

Massachusetts Crowdfunding Exemption Q&A for Issuers

This Q&A is designed to provide guidance to issuers that are considering using the Massachusetts Crowdfunding Exemption (the “Exemption”). While this Q&A is intended to provide helpful information, it is not legal advice. The Massachusetts Securities Division strongly recommends that an issuer considering the Massachusetts Crowdfunding Exemption seek the advice of an attorney experienced in securities law before offering securities under the Exemption.

1. Q: How does the Massachusetts Crowdfunding Exemption interact with the federal intrastate offering exemption?

A: In order to comply with the Massachusetts Crowdfunding Exemption, an issuer must also comply with the requirements of the federal intra-state offering exemption provided under SEC Rule 147 or Section 3(a)(11) of the Securities Act of 1933. Issuers will be responsible for ensuring that their transactions meet the requirements of the federal exemption. Offerings that fail to meet such requirements will lose the federal exemption, and as a consequence the benefit of the Massachusetts Crowdfunding Exemption. If the exemption is lost, the issuer may be offering and selling unregistered and non-exempt securities. The consequences of offering and selling unregistered securities can be severe: issuers and their principals may be liable to investors for the value of their investments and the issuer may be vulnerable to federal and/or state enforcement action.

2. Q: Can my company post its offering on the Internet and use the Massachusetts Crowdfunding Exemption?

A: Based on the requirements of the federal Section 3(a)(11) / Rule 147 exemption, most issuers will not be able to post their offerings on the Internet without causing the loss of the federal exemption. Section 3(a)(11) provides an exemption for a transaction where, among other conditions, both offers and sales of securities are limited to residents of a single state. Because most offerings posted on the Internet can be viewed by residents of many states, such offerings would not meet that requirement of the federal intrastate offering exemption.

However, the SEC has provided guidance in its Compliance and Disclosure Interpretations on how intrastate offerings might be able to use the internet. Please refer to questions 141.03, 141.04, and 141.05:

<http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm#141-03>

For further guidance on the requirements of the federal Section 3(a)(11) exemption, please visit the SEC website: <http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate>

3. Q: What kinds of business entities can use the Massachusetts Crowdfunding Exemption?

A: The Massachusetts Crowdfunding Exemption is available to a range of Massachusetts business entities, including corporations, limited liability companies (LLCs), and limited liability partnerships (LLPs).

4. Q: Is the Massachusetts Crowdfunding Exemption available to every kind of business?

A: No. The Crowdfunding Exemption is not available to the following types of issuers: blind pool and blank check offerings, investment companies, hedge funds, commodity pools and similar investment vehicles, and businesses involving oil and gas exploration or production, mining, or other extractive industries.

5. Q: Under the Massachusetts Crowdfunding Exemption, can an issuer aggregate investors into a Special Purpose Vehicle ("SPV"), and then have the SPV invest in the company?

A: No. The Exemption is designed to be used for issuers to sell securities directly to the public; it is not designed for the use of intermediate investment vehicles, such as SPVs.

6. Q: What forms of security may be offered and sold under the Massachusetts Crowdfunding Exemption?

A: Companies may offer and sell equity or debt securities under the Crowdfunding Exemption. This includes debt securities that are convertible to equity.

7. Q: How much money may an issuer raise using the Massachusetts Crowdfunding exemption?

A: Issuers may raise up to \$1 million in a twelve month period, and up to \$2 million if the issuer has audited financial statements.

8. Q: Is there a limit on how much an investor may purchase in a given offering?

A: If an investor's annual income and net worth are both less than \$100,000, then the investor may only purchase up to \$2,000 or an amount equal to 5% of the investor's annual income or net worth (whichever is greater). If either the investor's annual income or the investor's net worth is equal to or more than \$100,000, the investor may purchase an amount equal to up to 10% of his/her income or net worth – but in no case more than \$100,000.

9. Q: Can issuers meet the investment limits by asking investors to self-certify that the investor's investments fall within the investment limits?

A: No. The Exemption requires that investors must actually meet the investment limits or that issuers must take reasonable steps to verify that the investors meet that requirement of the Exemption.

10. Q: Who can offer and sell crowdfunding offerings?

A: Issuers may offer and sell their own offerings if no direct or indirect selling compensation is paid. But no commission or fee may be paid to any person for soliciting a transaction under the Crowdfunding Exemption unless that person is registered as a broker-dealer or agent in Massachusetts. Officers and directors of the issuer may be excluded from the definitions of broker-dealer and agent (and therefore not be required to register) if they meet the requirements spelled out in 950 CMR 14.401 (definitions of "agent" and "broker-dealer").

11. Q: Do crowdfunding offerings need to specify a minimum offering amount to be raised?

A: Yes. Issuers must specify a minimum offering amount to be raised under the Crowdfunding Exemption. This minimum offering amount must be at least 30% of the maximum offering amount.

12. Q: Until the minimum offering amount is reached, where and how should investor funds be held?

A: Until the minimum offering amount is reached, investor funds must be held in escrow at an insured depository institution.

13. Q: What disclosures are issuers required to provide to in offerings under the Massachusetts Crowdfunding Exemption?

A: The Crowdfunding Exemption requires issuers to provide full and fair disclosure of material facts relating to the company and the offering, including the risks involved in the offering and a description of the company and the planned use of proceeds of the offering. (Refer to 950 CMR 14.402(B)(13)(o)(11) and (12).)

The Crowdfunding Exemption requires all issuers to provide disclosures that that the offering is not registered under federal and state law. Issuers are also required to provide written disclosures on the limitations of the resale of securities that are sold pursuant to the exemption provided by SEC Rule 147.

14. Q: Are any disclosure legends required under the Massachusetts Crowdfunding Exemption?

A: Yes. The issuer must provide written disclosures on the limitations on resale of securities contained in SEC Rule 147(e)-(f) (17 CFR 230.147). The issuer must also place a required legend disclosing such limitations on resale on the securities certificate or other document evidencing the securities issued in the offering. (Refer to 950 CMR 14.402(B)(13)(o)(12) at "Note.")

15. Q: Does a "bad actor" disqualifier apply to the Massachusetts Crowdfunding Exemption?

A: Yes. The Crowdfunding Exemption is not available for issuers whose officers, directors, or major shareholders have been found to have violated the securities laws or other financial regulations, or committed other types of fraud or misconduct. (Refer to 950 CMR 14.402(B)(13)(o)(10)(1)-(4).)

16. Q: Is a filing required for a company to use the Massachusetts Crowdfunding Exemption?

A: Yes. The issuer must file a notice no later than 15 days after the first sale pursuant to the Exemption. This notice shall state that the issuer is conducting an offering pursuant to the Massachusetts Crowdfunding Exemption (950 CMR 14.402(B)(13)(o)). The notice shall provide: (i) the names and address of the issuer's officers, directors, and control persons; (ii) the names and addresses of all persons who will be involved in the offering and sale of securities on behalf of the issuer; the name and address of the bank or depository institution into which the issuer will deposit investment funds. The notice shall be accompanied by a copy of all materials used in connection with the solicitation, offer, or sale of the issuer's

securities and a consent to service of process on Form U-2. (Refer to 950 CMR 14.402(B)(13)(o)(15).)

17. Q: Is there any fee for filing the notice under the Exemption?

A: There is no fee for filing the notice under the Exemption.

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