”<sup>92</sup> The ambiguity lies in where the first provision “provide[s] for the aggregation of amounts raised in all exempt transactions, even those that do not involve crowdfunding, while the second provision could be read to provide that nothing in the Section 4(a)(6) exemption should limit an issuer’s capital raising through other methods.”<sup>93</sup>

Additionally, there are several places in the JOBS Act that use unclear language. For instance, the Act does not clarify what it means when it states: “including all entities controlled by or under common control with the issuers” at the beginning of § 4(a)(6).<sup>94</sup> It is also unclear what the drafters meant when they wrote that funding portals may not “offer investment advice or recommendations” in subsection 304(b) of the JOBS Act.<sup>95</sup> The meaning of “investment advice” is murky under the Investment Advisors Act, and the CROWDFUND Act does not help clarify.<sup>96</sup> Therefore, even funding portals that do not “offer investment advice or recommendations” under the CROWDFUND Act still risk required registration for being investment advisors under the Investment Advisors Act.<sup>97</sup> The Investment Advisors Act has a two-part definition of “investment advisors.”<sup>98</sup> The first part defines anyone who, “for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.”<sup>99</sup> Presumably, this prong would not apply to a funding portal complying with the CROWDFUND Act.<sup>100</sup> The second prong of the definition, however, continues to include anyone who “for compensation and as part of a regular business, issues or promulgates or reports concerning securities.”<sup>101</sup> Merely providing information regarding investment opportunities may be enough under this prong to constitute an investment advisor, even if no recommendation is

<sup>88</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66433 (Nov. 5, 2013).

<sup>89</sup> *Id.*

<sup>90</sup> Bradford, *supra* note 16, at 216.

<sup>91</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, §§ 4(a)(6)(A)-4(a)(6)(B), 126 Stat. 306, 315 (2012).

<sup>92</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(g), 126 Stat. 306, 320 (2012).

<sup>93</sup> Crowdfunding, 78 Fed. Reg. 66428, 66431 (proposed Nov. 5, 2013).

<sup>94</sup> Bradford, *supra* note 16, at 216.

<sup>95</sup> Bradford, *supra* note 16, at 220; Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302 § 3(a)(80)(A), 126 Stat. 306, 322 (2012) (to be codified at 15 U.S.C. § 78c(a)(80)(A)).

<sup>96</sup> Bradford, *supra* note 16, at 220.

<sup>97</sup> Bradford, *supra* note 16, at 220.

<sup>98</sup> Bradford, *supra* note 16, at 220; 15 U.S.C.A. § 80b-2 (2014).

<sup>99</sup> Bradford, *supra* note 16, at 220; 15 U.S.C.A. § 80b-2 (2014).

<sup>100</sup> Bradford, *supra* note 16, at 220.

<sup>101</sup> Bradford, *supra* note 16, at 221; 15 U.S.C.A. § 80b-2 (2014).

given.<sup>102</sup> Consequently, it is not clear whether the second prong of the Investment Advisors Act’s definition of investment advisor would be offering investment advice or recommendations within the funding portal restriction in the JOBS Act, but it would be a risk.<sup>103</sup>

Lastly, the statute’s requirements for issuers have some internal inconsistencies.<sup>104</sup> For example, § 4A(b) requires the disclosure of the names of those owning more than 20% of its shares, while elsewhere the Act requires the disclosure of those owning more than 20% of any class of its shares.<sup>105</sup>

## II. THE PROPOSED SECURITIES AND EXCHANGE COMMISSION RULES

The SEC proposed crowdfunding rules on November 5, 2013.<sup>106</sup> Although the SEC’s proposed rules solve some of the above-discussed problems, fatal flaws remain—largely because the SEC is constrained by the flawed provisions of the JOBS Act.<sup>107</sup>

### *A. The Crowdfunding Investor Limitations Remain Unmoved*

The proposed rules set forth by the SEC do not recommend changing the individual investment limit.<sup>108</sup> The possibility of changing the individual investment limit was only briefly mentioned in a question posed in a request for comments regarding adopting another crowdfunding exemption with different investment limits.<sup>109</sup> Therefore, the individual investment limits are still too high and are more than what most crowdfunding investors can afford to lose annually.<sup>110</sup>

If the SEC had addressed the individual investment limit in the proposed rules, the SEC likely would have declined to do so, consistent with its response to comments to change the aggregate investment limit. Despite several comments asking the SEC to raise the aggregate investment limit, the SEC did not propose to change the aggregate limit because they “[did] not believe that Congress intended for [them] to modify the aggregate amount permitted to be sold under the exemption when promulgating rules to implement the statute.”<sup>111</sup> To support this decision, the SEC pointed to the specific maximum aggregate amount of \$1 million provided in

<sup>102</sup> Bradford, *supra* note 16, at 221.

<sup>103</sup> Bradford, *supra* note 16, at 221.

<sup>104</sup> Bradford, *supra* note 16, at 216.

<sup>105</sup> Bradford, *supra* note 16, at 216; *See* Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(B), 126 Stat. 306, 317 (2012) (requires disclosure of “each person holding more than 20 percent of the shares of the issuer.”); Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(b)(1)(H), 126 Stat. 306, 318 (2012) (requires disclosure of those “who own more than 20 percent of any class of the securities of the issuer.”).

<sup>106</sup> Crowdfunding, 78 Fed. Reg. 66428, 66430 (proposed Nov. 5, 2013).

<sup>107</sup> *See infra* Part II.A–E.

<sup>108</sup> Crowdfunding, 78 Fed. Reg. 66428, 66430–31 (proposed Nov. 5, 2013).

<sup>109</sup> *Id.* at 66, 435 (proposed Nov. 5, 2013) (“Should we adopt rules providing for another crowdfunding exemption with different investment limits (e.g., an exemption with a \$250 investment limit and fewer issuer requirements), as one commenter suggested, or apply different requirements with respect to individual investments under a certain amount, such as \$500, as another commenter suggested?”).

<sup>110</sup> *See supra* Part I.A.

<sup>111</sup> Crowdfunding, 78 Fed. Reg. 66428, 66431 (proposed Nov. 5, 2013).

the statute and the fact that “statements in the Congressional Record indicate that Congress believed that \$1 million was a substantial amount for a small business.”<sup>112</sup>

Just like the aggregate investment limit, Congress also provided specific language as to individual investment limits in the JOBS Act, which the SEC would likely decline to lower.<sup>113</sup>

*B. Requirements for Issuers and Intermediaries Remain Expensive and Complex*

Although the SEC proposes to add some flexibility,<sup>114</sup> the requirements for issuers and intermediaries remain expensive and complex.<sup>115</sup> The SEC continues to support these expensive and complex statutory requirements based on the necessity to protect investors and to prevent fraud.<sup>116</sup> In fact, the SEC proposes the imposition of even greater requirements on issuers for the sake of investor protection.<sup>117</sup> For example, the SEC proposed the following additional requirements on issuers, which are not required by the statute:

- Disclosure of the amount of compensation paid to the intermediary for conducting the offering, including the amount of any referral or other fees associated with the offering;
- Disclosure of certain legends to be included in the offering statement;
- Disclosure of the current number of employees of the issuer;
- A discussion of the material factors that make an investment in the issuer speculative or risky;
- A description of the material terms of any indebtedness of the issuer, including the amount, interest rate, maturity date and any other material terms;
- Disclosure of exempt offerings conducted within the past three years; and
- Disclosure of certain related-party transactions.<sup>118</sup>

Similarly, the compliance requirements imposed on intermediaries remain unchanged.<sup>119</sup> The rule proposes that an intermediary only needs a reasonable basis to believe that the issuer is in compliance with relevant exemption regulations, that the issuer has means to keep accurate records of holders of the securities it offers, and that the investor meets the investment limitations.<sup>120</sup> Nevertheless, the reasonable basis standard to these requirements does not change the fact that the detailed and substantial requirements of 4A(a) have to be met by the intermediary.<sup>121</sup> Consequently, intermediaries will still shift these costs back onto issuers.

<sup>112</sup> *Id.*; Crowdfunding, 78 Fed. Reg. 66428, 66431 n. 30 (proposed Nov. 5, 2013) (quoting 158 CONG. REC. S1829 (daily ed. Mar. 20, 2012) (statement of Rep. Merkley) (“[T]he amendment allows existing small businesses and startup companies to raise up to \$1 million per year. That is a substantial amount for a small business.”)).

<sup>113</sup> See Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4(a)(6)(B), 126 Stat. 306, 314 (2012).

<sup>114</sup> Crowdfunding, 78 Fed. Reg. 66428-01 (Nov. 5, 2013) (In the proposed rules issuers are given the flexibility to calculate beneficial ownership as of the most recent practicable date, the flexibility of not having specific disclosures in the business description and the business plan, the flexibility to structure the offering as the issuer believes appropriate, the flexibility for issuers to determine the types of securities and how the securities are valued, etc.).

<sup>115</sup> See *infra* Part II.B.

<sup>116</sup> See Crowdfunding, 78 Fed. Reg. 66428-01 (Nov. 5, 2013).

<sup>117</sup> Crowdfunding, 78 Fed. Reg. 66428-01 (Nov. 5, 2013).

<sup>118</sup> *Id.* at 66442.

<sup>119</sup> *Id.* at 66458-77.

<sup>120</sup> *Id.* at 66461-70.

<sup>121</sup> *Id.*; Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, § 4A(a), 126 Stat. 306, 316 (2012). See *supra* Part I.B.

*C. Open, Public Communication Channels on Crowdfunding Sites Are Provided*

The proposed rule would remedy the need for public communication channels left by the JOBS Act. “The proposed rules would require an intermediary to provide, on its platform, channels through which investors can communicate with one another and with representatives of the issuer about offerings made available on the intermediary’s platform, subject to certain conditions.”<sup>122</sup> These communications on the channels provided by the intermediaries would also be required to be made publicly available.<sup>123</sup> Even though the JOBS Act does not impose these communication requirements, the SEC did so because “Congress contemplated that there would be such a mechanism in place for offerings made in reliance on Section 4(a)(6).”<sup>124</sup> An open and public communication channel provided on the intermediary’s platform would also “provide a centralized and transparent means for members of the public that have opened an account with an intermediary to share their views about investment opportunities and to communicate with representatives of the issuer to better assess the issuer and investment opportunity.”<sup>125</sup>

As part of the conditions of having a communication channel, “an intermediary that is a funding portal would be prohibited from participating in any communications in these channels, apart from establishing guidelines for communication and removing abusive or potentially fraudulent communications.”<sup>126</sup> Further, the proposed rules would require “any person posting a comment in the communication channels to clearly and prominently disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of issuer, or is otherwise compensated, . . . to promote the issuer’s offering.”<sup>127</sup>

*D. A “Substantial Compliance” Rule Is Provided*

The proposed rule essentially provides a “substantial compliance” rule for both issuers and intermediaries.<sup>128</sup> Issuers would be provided a safe harbor for certain “insignificant deviations” from a CROWDFUND Act requirement.<sup>129</sup> To qualify for the safe harbor, the issuer would have to show that:

(1) The failure to comply with a term, condition or requirement was insignificant with respect to the offering as a whole; (2) the issuer made a good faith and reasonable attempt to comply with all applicable terms, conditions and requirements of Regulation Crowdfunding; and (3) the issuer did not know of the failure to comply, where the failure to comply with a term, condition or requirement was the result of the failure of the intermediary to comply with the requirements of Section 4A(a) and the related rules, or such failure by the intermediary occurred solely in offerings other than the issuer’s offering.<sup>130</sup>

In proposing this safe harbor, the SEC acknowledged that Rule 508 of Regulation D has a similar provision and that it is appropriate for § 4(a)(6) to follow the first two prongs of the safe

<sup>122</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66471 (Nov. 5, 2013).

<sup>123</sup> *Id.* at 66472.

<sup>124</sup> *Id.* at 66471.

<sup>125</sup> *Id.* at 66472.

<sup>126</sup> *Id.*

<sup>127</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66472 (Nov. 5, 2013).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 66496.

<sup>130</sup> *Id.*

harbor provision in Regulation D.<sup>131</sup> The third prong was proposed, because under the CROWDFUND Act, an issuer could lose the exemption for an intermediary's failure to comply with the requirements set out in § 4A(a).<sup>132</sup> The SEC acknowledged that such a consequence of losing the exemption might make issuers hesitant to use the § 4(a)(6) exemption, since the intermediary's compliance to the requirements is likely out of the issuer's control.<sup>133</sup>

#### *E. Ambiguities Are Mainly Clarified*

The major ambiguities and unclear language left by the CROWDFUND Act would be clarified by the SEC's proposed rule.<sup>134</sup> The ambiguity of investors potentially being subjected to two different investment limits under §§ 4(a)(6)(B)(i)–(ii) was addressed by the SEC's proposed rules.<sup>135</sup> The proposed rule would provide for an “overall investment limit of \$100,000, but within that overall limit, to provide for a ‘greater of’ limitation on the income and net worth.”<sup>136</sup> In other words, if both annual income and net worth are less than \$100,000, then a greater of either \$2,000 or five percent would be the limit.<sup>137</sup> If either the annual income or net worth exceeds \$100,000 then the ten percent limit on the greater of annual income or net worth would be the limit as long as it does not exceed \$100,000.<sup>138</sup>

Second, the SEC disposed of the ambiguity created by § 4(a)(6) and § 4A(g) over how funds raised by other exemptions would affect the issuer's ability to fundraise under the CROWDFUND Act.<sup>139</sup> The SEC proposed that only capital raised under the § 4(a)(6) exemption should be counted toward the aggregate limit of \$1 million, and that capital raised by other means should be excluded.<sup>140</sup> Requiring aggregation of funds raised by any exempt transaction would be inconsistent with the statute's purpose of “alleviating the funding gap faced by startups and small businesses” and it would cap the amount of capital they could raise.<sup>141</sup>

The SEC clarified what “including all entities controlled by or under common control with the issuers” means at the beginning of § 4(a)(6).<sup>142</sup> The proposed rule provides that control is to be defined by the Securities Act Rule 405; that same definition is to be used to determine if the issuer had “control” over an entity under the phrase “controlled by or under common control with” for the purposes of the § 4(a)(6) exemption.<sup>143</sup> Securities Act Rule 405 defines control as, “the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.”<sup>144</sup>

The SEC also tried to make the “investment advice or recommendations” prohibition of subsection 304(b) of the JOBS Act clearer for funding portals by creating a safe harbor for

---

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66496 (Nov. 5, 2013). *See supra* Part I.E.

<sup>135</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66433 (Nov. 5, 2013).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 66432.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Preparation of Registration Statement, 17 C.F.R. § 230.405 (2011).

certain limited activities in which a funding portal may engage.<sup>145</sup> In proposing the safe harbor, the SEC stated they were mindful that the activities of funding portals are far more limited than those of a registered broker-dealer.<sup>146</sup> Still, the limited activities identified for funding portal creates only a “non-exclusive, conditional” safe harbor.<sup>147</sup> The non-exclusivity of the limited activities that are listed leaves some uncertainty as to activities funding portals may participate in without risking liability under the prohibition of 304(b) of the JOBS Act, and the safe harbor does nothing to address a funding portal’s potential liability to register under the Investment Advisors Act.<sup>148</sup> Therefore, risk would still remain on the intermediaries, which means more costs to hand down to issuer.

Lastly, the SEC reconciled the inconsistencies in the disclosure requirements of shareholders found in § 4A(b)(1)(B) and § 4A(b)(1)(H).<sup>149</sup> Instead of one provision requiring the disclosure of those “holding more than 20 percent of the shares of the issuer” and the other requiring those “who owns more than 20 percent of any class of the securities of the issuer” respectively, the proposed rules would simply require the names of beneficial owners of 20 percent or more of the issuer’s voting equity securities.<sup>150</sup>

### III. STATE EXEMPTIONS FOR CROWDFUNDING REGISTRATION

In this federal vacuum, states have forged the way for state crowdfunding by using various non-crowdfunding federal exemptions. With the SEC’s delay on finalizing crowdfunding rules stalling the national crowdfunding scene, the crowdfunding industry used the inertia created by the SEC’s proposed rules to go to states and get guidelines passed.<sup>151</sup>

The most widely used federal exemption that states have adapted for their own crowdfunding purposes is § 3(a)(11) of the Securities Act of 1933.<sup>152</sup> Section 3(a)(11) is commonly known as the “intrastate exemption” and provides an exemption for:

Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.<sup>153</sup>

The intrastate exemption of the Securities Act of 1933 was adopted with the intention that individual states have jurisdiction over offerings within their own borders.<sup>154</sup> Since state exemptions cannot supersede SEC regulations, many states have used the intrastate exemption as a way to proceed with crowdfunding without the “delay and burdens” of the federal

---

<sup>145</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66485 (Nov. 5, 2013) (“These activities relate to: limiting offerings made on or through the funding portal’s platform based on eligibility requirements; highlighting and displaying offerings on the platform; providing communication channels for potential investors and issuers; providing search functions on the platform; advising issuers on the structure or content of offerings; compensating others for referring persons to the funding portal and for the other services; and advertising the funding portal’s existence.”).

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66485 (Nov. 5, 2013); *Supra* Part I.E.

<sup>149</sup> Crowdfunding, 78 Fed. Reg. at 66439; *Supra* Part I.E.

<sup>150</sup> Crowdfunding, 78 Fed. Reg. at 66439.

<sup>151</sup> Solomon, *supra* note 35.

<sup>152</sup> *See* Appendix A.

<sup>153</sup> 15 U.S.C. § 77c(11).

<sup>154</sup> Solomon, *supra* note 35.

crowdfunding exemption.<sup>155</sup> Another federal securities registration exemption—which only one state relied upon for its intrastate crowdfunding exemption<sup>156</sup>—is found in Rule 504 of Regulation D.<sup>157</sup> Rule 504 of Regulation D provides a registration exemption for offers and sales of securities up to \$1,000,000 in a twelve-month period if the company is not: 1) a blank check company, 2) an investment company, and 3) does not have to file reports under the Securities Exchange Act of 1934.<sup>158</sup> Instead of registration with the SEC, the company must electronically file a Form D after first selling their securities. A Form D provides notice of the name and address of the company’s promoters, executive officers and directors, and the details of the offering.<sup>159</sup> Generally, under this exemption, purchasers receive restricted securities and companies are not to advertise their securities publicly.<sup>160</sup> Issuers can advertise unrestricted securities if the offer of sale is made:

(i) Exclusively in one or more states that provide for the registration of the securities, and require the public filing and delivery to investors of a substantive disclosure document before sale, and are made in accordance with those state provisions;

(ii) In one or more states that have no provision for the registration of the securities or the public filing or delivery of a disclosure document before sale, if the securities have been registered in at least one state that provides for such registration, public filing and delivery before sale, offers and sales are made in that state in accordance with such provisions, and the disclosure document is delivered before sale to all purchasers (including those in the states that have no such procedure); or

(iii) Exclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to “accredited investors” as defined in § 230.501(a).<sup>161</sup>

Currently, fourteen states and the District of Columbia have adopted crowdfunding exemptions, including: Alabama, Colorado, Georgia, Idaho, Indiana, Kansas, Nebraska, Maine, Maryland, Michigan, Texas, Tennessee, Washington, and Wisconsin.<sup>162</sup> Nine other states presently have pending crowd funding legislation.<sup>163</sup> In his own capacity, Chicago attorney

<sup>155</sup> Tom Sharbaugh, *Some States Are Sidestepping the JOBS Act’s Burdensome Crowdfunding Rules*, CROWDFUND INSIDER (May 16, 2014, 8:30 AM), <http://www.crowdfundinsider.com/2014/05/38730-states-sidestepping-jobs-acts-burdensome-crowdfunding-rules>.

<sup>156</sup> See Appendix A.

<sup>157</sup> 17 C.F.R. § 230.504 (2014).

<sup>158</sup> 17 C.F.R. § 230.504(a) (2014); *Rule 504 of Regulation D*, SEC.GOV, <http://www.sec.gov/answers/rule504.htm> (last visited 11/21/14).

<sup>159</sup> *Rule 504 of Regulation D*, SEC.GOV, <http://www.sec.gov/answers/rule504.htm> (last visited 11/21/14).

<sup>160</sup> 17 C.F.R. § 230.504(b)(1) (2014); *Rule 504 of Regulation D*, *supra* note 159.

<sup>161</sup> 17 C.F.R. § 230.504(b)(1)(i)-(iii) (2014).

<sup>162</sup> See Appendix A.

<sup>163</sup> H.R. B. 303, 2013 Leg., 28th Sess. (Alaska 2014), *available at* <http://www.legis.state.ak.us/PDF/28/Bills/HB0303A.PDF>; Assemb. B. 2096, 2013 Leg., Reg. Sess. (Cal. 2014), *available at* [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2051-2100/ab\\_2096\\_bill\\_20140807\\_amended\\_sen\\_v93.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2051-2100/ab_2096_bill_20140807_amended_sen_v93.pdf); H.R. B. 5577, 2014 Gen. Assemb., Feb. Reg. Sess. (Conn. 2014), *available at* <http://www.cga.ct.gov/2014/TOB/h/pdf/2014HB-05577-R02-HB.pdf>; H.R. B. 1736, 97th Gen.

Anthony Zeoli, has started a petition to generate support for the crowdfunding legislation he drafted for Illinois.<sup>164</sup> On the other hand, Florida, Mississippi, and New Mexico tried adopting crowdfunding legislation, and the legislation either died in committee or was postponed indefinitely.<sup>165</sup>

Contrary to this article's recommendation, states that have created their own crowdfunding registration exemptions have generally increased the individual investment limit while lowering registration exemption requirements.<sup>166</sup> States so far have leaned toward individual investment limits of either \$5,000 or \$10,000.<sup>167</sup> However, Maryland's \$100 investment limit and Kansas's \$1,000 investment limit are consistent with this article's recommendation.<sup>168</sup>

Furthermore, states that have not joined the state crowdfunding movement could try the suggested "lesser of" approach to the individual investment limits for non-accredited investors.<sup>169</sup> This approach is directly counter to the SEC's proposed "greater of" approach.<sup>170</sup> The "lesser of" approach would "base the calculation on the lesser of income or net worth and make the calculation using the lower five percent amount if either income or net worth fell below the \$100,000 threshold."<sup>171</sup> This means that \$2,000 would be the upper limit for an investor with an income or net worth of \$100,000 or less.<sup>172</sup> An investor with a net worth and income that both exceed the \$100,000 threshold, then could invest up to ten percent of the lower of either their income or net worth.<sup>173</sup> The "lesser of" approach may not cut the individual investor limits as drastically as Maryland, but such an approach is a middle-of-the road approach that would be worth a state's time to explore.

---

Assemb., 2d Reg. Sess. (Mo. 2014), *available at* <http://www.house.mo.gov/billtracking/bills141/billpdf/intro/HB1736I.PDF>; S. B. 712, 216th Leg., 2014 Sess. (N.J. 2014), *available at* [http://www.njleg.state.nj.us/2014/Bills/S1000/712\\_I1.PDF](http://www.njleg.state.nj.us/2014/Bills/S1000/712_I1.PDF); H.R. B. 680, Gen. Assemb., 2013 Sess. (N.C. 2013), *available at* <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H680v4.pdf>; H.R. B. 4799, 2013 Gen. Assemb., 120th Sess. (S.C. 2014), *available at* <http://www.scstatehouse.gov/billsearch.php?billnumbers=4799&session=120&summary=B&PRINT=1>; H.R. B. 142, 2014 Leg., Reg. Sess. (Utah 2014), *available at* <http://le.utah.gov/~2014/bills/hbillint/hb0142.pdf>; S. B. 351, Gen. Assemb., 2014 Sess. (Va. 2014), *available at* <http://leg1.state.va.us/cgi-bin/legp504.exe?141+ful+SB351+pdf>.  
<sup>164</sup> See *Illinois Intrastate Crowdfunding Initiative*, CROWDFUNDING-WEBSITE-REVIEWS.COM, <http://www.crowdfunding-website-reviews.com/illinois-crowdfunding/> (last visited Mar. 2, 2015); Anthony Zeoli, *Illinois Crowdfunding Now*, THE PETITION SITE, <http://www.thepetitionsite.com/778/547/459/illinois-crowdfunding-now/> (last visited Mar. 2, 2015).

<sup>165</sup> S. B. 1596, 2014 Leg., Reg. Sess. (Fla. 2014) (unenacted), *available at* <http://www.flsenate.gov/Session/Bill/2014/1596/BillText/Filed/PDF>; S. B. 2685, 2014 Leg., Reg. Sess. (Miss. 2014) (unenacted), *available at* <http://billstatus.ls.state.ms.us/documents/2014/pdf/SB/2600-2699/SB2685CS.pdf>; H. B. 94, 51st Leg., 2014 2d Sess. (N.M. 2014) (unenacted), *available at* <http://www.nmlegis.gov/Sessions/14%20Regular/bills/house/HB0094.pdf>.

<sup>166</sup> See Appendix A.

<sup>167</sup> See Appendix A.

<sup>168</sup> See Appendix A.

<sup>169</sup> *Recommendation of the Investor Advisory Committee: Crowdfunding Regulations*, SECURITIES AND EXCHANGE COMMISSION (April 10, 2014), <http://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-crowdfunding-recommendation.pdf>.

<sup>170</sup> Crowdfunding, 78 Fed. Reg. 66428-01, 66433 (Nov. 5, 2013). See *supra* Part II.E.

<sup>171</sup> *Recommendation of the Investor Advisory Committee: Crowdfunding Regulations*, *supra* note 169.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*



State crowdfunding exemptions are generally consistent with this article's recommendation that the requirements for issuers should be less expensive and complex.<sup>174</sup> State regulations on intermediaries are also generally more flexible than the federal requirement.<sup>175</sup> These reduced state exemption requirements then lower the cost burden put on issuers. Reducing the sheer number of exemption requirements reduces issuer compliance costs even though some state exemption requirements may still be complex enough to require the help of lawyers and accountants. Issuer costs are further reduced by intermediaries that will not have as many, if any, compliance costs that will shift back onto issuers as part of transaction costs.

#### IV. CROWDFUNDING MOVING FORWARD

As can be seen from the above discussion, individual investor limits and the amount of requirements to meet the federal registration exemption are the two main issues still surrounding the topic of equity crowdfunding. Individual investor limits and donation caps at this time are arbitrary numbers with which Congress and state legislatures should remain flexible. The individual investment limits seem particularly arbitrary because none of the JOBS Act's legislative reports provided studies as to how these limit amounts were reached.<sup>176</sup> Equity crowdfunding is very different than the donation model that existed previously. Instead of donating \$25 to \$50 to fund something on impulse, equity crowdfunding investment requires the donor to look at the long-term prospects of the business when asked to take ownership interest.<sup>177</sup> Permitting states to continue to implement their own intrastate exemptions allows states to operate as "laboratories" and to experiment as to what the individual investment limits should be. Likewise, permitting states to experiment will allow time to find a good balance between anti-fraud provisions for investors and the cost-prohibitive nature of these provisions for issuers. Giving time for the states to individualize their own intrastate crowdfunding registration exemption will then lend valuable lessons for the SEC and Congress to then implement and make equity crowdfunding more viable on a national scale. Finding this right balance on the national scale would in turn not only help the small business and entrepreneurs, but it would help the job market and it support human innovation.

---

<sup>174</sup> *Id.* See Appendix A.

<sup>175</sup> *Recommendation of the Investor Advisory Committee: Crowdfunding Regulations*, *supra* note 169. See Appendix A.

<sup>176</sup> See H.R. REP. NO. 112-206 (2011); H.R. REP. NO. 112-262 (2011); H.R. REP. NO. 112-263 (2011); H.R. REP. NO. 112-265 (2011); H.R. REP. NO. 112-327 (2011); H.R. REP. NO. 112-406 (2012), *reprinted in* 2012 U.S.C.C.A.N. 278; H.R. REP. NO. 112-406(II) (2012), *reprinted in* 2012 U.S.C.C.A.N. 289; H.R. REP. NO. 112-409 (2012).

<sup>177</sup> Chance Barnett, *Donation-Based Crowdfunding Side: Kickstarter vs. Indiegogo*, FORBES (Sept. 9, 2013), <http://www.forbes.com/sites/chancebarnett/2013/09/09/donation-based-crowdfunding-sites-kickstarter-vs-indiegogo/>.

V. APPENDIX A: STATE CROWDFUNDING EXEMPTIONS

|  |   |
|--|---|
| <b>STATE</b>   | <b>Alabama</b>  |
| <b>Title</b>   | SB 44.  |
| <b>Statute citation</b>  | Amends Alaska Code § 8-6-11 to provide for an exception to §§ 8-6-3 through 8-6-9.  |
| <b>Date enacted</b>  | Signed 4/9/14, immediately effective upon passage and approval by the Governor.   |
| <b>Exemption from federal registration relied on</b>   | 3(a)(11).   |
| <b>Companies permitted to use the exemption</b>  | Issuers shall be a for-profit corporation or other for-profit entity, or business in the state of Alabama and registered with the Secretary of State.   |
| <b>Aggregate annual sales limit</b>  | The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption must not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12-months before the first offer or sale made in reliance upon this exemption. Sales to controlling persons do not count to this limitation.  |
| <b>State registration requirements</b>   | Securities must be offered and sold only to persons who are residents to the state of Alabama at the time of purchase. Prior to each sale, the seller must obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe that such investor is a resident of Alabama. The issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security. A commission or remuneration must not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities to the issuer unless the person is registered as a broker-dealer or agent under the Act. All funds received from investors must be deposited into a bank or depository institution, and must be used in accordance with representations made to investors. The issuer must not be, either before or as a result of the offering, an investment company or an investment advisor.   |
| <b>Internet offering portal requirements or restrictions</b>   | Silent.   |
| <b>Escrowee requirements or restrictions</b>   | The bank or depository institution must be authorized to do business in Alabama.  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The issuer must not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 SEC regulation D.  |
| <b>Required disclosure to investors</b>  | No less than 10 days prior to the use of any general solicitation or within fifteen (15) days after the first sale of the security pursuant to this exemption (provided no general solicitation has been used prior to such sale), whichever occurs first, the issuer must provide a notice to the commission. The notice to the commission must specify that the issuer is conducting an offering in reliance upon this exemption and must contain the names and addresses of the following persons: 1) the issuer; 2) officers, directors, and any control person of the issuer; 3) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and 4) the bank or other depository institution in which investor funds will be deposited. The issuer must inform all purchasers that the securities have not been registered under the Act and cannot be resold unless the securities are registered or qualify for an exemption from registration under Alabama Code § 8-6-4 through 8-6-11. In addition, the issuer must make disclosures required under subsection (f) regarding any commission or remuneration. Securities Commission may by rule or order, as to any security or transaction of any type of security or transaction, withdraw, further condition or expand this exemption. |
| <b>Restriction on advertising and communications</b>   | Silent.   |

|  |   |
|--|---|
| <b>STATE</b>                                     | <b>Alabama</b>  |
| <b>Ongoing reporting requirements</b>            | Silent.   |
| <b>Use with other exemptions</b>                 | This exemption must not be used in conjunction with any other exemption under the Act except the exemption to institutional investors at § 8-6-11(a)(8) and for offers and sales to controlling persons of the issuer.  |
| <b>Disqualification from exemption</b>           | This exemption is not available if the issuer, or any of the officers, controlling people or promoters is subject to a disqualifier § 8-6-9 of the 1975 Alabama Code. Nothing in this exemption is construed to alleviate any person from the antifraud provisions § 8-6-17, nor must this exemption be construed to provide relief from any other provisions of this Article other than as expressly stated. |
| <b>Applicable state securities law liability</b> | Silent.   |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Colorado</b>  |
| <b>Title</b>   | House Bill 14-1079 (Concerning an Increase in the Monetary amount Allowed for the limited offering registration procedure under the “Colorado Securities Act.”).   |
| <b>Statute citation</b>  | 11-51-304(6) introduction is amended (registration by qualification).  |
| <b>Date enacted</b>  | Signed March 27, 2014, effective at 12:01 a.m. on the day following the expiration of the ninety day period after final adjournment of the general assembly; except that, if a referendum petition is filed, then the act, item, section, or part will not take effect unless approved by the people at the general election in November 2014. In such case, the enactment will take effect on the date of the official declaration by the governor. |
| <b>Exemption from federal registration relied on</b>   | 3(a)(11).  |
| <b>Companies permitted to use the exemption</b>  | Issuers that have their principal office and the majority of its full-time employees in Colorado.  |
| <b>Aggregate annual sales limit</b>  | The gross proceeds from the offering cannot exceed 5 million within any 12-month period.   |
| <b>State registration requirements</b>   | The issuer will need to provide an offering document that at least 80% of the net proceeds from the offering will be used in connection with the operations of the issuer in the state. The Commissioner must by rule prescribe a limited offering registration procedure. The registration and offering documents for this limited offering must meet the rest of the requirements laid out in 11-51-304(6).  |
| <b>Internet offering portal requirements or restrictions</b>   | Silent.  |
| <b>Escrowee requirements or restrictions</b>   | Silent.  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | Silent.  |
| <b>Required disclosure to investors</b>  | Silent.  |

|  |                 |
|--|-----------------|
| <b>STATE</b>   | <b>Colorado</b> |
| <b>Restriction on advertising and communications</b> | Silent.         |
| <b>Ongoing reporting requirements</b>                | Silent.         |
| <b>Use with other exemptions</b>                     | Silent.         |
| <b>Disqualification from exemption</b>               | Silent.         |
| <b>Applicable state securities law liability</b>     | Silent.         |

|  |  |
|--|--|
| <b>STATE</b>   | <b>District of Columbia</b>  |
| <b>Title</b>   | District of Columbia—Only Securities Offering Exemption.   |
| <b>Statute citation</b>                                      | Adds § 250.1 to Chapter 2 of Title 26-B, Securities.   |
| <b>Date enacted</b>  | Final Rule adopted 9/29/2014.  |
| <b>Exemption from federal registration relied on</b>         | 3(a)(11).  |
| <b>Companies permitted to use the exemption</b>              | The issuer must be an entity that is organized under D.C. laws, and is authorized to do business in D.C., and has its principal place of business in D.C.  |
| <b>Aggregate annual sales limit</b>                          | Consideration received for all sales of the securities in reliance on the exemption must not exceed: 1) \$500,000, if the issuer has financial statements, including balance sheets, income statements and cash flow statements for the past three (3) years, or as much time as the issuer has been in operation, that are certified by the principal executive officer; 2) \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within twelve (12) months before the first offer or sale, if the issuer has undergone a financial review of the financial statements of its most recently completed fiscal year; 3) \$2,000,000, less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer or sale, if the issuer has undergone an audit of the financial statement of its most recently completed fiscal year. An offer of sale to a director or one of similar status or to one owning 10% or more of any outstanding shares of securities does not count to the monetary limitation. |
| <b>State registration requirements</b>                       | The issuer must file these documents with the Commissioner no later than twenty (20) calendar days prior to offer or sale: 1) a written notice of claim of exemption; and 2) a copy of the offering document to be provided to prospective investors. The offering document must be delivered to each offeree at least twenty-four (24) hours prior to any sale of securities. The offering document must: 1) inform all prospective purchasers of securities offered that securities are not registered and are subject to limitation on resale; 2) must display a specific legend open on the cover page of the disclosure statement; 3) offering document must be signed by a duly authorized representative of the issuer to certify issuer has made reasonable efforts to verify the material accuracy and completeness. The issuer must maintain records of all offers and sales.  |
| <b>Internet offering portal requirements or restrictions</b> | Any person acting as an internet site operator must be an issuer, broker-dealer licensed in D.C., or a funding portal that is in compliance with all D.C., SEC, and FINRA requirements. Internet site operators must comply with all D.C., SEC and FINRA requirements applicable to intrastate offerings through the internet. Internet site operators must record all offers and sales of securities affected through its site.   |
| <b>Escrowee requirements or restrictions</b>                 | The bank or other financial institution must be chartered under D.C. law or any agency of the federal government.  |

|  |  |
|--|--|
| <b>STATE</b>   | <b>District of Columbia</b>  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | Unless the purchaser is an accredited investor, the issuer must not accept: 1) more than \$10,000, if the purchaser's annual gross income is less than \$100,000; 2) more than \$25,000, if the purchaser's annual gross income is less than \$200,000; or 3) an offer from any purchaser unless the purchaser's annual gross income or net worth is more than \$1 million.  |
| <b>Required disclosure to investors</b>  | The offering document provided to prospective investors must contain: 1) a description of the company, type of entity, address and phone of the principal office, history and business plan, and intended use of the proceeds; 2) the identity of all persons owning more than 10% of the ownership interests of any class of securities of the company; 3) the identity of the executive officers or those of similar status, including their titles and prior experience; 4) owners or one of similar status getting paid from the proceeds or anyone with at least 10% ownership interest must provide an affidavit that includes birthday, address and social security number and a statement under penalty of perjury that she is not disqualified from participating in the offer; 5) the terms and conditions of the securities being offered and any outstanding securities of the company, the amount securities are being offered, any restrictions on transfer, either the percentage ownership of the company represented by the offered securities or valuation of the company implied by the price of offered security; any anticipated future issuance of securities that might dilute value of securities being offered; 6) the identity of any person who has been or will be retained by the issuer to help with the offer; 7) considering being paid for assistance of any person; 8) description of any litigation or regulatory action involving the company; 9) any additional information material to the offering; 10) the issuers business plan for the next five (5) fiscal years; 11) the issuer's financial statements, for the three (3) most fiscal years; 12) a statement of the issuer's proposed use of the funds derived from the offer; 13) all sales material distributed or made available to potential purchasers during the offering period; 14) if any material change occurs in the info that an issuer submits to the Commissioner, the issuer must notify the Commissioner within five (5) calendar days of the change and make changes to disclosures; 15) an escrow agreement with a financial institution. |
| <b>Restriction on advertising and communications</b>   | Advertising or solicitation may be published at least twenty (20) calendar days before any sale of the security, the issuer has filed with the Commissioner a notice setting forth the material terms of the proposed sale and copies of sale and advertising literature to be used, and the Commissioner does not disallow the exemption by order within ten (10) days after the filing is received.  |
| <b>Ongoing reporting requirements</b>  | An issuer must provide, free of charge, an annual report to the issuer's investors and must file a copy of the report with the Department, for each of the three (3) fiscal years of the issuer. Can be made available by website, if it is made available within sixty (60) days after the end of each fiscal year and remains available until the next annual report. The annual report must contain: 1) compensation received by each director and executive officer; 2) an analysis by management of the issuer of the business operations and financial condition of the issuer; 3) operating results and financial statement; and 4) a statement of the use of the proceeds of the offering.   |
| <b>Use with other exemptions</b>   | Neither issuer nor any of the officers, shareholders, employees or contractors would be disqualified from participating in an offering under Regulation A.   |
| <b>Disqualification from exemption</b>   | The issuer is disqualified from the exemption if, either before or as a result of the offering, an investment company, or any entity that would be an investment company but for the exclusions, or subject to the reporting requirements, or a development stage company that either has not specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company, or other entity or person.   |
| <b>Applicable state securities law liability</b>   | Silent.  |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Georgia</b>  |
| <b>Title</b>   | Invest Georgia Exemption.   |
| <b>Statute citation</b>                              | Georgia Com. R. & Regs § 590--4-2-.08 .   |
| <b>Date enacted</b>                                  | Amended 12/7/2012, effective 12/27/12.  |
| <b>Exemption from federal registration relied on</b> | 3(a)(11).   |
| <b>Companies permitted to use the exemption</b>      | The issuer of the security must be a for-profit business entity formed under the laws of Georgia and registered with the Secretary of State. Issuer must not be, either before or as a result of the offering, an investment company as defined in § 3 of the Investment Company Act of 1940, or subject to the reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934. |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Georgia</b>  |
| <b>Aggregate annual sales limit</b>  | The sum of all cash and other consideration for all sales of the security in reliance upon the exemption must not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the twelve (12) month period before the first offer or sale made in reliance on this exemption.   |
| <b>State registration requirements</b>   | All funds received from investors shall be deposited into a bank or depository institution, and all the funds shall be used in accordance with representations made to investors.   |
| <b>Internet offering portal requirements or restrictions</b>   | Silent.   |
| <b>Escrowee requirements or restrictions</b>   | The bank or depository institution must be authorized to do business in Georgia.  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The issuer must not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D.  |
| <b>Required disclosure to investors</b>  | Before the use of any general solicitation or the twenty-fifth (25) sale of the security, whichever occurs first, the issuer shall file a notice with the Commissioner in writing or in electronic form. The notice must specify that the issuer is conducting an offering in reliance upon this exemption and must contain the names and addresses of the following persons: 1) the issuer; 2) all persons who will be involved in the offer or sale of securities on behalf of the issuer; 3) the bank or other depository institution in which investor funds will be deposited. The issuer must inform all purchasers that the securities have not been registered under the Act and that the securities are subject to the limitation on resales contained in § (e) of SEC Rule 147. |
| <b>Restriction on advertising and communications</b>   | Silent.   |
| <b>Ongoing reporting requirements</b>  | Silent.   |
| <b>Use with other exemptions</b>   | This exemption must not be used in conjunction with any other exemption under these rules or the Act, except for offers and sales to the following persons, who shall not count toward the limitation: (a) an officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or (b) a person owning 10% or more of the outstanding shares of any class(es) of securities.  |
| <b>Disqualification from exemption</b>   | This exemption shall not be available if the issuer is subject to disqualifying event specified in Rule 590-4-2-.06   |
| <b>Applicable state securities law liability</b>   | Silent.   |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Idaho</b>   |
| <b>Title</b>   | Director of Finance Order Pursuant to IC. § 30-14-203 (Treasure Valley Angel Fund, LLC). |
| <b>Statute citation</b>                              | Pursuant to I.C. § 30-14-203.  |
| <b>Date enacted</b>                                  | Signed 1/20/12.  |
| <b>Exemption from federal registration relied on</b> | 3(a)(11).  |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Idaho</b>  |
| <b>Companies permitted to use the exemption</b>  | The Fund is a business organization formed under the laws of the state of Idaho and registered with the Idaho Secretary of State. The Fund will not be, either before or as a result of the offering, an investment company as defined in § 3 of the Investment Company Act of 1940, or subject to reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934.  |
| <b>Aggregate annual sales limit</b>  | The sum of all cash and other consideration to be received for all sales of the Fund's interests in reliance upon this exemption will not exceed \$2,000,000. Sales to controlling persons do not count toward this limitation.   |
| <b>State registration requirements</b>   | No commission or remuneration can be paid or given, directly or indirectly, for any person's participation in the offer or sale of interests in the Fund unless the person is registered as a broker-dealer or agent under the Act. All funds received from investors shall be deposited into an escrow account with a bank or depository institution until \$750,000 is raised. All funds shall be used in accordance with representations the Fund has made to investors. At least 80% of the Fund's assets at the end of its most recent semiannual period prior to the offering must be located in Idaho. At least 80% of the Fund's gross revenues during its most recent fiscal year prior to the offering must be derived from its investments in Idaho. The Fund will use at least 80% of the net proceeds of this offering in connection with the operation of a business within Idaho. The Fund must provide notice of the offering to the administrator in writing of electronic form and receive approval of the offering prior to any offers or sale being made. |
| <b>Internet offering portal requirements or restrictions</b>   | Silent.   |
| <b>Escrowee requirements or restrictions</b>   | The bank or depository institution that is authorized to do business in Idaho.  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The Fund must not accept more than \$2,500 from any single purchaser unless the purchaser is an accredited investor as defined by 501 of SEC Regulation D. The Fund shall not accept an investment from any single investor in an amount that exceeds 10% of the investors net worth exclusive of the investor's home, automobiles, and furnishings.  |
| <b>Required disclosure to investors</b>  | The notice must specify that the Fund is conducting an offering in reliance upon this exemption and shall contain: 1) the names and addresses of the Fund, all persons who will be involved in the offer or sale of securities on behalf of the Fund, the bank or other depository institution in which investor funds will be held in escrow; 2) a copy of the offering document to be given to investors; 3) all advertising to be used in the solicitation of investments in the Fund; 4) the Fund's balance sheet and income statement prepared in accordance with Generally Accepted Accounting Principles and in compliance with IDAPA 12.01.08.02 and 03. The Fund must inform all purchasers that interests in the Fund have not been registered under the Act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under I.C. § 30-14-301. The Fund and all its officers, directors and agents must make the disclosures required by § (f) of SEC rule 147.   |
| <b>Restriction on advertising and communications</b>   | Silent.   |
| <b>Ongoing reporting requirements</b>  | Silent.   |
| <b>Use with other exemptions</b>   | The Fund cannot use this exemption in conjunction with any other exemption from registration under I.C. § 30-14-301, except for offers and sales to controlling persons of the Fund.  |
| <b>Disqualification from exemption</b>   | This exemption is not available if the Fund or its officers, directors, or agents are subject to a disqualifying event specified in IDAPA 12.01.08.59.02 and 03. The Fund, its officers and directors and agents are also subject to all provisions of the Act not otherwise exempted therein.  |
| <b>Applicable state securities law liability</b>   | Silent.   |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Indiana</b>   |
| <b>Title</b>   | Senate Enrolled Act No. 375.   |
| <b>Statute citation</b>  | § 1. IC 6-3.1.24-14 is added. § 2 IC 23-19-1-2 as added by P.L. 27-2007. § 23 is amended.  |
| <b>Date enacted</b>  | signed 3/25/14, and effective 7/1/14.  |
| <b>Exemption from federal registration relied on</b>   | 3(a)(11).  |
| <b>Companies permitted to use the exemption</b>  | The issuer of the security is a business entity organized under the laws of Indiana and authorized to do business in Indiana. Issuer cannot be, before or as a result of the offering, an investment company.  |
| <b>Aggregate annual sales limit</b>  | 1) \$1,000,000 if the issuer has not undergone or made available the financial audit report for the most recently completed fiscal year to prospective investors and the Commissioner. 2) \$2,000,000 if the issuer has undergone and made available a financial audit or the most recently completed fiscal year to prospective investors and the Commissioner. Both limitations are less the aggregate amount for all sales of securities within twelve (12) months of first offer or sale using the exemption.  |
| <b>State registration requirements</b>   | An offer or sale to an officer, director, partner, trustee, anyone with similar status, or person owning 10% or more outstanding shares of any class(es) of securities does not count toward the monetary limitations. The issuer must do all the following not less than ten (10) days before offering securities on this exemption unless waived: 1) make a notice filing; 2) pay fee established by the Commissioner; 3) provide disclosure statement to the Commissioner; 4) provide the Commissioner a copy of an escrow agreement with a bank; 5) the issuer must not access the escrow funds until the aggregate funds raised by investor equals or exceeds the minimum amount specified in the escrow agreement; 6) the investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement.  |
| <b>Internet offering portal requirements or restrictions</b>   | Offerings exclusively through one or more internet websites and each internet website subject to: 1) the issuer must provide to the internet site evidence of being organized under Indiana law and authorized to business there; 2) subject to (3) and (4), the internet site must register with the division by filing a statement; 3) the internet site is not required to register as a broker-dealer if all the conditions in 2.3(c) apply; 4) if any change affects the internet website's registration exemption, the internet website operator must notify the division within thirty (30) days after the change occurs; 5) internet website is not required to register as a broker-dealer under (2) if registered as such under the Securities Exchange Act of 1934; 6) the issuer and the internet site must maintain records of all offers and sales of securities effected through the internet website and provide ready access to these records to the division upon request; 7) the internet website shall limit website access to the offer and sale of securities to only Indiana residents; 8) the internet website shall not hold, manage, possess, or handle investor funds or securities; 9) the internet website may not be an investor in any Indiana offering under this subsection.  |
| <b>Escrowee requirements or restrictions</b>   | The bank, regulated trust company or corporate fiduciary, savings bank, savings and loan association, or credit union must be authorized to do business in Indiana. The bank or other depository institution is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty of liability, contractual or otherwise, to any investor or other person.  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The issuer cannot accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor.   |
| <b>Required disclosure to investors</b>  | The issuer must inform prospective purchasers that the securities offered under the exemption have not been registered and are subject to limitations on resale. The issuer must display a specific legend conspicuously on the cover page of the disclosure document. The issuer is to require each purchaser to certify in writing or electronically a statement acknowledging the risk of investing. The investor must obtain from each purchaser evidence that the purchaser is a resident of Indiana and an accredited investor (if applicable). This issuer is to provide each prospective investor at the time of offer a disclosure statement that contains: 1) a description of the company, contact information to the executive officer or those of similar status, and its business plan; 2) the identity of those holding 20% or more of any class of securities of the company; 3) the identity of the officers and their titles; 4) the terms and conditions of the securities being offered, outstanding securities of the company, the minimum and maximum amount of securities being offered, restrictions on the securities transfer, percent of ownership based on valuation of stock being offered; 5) identity of those helping the issuer conduct the offer; 6) considering being paid; 7) description of any litigation involving the company; 8) names and addresses of each internet site used to offer or sell securities under this exemption; and 9) any additional material information to the offering. |
| <b>Restriction on advertising and communications</b>   | Silent.  |



|  |  |
|--|--|
| <b>STATE</b>                                     | <b>Indiana</b>   |
| <b>Ongoing reporting requirements</b>            | An issuer of an exempt sale must provide free of charge, quarterly reports to their investors until no securities issued under an exemption under this subdivision are outstanding. Requirement may be satisfied by use of the internet if made available within 45 days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. Quarterly reports also must be filed with the division. The report must contain: 1) the compensation received by each director and executive officer earned since the previous report and on an annual basis, and any bonuses, stock options; and 2) an analysis by management of the issuer of business operations and financial conditions of the issuer. |
| <b>Use with other exemptions</b>                 | The exemption may not be used in conjunction with any other exemption except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve (12) month period.   |
| <b>Disqualification from exemption</b>           | The exemption does not apply if an issuer or person affiliated with the issuer or offering is subject to disqualification established by the Commissioner by rule or contained in the Securities Act of 1933 and the Rule 147 adopted under the Securities Act of 1933. This disqualification does not apply if: 1) on a showing of good cause the Commissioner determines it not necessary under the circumstances; and 2) the issuer establishes that it made a factual inquiry into any disqualification but did not know, and in the exercise of reasonable care could not have known, that disqualification existed.  |
| <b>Applicable state securities law liability</b> | Silent.  |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Kansas</b>  |
| <b>Title</b>   | Invest Kansas exemption.   |
| <b>Statute citation</b>  | Modifies K.A.R. 81-5-21 by Special Order of the Securities Commissioner.   |
| <b>Date enacted</b>  | Signed 6/21/13.  |
| <b>Exemption from federal registration relied on</b>   | 3(a)(11).  |
| <b>Companies permitted to use the exemption</b>  | The issuer of the security must be a business or organization formed under the laws of the state of Kansas and registered with the Secretary of State. The issuer must not be, either before or as a result of the offering, an investment company as defined in § 3 of the Investment Company Act of 1940, or subject to the reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934.              |
| <b>Aggregate annual sales limit</b>  | The sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer of sale made in reliance upon the exemption.  |
| <b>State registration requirements</b>   | No commission or other remuneration must can be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under the Act. All funds from investors shall be deposited into a bank or depository institution and all the funds shall be used in accordance with representations made to investors. |
| <b>Internet offering portal requirements or restrictions</b>   | Silent.  |
| <b>Escrowee requirements or restrictions</b>   | The bank or depository institution must be authorized to do business in Kansas.  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The issuer must not accept more than \$1,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D. Sales to controlling persons shall not count toward the limitations in paragraph (a)(3).   |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Kansas</b>   |
| <b>Required disclosure to investors</b>              | Before the use of any general solicitation or the twenty-fifth (25) sale of the security, whichever occurs first, the issuer shall provide a notice to the administrator in writing or in electronic form. The notice shall specify that the issuer is conducting an offering upon this exemption and shall contain the names and addresses of the following persons: A) the issuer; B) all persons who will be involved in the offer or sale of securities on behalf of the issuer; C) the bank or other depository institution in which investor funds will be deposited. The issuer must inform all purchasers that the securities have not been registered under the Act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under K.S.A. 17-12a202. The issuer must make the disclosures required by subsection (f) of SEC rule 147. |
| <b>Restriction on advertising and communications</b> | Silent.   |
| <b>Ongoing reporting requirements</b>                | Silent.   |
| <b>Use with other exemptions</b>                     | This exemption cannot be used in conjunction with any other exemption under these regulations or K.S.A. 17-12a202, except for offers and sales to controlling persons of the issuer.  |
| <b>Disqualification from exemption</b>               | The exemption is not available if the issuer is subject to a disqualifying event specified in K.A.R. 81-5-13(b), except as permitted under K.A.R. 81-5-13(c).   |
| <b>Applicable state securities law liability</b>     | Silent.   |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Maine</b>   |
| <b>Title</b>   | An Act to Increase Funding for Start-ups.  |
| <b>Statute citation</b>                                      | 32 MRSA § 16304, sub- § 6-A.   |
| <b>Date enacted</b>  | Signed 3/2/14, immediately effective upon approval.  |
| <b>Exemption from federal registration relied on</b>         | Rule 504 of Regulation D. The offering meets the requirements of federal exemption for limited offerings and sales of securities not exceeding \$1,000,000 in 17 C.F.R. § 230.504 (2013).  |
| <b>Companies permitted to use the exemption</b>              | The issuer of the security must be a corporation or entity having its principal place of business in Maine, and registered with the Secretary of State as an entity formed under the laws of Maine to do business in Maine.  |
| <b>Aggregate annual sales limit</b>                          | The aggregate amount of sales sold to all investors by the issuer within any twelve (12) month period is not more than \$1,000,000.  |
| <b>State registration requirements</b>                       | The issuer set aside in a separate bank account all funds raised as part of the offering to be held until such time as the minimum offering amount is reached. If the minimum offering amount is not met within one (1) year of the effective date of the offering, the issuer must return all funds to investors. The issuer must also comply with other requirements set forth by rule or order issued under this chapter. |
| <b>Internet offering portal requirements or restrictions</b> | Silent.  |
| <b>Escrowee requirements or restrictions</b>                 | Silent.  |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Maine</b>  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The aggregate amount of securities sold to any investor in a twelve (12) month period is not more than \$5,000, or a greater amount as the administrator may provide by rule or order, unless the investor is an accredited investor as defined by 17 C.F.R. § 230.501 (2013).  |
| <b>Required disclosure to investors</b>  | The investor files with the administrator, provides to investors, and makes available to potential investors an offering document setting forth the following: 1) name, legal status physical address and website address of issuer; 2) the names of the directors, officers and any persons occupying a similar status or performing similar functions; 3) the name of each person holding more than 20% of the shares of the issuer; 4) a description of the business of the issuer and the anticipated business plan of the issuer; 5) a description of the financial conditions of the issuer (income tax returns for the most recent year and any financial statements certified by the principal executive officer of the issuer to be true and complete if the aggregate offering amounts within the last twelve (12) months were \$100,000 or less. For aggregate amounts more than \$100,000, but less than \$500,000, the financial statements that have been reviewed by a public accountant who is independent of the issuer. For aggregate offering amounts of more than \$500,000, the audited financial statements; 6) a description of the stated purpose and intended use of the proceeds of the offering by the issuer; 7) the offering amount, deadline to reach the offering amount and regular updates regarding progress of the issuer in meeting offering amount; 8) the price or method to determine the price of the securities; 9) a description of ownership and capital structure of the issuer (terms of the securities being offered, description of how the exercise rights held by principal shareholder of the issuer could negatively impact securities being offered, name and ownership level of each existing shareholder owning more than 20% of any class of the securities of the issuer, how securities are valued, and risks to minority ownership purchasers). |
| <b>Restriction on advertising and communications</b>   | Silent.   |
| <b>Ongoing reporting requirements</b>  | Silent.   |
| <b>Use with other exemptions</b>   | Silent.   |
| <b>Disqualification from exemption</b>   | Silent.   |
| <b>Applicable state securities law liability</b>   | Silent.   |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Maryland</b>  |
| <b>Title</b>   | SB 811, Chapter 551(Corporations and Associations—Maryland Securities Act—Registration and Filing Exemption).  |
| <b>Statute citation</b>                              | Repealing and reenacting, without amendments to §§ 11-101(a), (d), (k), (m), (p), and (r), 11-205, 11-501. Repeals and reenacting with amendments 11-506, 11-601(15) and (16). Adding to 11-601(16). |
| <b>Date enacted</b>                                  | Signed 5/15/14, effective 10/1/14.   |
| <b>Exemption from federal registration relied on</b> | 3(a)(11).  |
| <b>Companies permitted to use the exemption</b>      | Permits any sale of security issued by an entity formed, organized, or existing under the laws of the state.   |
| <b>Aggregate annual sales limit</b>                  | Silent, although the aggregate price of securities in an offering under this item is to not exceed \$100,000.  |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Maryland</b>  |
| <b>State registration requirements</b>   | The offer and sale of the securities are made only to residents of the state; no commission or other remuneration is to be paid in connection with an offering of securities to any person who is not registered as required under this exemption. Further rules and orders are to be established by the Commissioner (ie restrictions on the nature of the issuer; limitations on the number and manner of offerings; required disclosures to investors; and required filing with the Commissioner of notices and other materials related to the offering). |
| <b>Internet offering portal requirements or restrictions</b>   | Silent   |
| <b>Escrowee requirements or restrictions</b>   | Silent   |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The total consideration paid by any purchaser of securities must not exceed \$100.   |
| <b>Required disclosure to investors</b>  | Silent.  |
| <b>Restriction on advertising and communications</b>   | Silent.  |
| <b>Ongoing reporting requirements</b>  | Silent.  |
| <b>Use with other exemptions</b>   | Silent.  |
| <b>Disqualification from exemption</b>   | Neither the issuer nor any of its related persons is subject to a disqualification by rule or order as defined by the Commissioner.  |
| <b>Applicable state securities law liability</b>   | Silent.  |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Michigan</b>  |
| <b>Title</b>   | House Bill 4996 (Public Act 264).  |
| <b>Statute citation</b>                              | Amends 2008 PA 551.  |
| <b>Date enacted</b>                                  | Approved by the Governor 12/26/13; filed with the Secretary of State 12/30/13, effective 12/30/13.   |
| <b>Exemption from federal registration relied on</b> | 3(a)(11).  |
| <b>Companies permitted to use the exemption</b>      | The issuer of the security is an entity that is incorporated or organized under the laws of this state and authorized to do business in this state. The issuer cannot be, either before or as a result of the offering, an investment company as defined in section 3 of the Investment Company Act of 1940, or an entity that would be an investment company but for the exclusions.  |
| <b>Aggregate annual sales limit</b>                  | The Act creates two distinct maximum offering amounts. If the issuer makes audited financial statements for the most recently completed fiscal year available to investors before the first offer, the maximum offering is \$2,000,000. If the issuer does not make available audited financial statements, the maximum amount is \$1,000,000. Sales by the issuer within the prior 12 months are aggregated for this purpose. |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Michigan</b>   |
| <b>State registration requirements</b>   | At least 10 days before an issuer makes an offer of securities in reliance on the exemption (or uses any publicly available website in connection with a securities offering in reliance on the exemption), the issuer must file a written or electronic notice with the State of Michigan. The notice must include: 1) a \$100 filing fee, 2) a copy of the disclosure statement to be provided to investors, 3) a copy of an escrow agreement with a bank stating that funds will be released to the issuer only when the minimum target amount is reached, and 4) a notice of whether the issuer plans to engage a website to assist with the offering. The issuer must inform each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and display a specific legend on the cover page of the disclosure statement. The issuer must also require each purchaser to certify in writing and sign each paragraph of a specific acknowledgment. The issuer cannot pay, directly or indirectly, any commission to any commission or remuneration to an executive officer or person with similar status, unless he or she is registered as a broker dealer or investment advisor.                    |
| <b>Internet offering portal requirements or restrictions</b>   | Offers or sale of a security cannot be made through an internet website unless the website has filed a written notice with the administrator.   |
| <b>Escrowee requirements or restrictions</b>   | The bank of depository institution must be located in the Michigan.   |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The issuer cannot accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC Regulation D.  |
| <b>Required disclosure to investors</b>  | The disclosure statement to investors must contain all of the following: 1) a description of the issuer (type of entity, address, phone number, formation history, business plan, intended use of offering proceedings, including amounts to be paid as compensation), 2) the identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer, 3) the identity of the executive officers, directors, and managing members of the issuer, and any other individuals who occupy similar status or perform similar functions for the issuer, 4) terms and conditions of the securities being offered and any outstanding securities of the issuer, and either the percentage of ownership represented by the offered securities or the valuation the issuer implied by the price of the offered securities, 5) the identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offering and sale of securities, 6) a description of any litigation or legal proceedings involving the issuer or its management, 7) name and address of any website that the issuer intends to use in connection with the offering. The disclosure must also contain any information for significant factors that would make the purchase risky. |
| <b>Restriction on advertising and communications</b>   | Silent.   |
| <b>Ongoing reporting requirements</b>  | The issuer must provide quarterly reports to the issuer's purchasers until none of the securities issued under the section are outstanding. The report must include the compensation received by each director/executive officer or person of similar status since the previous report, and an analysis by management of the issuer of the business operations and financial condition of the issuer.   |
| <b>Use with other exemptions</b>   | Silent.   |
| <b>Disqualification from exemption</b>   | The exemption does not apply if an issuer or person affiliated with the issuer or offering is subject to disqualification established by the administrator contained in rule 262 under the Securities Act of 1933. The disqualification does not apply if: 1) on a showing of good cause and administrator determines that the circumstances do not warrant exemption denial, and 2) the issuer made a factual inquiry into any disqualification but did not know, and in the exercise of reasonable care could not have known that a disqualification existed.   |
| <b>Applicable state securities law liability</b>   | §§ 509 and 510.   |

|                         |  |
|-------------------------|--|
| <b>STATE</b>            | <b>Nebraska</b>                                |
| <b>Title</b>            | Legislative Bill 205.                          |
| <b>Statute citation</b> | Amends sections 8-1108.01, 8-1111, and 8-1118. |
| <b>Date enacted</b>     | Approved by the Governor 5/8/13.               |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Nebraska</b>   |
| <b>Exemption from federal registration relied on</b>   | 3(a)(11).   |
| <b>Companies permitted to use the exemption</b>  | Silent.   |
| <b>Aggregate annual sales limit</b>  | The proceeds in a two-year period from all sales of securities by the issuer do not exceed \$250,000.   |
| <b>State registration requirements</b>   | Eighty percent of all proceeds must be used in Nebraska. No commission or remuneration can be paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer. The issuer, and any part or member or one of equivalent status or one who performs similar functions can have been: 1) found to have violated any provision of the Securities Act of Nebraska; 2) convicted of any felony or misdemeanor in connection with an offer, purchase or sale of any security or any felony involving fraud or deceit; 3) found in any state or federal administrative agency or court to have engaged in fraud or deceit; or 4) temporarily or preliminary restrained or enjoined by a court from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or false filing with any state or the SEC. At least 15 days before the offer or sale, the issuer must file a notice with the director that includes: 1) name, address, phone number, and email of the issuer; 2) the name and address of each person holding direct or indirect ownership or beneficial interest in the issuer; 3) the amount of the offering; 4) the type of security being offered, manner of solicitation, and oath that the conditions of exemption have been or will be met.. Within 30 days after completing the offering, a statement indicating the number of investors, the total amount raised, and the use of the offering proceeds, must be filed with the Department of Banking and Finance. |
| <b>Internet offering portal requirements or restrictions</b>   | Silent.   |
| <b>Escrowee requirements or restrictions</b>   | Silent.   |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | Silent.   |
| <b>Required disclosure to investors</b>  | Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing: 1) a description of the propose use of the proceeds of the offering; 2) the name of each partner or person occupying a similar status of the issuer; and 3) the financial condition of the issuer. The purchaser must sign a subscription agreement in which the purchaser acknowledges that she: 1) has received the written disclosure statements; 2) that she understands the investment is high risk; and 3) that she has the financial resources to withstand the total loss of the money invested.  |
| <b>Restriction on advertising and communications</b>   | Silent.   |
| <b>Ongoing reporting requirements</b>  | Silent.   |
| <b>Use with other exemptions</b>   | Silent.   |
| <b>Disqualification from exemption</b>   | Silent.   |
| <b>Applicable state securities law liability</b>   | Silent.   |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Tennessee</b>   |
| <b>Title</b>   | SB 1481 and HB 1648 (Invest Tennessee Exemption).  |
| <b>Statute citation</b>  | Tennessee Code, section 48-1-103(a) is amended and added to.   |
| <b>Date enacted</b>  | Signed 5/19/14, effective 1/1/15.  |
| <b>Exemption from federal registration relied on</b>   | 3(a)(11).  |
| <b>Companies permitted to use the exemption</b>  | Issuer may be any person so long as the issuer is not, either before or as a result of the offering, an investment company as defined in section 3, investment Company Act of 1940.  |
| <b>Aggregate annual sales limit</b>  | Securities received in reliance upon this exemption must not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer.   |
| <b>State registration requirements</b>   | All funds received from the sale of a security in reliance upon this exemption must be deposited in a bank or depository institution authorized to do business in Tennessee. All funds received from buyers in reliance of this exemption shall be used consistent with written representations made by the issuer to investors.   |
| <b>Internet offering portal requirements or restrictions</b>   | Silent.  |
| <b>Escrowee requirements or restrictions</b>   | The bank or depository institution must be authorized to do business in Tennessee.   |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The issuer must not accept more than \$10,000 from an investor unless the investor is an accredited investor pursuant to 17 C.F.R. § 230.501.  |
| <b>Required disclosure to investors</b>  | The issuer must inform all buyers prior to the sale of a security that falls within the exemption that the security has not been registered under this part, and the security is subject to the limitation on resales contained in 17 C.F.R. § 230.147(e).   |
| <b>Restriction on advertising and communications</b>   | Silent.  |
| <b>Ongoing reporting requirements</b>  | Silent.  |
| <b>Use with other exemptions</b>   | This exemption must not be used with any other exemption under this part unless the offer or sale is to 1) an officer, director, partner or trustee of the entity or the individual; or 2) a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities issued by the entity offering the sale of the security.   |
| <b>Disqualification from exemption</b>   | The exemption is not available if 1) the person selling or offering to sell the security is subject to a disqualifying event in § 48-1-112(a)(20)(A)-(H), 2) if the offering does not qualify for the exemption provided in 17 C.F.R. § 230.147; or 3) if the issuer, any of the issuer's predecessors, any affiliate of the issuer, any of the issuer's directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter: (a) has filed a registration statement subject to a currently effective registration stop within five years; (b) has been convicted of any criminal offense in connection with the offer, sale, or purchase of any security, or involving fraud or deceit; (c) is subject to any state or federal administrative enforcement order or judgment, entered within the past five years, finding fraud, deceit in connection with the purchase or sale of any security; or (d) is currently subject to any order, judgment, or decree of any court or competent jurisdiction, entered within the past five years for engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. |

|  |                  |
|--|------------------|
| <b>STATE</b>                                     | <b>Tennessee</b> |
| <b>Applicable state securities law liability</b> | Silent.          |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Texas</b>  |
| <b>Title</b>   | Intrastate Crowdfunding Exemption, and Texas Crowdfunding Portal Registration and Activities.   |
| <b>Statute citation</b>                                      | 7 Tex. Admin. Code §§ 139.25, 115.19.   |
| <b>Date enacted</b>  | Approved 10/17/14.  |
| <b>Exemption from federal registration relied on</b>         | 3(a)(11).   |
| <b>Companies permitted to use the exemption</b>              | Issuer is a Texas entity and is authorized to do business in Texas and: 1) at least 80% of the issuer's gross revenues during its most recent fiscal year prior to the offering are derived from the operation of a business in Texas; 2) at least 80% of the issuer's assets at the end of the most recent fiscal year prior to the offering are located in Texas; 3) the issuer will use at least 80% of the net proceeds of this offering in connection with the operation of its business within Texas; and 4) the principal office of the issuer is located in Texas.  |
| <b>Aggregate annual sales limit</b>                          | All consideration received for all sales of the securities must not exceed \$1 million in a 12-month period. This amount is reduced by the aggregate amount received for all sales of securities by the issuer in another offering that does not take place prior to the six-month period immediately preceding or after the six-month period immediately following any offers or sale.   |
| <b>State registration requirements</b>                       | The issuer is not, either before or because of the offering: 1) a company that engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities; 2) subject to reporting requirements of the Securities Exchange Act of 1934; 3) a company that has not yet defined its business operations, has no business plan, has not stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity. The offering must be made exclusively through an Internet website. Funds received will be held in escrow until the aggregate capital is raised from purchasers is equal to or greater than the target amount specified in the disclosure statement. Investors will receive all funds back if the target amount is not raised by the time stated in the disclosure statement. Before using any publically available website in an offering of securities in reliance on this section, the issuer shall file with the Securities Commissioner: 1) the exemption notice; 2) the disclosure statement; 3) the summary of the offering. The issuer must place a legend on the certificate or other document evidencing that the securities have not been registered and setting forth the limitations on resale, including that for a period of nine months from the date of the last sale by the issuer of the securities of the offering, all resales by any person, must be made only to Texas residents. Commissions or other remuneration must not be paid or given, directly or indirectly, for the offer or sale of the securities unless the person receiving such compensation is a Texas registered dealer or agent or as a Texas crowdfunding portal. The issuer may not list securities on a website that hold an interest in the issuer. An issuer may not compensate a general dealer or a portal by providing financial interest as compensation. |
| <b>Internet offering portal requirements or restrictions</b> | All communications between issuer, prospective purchasers, or investors during the offer of securities must occur through the internet website of the registered general dealer or Texas crowdfunding portal. During the offering time, the website must provide channels through which potential purchasers and investors can communicate with one another and with representatives of the issuer about the offering. These communications must be visible to all those with access to the offering materials on the website. The website by a registered dealer or Texas crowdfunding portal must contain a disclaimer that reflects that access to securities offering are limited to Texas residents. The website must also have affirmative representation by a visitor to the site that the visitor is a resident of Texas is required before viewing securities-related offering materials. Also evidence of residency within Texas is required before a sale may be made to a prospective purchaser. The registered general dealer or registered portal must give the Securities Commissioner access to the website. The information about the issuer and the offering posted on the Internet website must consist of: 1) a copy of the disclosure statement required; 2) a summary of the offering, including (a description of the entry of the entity, the identity of the executive officers, and a description of the securities being offered). Information on the Internet website required must be made available to the Commissioner and potential investors for a minimum of twenty-one days before any securities are sold in the offering.  |
| <b>Escrowee requirements or restrictions</b>                 | All payment of purchase are directed to and deposited in an escrow account with a bank or other depository institution located in Texas and organized and subject to regulation under the laws of the U.S. or under Texas law.  |



|  |  |
|--|--|
| <b>STATE</b>   | <b>Texas</b>   |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The issuer cannot accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor. The issuer must have a reasonable basis for believing that the purchaser is a Texas resident and an accredited investor.  |
| <b>Required disclosure to investors</b>  | A disclosure statement must be readily available and accessible to each prospective purchaser at the time the offer of securities is made to the prospective purchaser on the Internet website. The disclosure statement must contain: 1) material information and risk factors. The issuer shall inform all prospective purchasers and investors of the following: 1) there is not a market ready for the sale of the securities acquired from 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 risk of this investment indefinitely; 2) 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; 3) in making investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved; and 4) no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the accuracy of the disclosure statement or any other information on this Internet website.   |
| <b>Restriction on advertising and communications</b>   | The issuer may distribute a notice within Texas limited to a statement that the issuer is conducting an offering, the name of the registered general dealer or portal through which the offering is being conducted, and a link directing the potential investor to the dealer or portal's website. The notice must contain a disclaimer that reflects that the offering is limited to Texas residents and offers and sales of the securities appearing on the website are limited to Texas residents.   |
| <b>Ongoing reporting requirements</b>  | Issuers must provide current financial statements certified by the principal executive officer to be true and complete in all material aspects. If the issuer has audited or reviewed financial statements, prepared within the last three years, such financial statements must also be provided to investors.  |
| <b>Use with other exemptions</b>   | Silent.  |
| <b>Disqualification from exemption</b>   | This exemption is not available if the issuer, issuer's predecessors, any affiliated issuer, or any control person of the issuer: 1) within the past 5 years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or SEC; 2) within the last 5 years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit; 3) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last 5 years, finding fraud or deceit in connection with the purchase or sale of any security; or 6) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years that temporarily, preliminary, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. This exemption is not available to an issuer if: 1) a control person of the issuer is also a control person of another issuer that has made securities offerings in Texas within the last twelve months; 2) a control person of the issuer is also a control person of another issuer that is concurrently conducting a securities offering in Texas; 3) the proceeds of the offering will be combined with the proceeds of a securities offering by another issuer as part of a single plan of financing. |
| <b>Applicable state securities law liability</b>   | Silent.  |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Wisconsin</b>   |
| <b>Title</b>   | 2013 Wisconsin Act 52.   |
| <b>Statute citation</b>                              | Amends 551.605(3); amed 551.102(11), 551.305(9), 551.401(1), 551.402(2); and creates 227.01(13), 551.102(4m), 551.102(8m), 551.102(9m), 551.202(ar), 551.202(24m), 551.202(26), 551.202(27), 551.205, 551.206, 551.605(3), 551.607, and 551.614. |
| <b>Date enacted</b>                                  | effective 11/9/13. Provisions of the Act relating to crowdfunding first apply to securities sold on 6/1/14.  |
| <b>Exemption from federal registration relied on</b> | 3(a)(11).  |

|  |  |
|--|--|
| <b>STATE</b>   | <b>Wisconsin</b>   |
| <b>Companies permitted to use the exemption</b>  | The issuer is a business entity organized under the laws of this state and authorized to do business in this state.  |
| <b>Aggregate annual sales limit</b>  | The sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption does not exceed: 1) \$1,000,000 If the issuer has not undergone and made available to investors and administrators the documentation resulting from a financial audit of its most recently completed fiscal year; 2) \$2,000,000 If the issuer has undergone and made available to investors and the administrator from its recently completed fiscal year. Sales by the issuer within the prior twelve months are aggregated for this purpose.  |
| <b>State registration requirements</b>   | An offer or sale to an officer, director, partner, trustee, person owning 10% or more of the outstanding shares of any class(es) of security does not count toward the monetary limitation. Exemption can be made exclusively through one or more internet sites and each is registered with the division. Not less than ten days prior to offering, the issuer must file a notice with the administrator, which will be made available as an electronic document on the department or financial institution's internet site, containing the following: 1) a claim of exemption from registration, specifying reliance on this exemption; 2) a copy of the disclosure statement to be provided to prospective investors (description of the company, identifying owners of 10% or more, identify officers and other directors, the terms and conditions of the securities, identity of those assisting issuer in the offer, consideration being paid to officers, description of any litigation, name and address of each internet site, any other material information); 3) an escrow agreement with a bank or depository institution. Issuer is not either before or as a result of the offering, an investment company. The issuer is to make sure the purchaser is a resident of the state. All payments for purchase are directed to and held by the financial institution. No offer or sale of a different class or series of security had been made by the issuer in reliance on the exemption under this subsection in the last 12 months. No commission for offers that are not internet website based, unless registered as a broker-dealer or agent--all payments for purchase of securities are deposited by the issuer in a financial institution and used in accordance with representation made to investors. |
| <b>Internet offering portal requirements or restrictions</b>   | Internet sites would need to be registered with the division under 551.205(1)(b). Prior to any offer or sale of securities, the issuer must provide the internet site evidence that the issuer is organized under the laws of the state and do business in the state. The internet site must register a filing statement with the administrator including: 1) that the internet site is the business organized under the laws of the state and to do business in the state; 2) The that site is being utilized to offer and sale securities pursuant to the exemption; 3) the identity and location of, and contract info for, the internet site operator; 4) except as provided, that the internet site is registered as a broker-dealer. If any change occurs in the information that an internet site submits to the division, the internet must notify the division within 30 days after the change occurs. The issuer and internet site must maintain records of all offers and sales of securities effected through the internet site and shall provide ready access to the records to the division, upon request.   |
| <b>Escrowee requirements or restrictions</b>   | Financial institution must be chartered in Wisconsin.  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The issuer does not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor or certified investor.  |
| <b>Required disclosure to investors</b>  | A copy of the disclosure statement to be provided to prospective investors must include: description of the company, identifying owners of 10% or more, identify officers and other directors, the terms and conditions of the securities, identity of those assisting issuer in the offer, consideration being paid to officers, description of any litigation, name and address of each internet site, any other material information. Prospective investors must be informed that the securities are not registered and are subject to limitations on resale--having a specific legend on the cover page of the disclosure document. The issuer also must require each purchaser to certify in writing or electronically a specific statement acknowledging risk of investing.  |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Wisconsin</b>  |
| <b>Restriction on advertising and communications</b> | No general solicitation or general advertising can be made in connection with offer in a non-internet based offer unless permitted by the administrator.  |
| <b>Ongoing reporting requirements</b>                | The issuer of a security must provide, free of charge, a quarterly report to the issuer's investors until no securities under the exemption are outstanding. An issuer may satisfy the reporting requirement by making the information available on an internet site within 45 days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. A written report must be given to an investor upon request--report including the compensation received by directors, and analysis by management of the issuer of the business operation and fiscal condition of the issuer. |
| <b>Use with other exemptions</b>                     | Silent.   |
| <b>Disqualification from exemption</b>               | Silent.   |
| <b>Applicable state securities law liability</b>     | Silent.   |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Washington</b>   |
| <b>Title</b>   | House Bill 2023 (Washington Jobs Act).  |
| <b>Statute citation</b>                                      | Amends RCW 42.56.270; adds new sections to chapter 20.21 RCW; and creates new sections.   |
| <b>Date enacted</b>  | Signed 3/28/14, effective 6/12/14.  |
| <b>Exemption from federal registration relied on</b>         | 3(a)(11).   |
| <b>Companies permitted to use the exemption</b>              | The issuer must be an entity organized and doing business in the state of Washington.   |
| <b>Aggregate annual sales limit</b>                          | The aggregate purchase price of all securities sold by an issuer pursuant to the exemption provided by this section cannot exceed \$1,000,000 during any 12-month period.   |
| <b>State registration requirements</b>                       | The offering has to be declared to be exempt by the director after: 1) the issuer files the offering with the director, 2) a portal working in collaboration with the director files the offering with the director on behalf of the issuer. Each investor must provide evidence or certification of residency in the estate of Washington at the time of purchase. The issuer must file with the director an escrow agreement either directly or through a portal providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from investors equal or exceeds the minimum target offering.  |
| <b>Internet offering portal requirements or restrictions</b> | Only a local associate development organization, a port district, or an organization that qualifies as a portal pursuant to regulations may work with the director to act as a portal in this exemption. A portal must require, at a minimum, the following information from an applicant for exemption prior to offering services: 1) a description of the issuer, type of entity, and business plan; 2) the intended use of proceeds; 3) identities of officers, directors, and outstanding requirements; 4) a description of outstanding securities; and 5) a description of any litigation or legal proceedings. Portal can then offer services, such as assisting with development of a business plan, referral to legal services, and other technical assistance in preparing for public securities offering. The portal must then forward the materials necessary to qualify for exemption to the director for filing. |

|  |   |
|--|---|
| <b>STATE</b>   | <b>Washington</b>   |
| <b>Escrowee requirements or restrictions</b>   | Silent  |
| <b>Annual investment/sale limitations (per issuer to an investor) per issue annual investor limits</b> | The aggregate amount sold to any investor by one or more issuers during the 12-month period preceding the date of the sale does not exceed: 1) the greater of \$2,000 or 5% of the annual income or net worth of the investor if either the annual income or net worth of the investor is less than \$100,000; 2) 10% of the annual income or net worth of the investor up to \$100,000, if either the annual income or net worth of the investor is \$100,000 or more.                                       |
| <b>Required disclosure to investors</b>  | The investor must acknowledge by manual or electronic signature a statement acknowledging the risk of the sale; the issuer must reasonably believe that all purchasers are purchasing for investment and not for sale in connection with a distribution of the security; and the issuer and investor must provide any other information reasonably requested by the director.   |
| <b>Restriction on advertising and communications</b>   | Silent.   |
| <b>Ongoing reporting requirements</b>  | For as long as securities under this exemption are outstanding, the issuer must provide a quarterly report to the shareholders and the director by making the report publicly accessible, free of charge, at the issuers internet website address within 45 days of the end of each fiscal quarter, containing: 1) executive officer compensation, bonuses, stock options and other rights, 2) a brief analysis by management of the issuer of the business operations and financial condition of the issuer. |
| <b>Use with other exemptions</b>   | Attempted compliance with this exemption does not act as an exclusive election. The issuer may claim any other applicable exemption.  |
| <b>Disqualification from exemption</b>   | Silent.   |
| <b>Applicable state securities law liability</b>   | Silent.   |