

## State Crowdfunding Update as of January 1, 2015

The following 15 crowdfunding provisions which include the eight main federal crowdfunding provisions are discussed below by the following six states:

- Alabama:
  - Crowdfunding Act Exemption
- Maine:
  - Crowdfunding Act Exemption
- Michigan:
  - Crowdfunding Act Exemption
- Texas:
  - Crowdfunding Rule Exemption
    - Funding Portal Registration
    - Written Exam Waiver  
(Restricted Dealer)
    - Funding Portal Definition
- Washington:
  - Crowdfunding Act Exemption
    - Internet Portal
- Wisconsin:
  - Crowdfunding Act Exemptions
    - Additional Crowdfunding Provisions  
(Internet Site Operator)
    - Crowdfunding Monetary Adjustments
    - Crowdfunding Definitions

### 1. Eligibility

- *Issuer must be organized and located in the state*

All six states—*Alabama, Maine, Michigan, Texas, Washington* and *Wisconsin*—require this. Alabama specifies “for-profit issuers registered and doing business in Alabama.” Maine requires the issuer’s principal place of business to be in the state. Michigan and Washington require the issuer to be “authorized” to do business in the state. Washington’s exemption is available only to corporations, centrally managed limited liability companies or limited partnerships that reside and do business within Washington at the time of any securities offer or sale. And the exemption is only available for the issuer's *equity* offerings, which include convertible preferred stock authorized and issued in accordance with charter documents providing convertible preferred holders with prescribed protections.

Wisconsin combines the Maine and Michigan requirements while also adding that the majority of the issuers’ full-time employees must work in the state.

Texas’s crowdfunding rule, in addition requires that the issuer file a certificate of formation with the Texas Secretary of State, be organized under Texas law, be authorized to do business in Texas and have its principal place of business in the state, mandate that: (1) at

least 80 percent of the issuer's gross revenues during its most recent fiscal year before the offering be derived from its business operations in Texas; (2) at least 80 percent of the issuer's assets at the end of its most recent semiannual period before the offering be located in Texas; and (3) the issuer uses at least 80 percent of the net proceeds from this offering for its business operation in Texas.

- *Prospective purchasers must reside in the state*

Four of the six states—*Alabama, Michigan, Texas* and *Washington*—require this. *Maine* and *Wisconsin* do not mention this requirement. Alabama and Washington require issuers to have documentary evidence for reasonably believing the purchasers are from Alabama and Washington, respectively. Michigan requires “prima facie” evidence that offerees and purchasers are Michigan residents. Texas mandates that offers and sales are made exclusively to Texas residents, and that the offerings are completed within Texas.

- Securities offerings must be made according to federal Securities Act, Section 3(a)(11) and SEC Rule 147.

Five of the six states—*Alabama, Michigan, Texas, Washington* and *Wisconsin*—require this, with Alabama, Michigan, Texas and Wisconsin mentioning both Section 3(a)(11) and Rule 147, and Washington mentioning only Section 3(a)(11).

*Maine* requires that the offering complies with SEC Rule 504.

## **2. Unavailability**

- *Exemption is unavailable for 1940 Act investment companies or issuers subject to Exchange Act, Section 13 or 15(d) reporting company requirements*

Four of the six states—*Alabama, Michigan, Texas* and *Wisconsin*—adopted this prohibition.

- *Exemption is unavailable for issuers who, themselves, or whose affiliates (e.g., officers, controllers or promoters) are subject to “bad boy” disqualification provisions (unless waived by the state securities commissioner by, for example, showing good cause for a waiver)*

All six states—*Alabama, Michigan, Texas, Washington* and *Wisconsin*—adopted this prohibition. Washington and Wisconsin specify or allude to Rule 506(d) disqualifiers.

- *Exemption is unavailable for state-defined “investment advisers” or persons who provide investment advice*

*Alabama* adopted this prohibition.

- *Exemption is unavailable for an issuer which, either before or because of the offering, is a company engaged or proposing to engage in a securities investing, reinvesting, owning, holding or trading business*

*Texas* adopted this prohibition.

- *Exemption is unavailable for an issuer which, either before or because of the offering, is a company with an undefined business operation, business plan, investment goal for raising funds, or a desire to merge with or acquire an unspecified business entity*

*Texas* adopted this prohibition.

### **3. Additional conditions**

- *Exemption may not be combined with any other exemption*

*Alabama* holds that the exemption may not be used with any other Alabama Securities Act exemption except for the subsection 8-6-11(a)(8) institutional investor exemption, or for offers or sales made to the issuer's controlling persons, the sales of which will not count toward the crowdfunding exemption's cash and consideration limitations.

*Michigan* adopted this prohibition verbatim.

*Texas* holds that the exemption is unavailable for an issuer whose control person is another issuer's control person for a securities offering being conducted or made in the state within the previous 12-month period, or if the proceeds from this offering will be combined with the proceeds from another issuer's offering as part of a single plan of financing.

*Wisconsin* holds that the crowdfunding exemptions at Uniform Securities Act Sections 551.202 (14m) and (27) may not be used in conjunction with each other. *Wisconsin* also holds that the issuer may not make an offer or sale of a different class or series of securities during the immediately preceding 12-month period.

- *The exemption does not alleviate issuers from having to comply with the state's other act provisions, including the state's anti-fraud provisions*

*Alabama* expressly states this anti-fraud requirement.

### **4. Aggregate sales/consideration**

- *The aggregate purchase price for all securities sold by an issuer under the exemption may not exceed \$1 million, less the aggregate amount received for all sales of the issuer's securities made within the 12-month period before the first offer or sale under the exemption*

*Alabama* and *Maine* adopted this provision verbatim.

*Michigan* holds that the sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption may not exceed the following amounts:

- (i) \$1 million dollars, 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 on this exemption, if the issuer has not made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in accordance with the statements on auditing standards of the American institute of certified public accountants (AICPA) or the statements on standards for accounting and review services of the AICPA, as applicable.
- (ii) \$2 million dollars, 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 on this exemption, if the issuer has made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in accordance with the statements on auditing standards of the AICPA or the statements on standards for accounting and review services of the AICPA, as applicable.

*Texas* holds that the total consideration received for all security sales made under the exemption must not exceed \$1 million in a 12-month period, but the amount may be reduced by the aggregate amount received for all security sales by the issuer in another offering that does not take place either before the six-month period immediately preceding, or after the six-month period immediately following, any security offers or sales made under the exemption.

*Washington* holds that the aggregate purchase price for all securities issued may not exceed \$1 million.

*Wisconsin* holds that the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subsection, excluding sales to any accredited investor, certified investor, or institutional investor, does not exceed the following amount:

- (a) If the issuer has not undergone and made available to each prospective investor and the administrator the documentation resulting from a financial audit of its most recently completed fiscal year which complies with generally accepted accounting

principles, \$1 million subject to adjustment, 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 on the exemption under this subsection.

- (b) If the issuer has undergone and made available to each prospective investor and the administrator the documentation resulting from a financial audit of its most recently completed fiscal year which complies with generally accepted accounting principles, \$2 million subject to adjustment, 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 on the exemption under this subsection.
- (c) An offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning 10 percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitation in (a) and (b) above.

## **5. Single purchaser/investor limitations**

• *Issuers may not accept more than \$5,000 from any single purchaser unless the purchaser is a federal Regulation D, Rule 501 “accredited investor.”*

*Alabama* adopted this provision verbatim.

*Maine* authorizes the Administrator to increase the amount above \$5,000, by rule or order.

*Texas* adopts the \$5,000 provision verbatim but requires the issuer to have a reasonable basis for believing the purchaser is a Texas resident and, if applicable, an accredited investor.

*Michigan* and *Wisconsin* hold that issuers may not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor. Michigan permits the issuer to rely on confirmation from a licensed broker-dealer or other third party that the purchaser is an accredited investor. Wisconsin allows an issuer to accept more than \$10,000 from a single purchaser if the purchaser is either an “accredited investor” or “certified investor” as defined.

*Washington* holds that the issuer must reasonably believe *for each sale made under the exemption* that the aggregate amount of securities sold to any investor by one or more issuers offering or selling securities under the exemption, during the 12-month period before the sale date, together with the securities the issuer will sell to the investor, does not exceed the lesser of: (1) \$2,000 or 5 percent of the investor's annual income or net worth, whichever amount is greater, if either the annual income or net worth is less than \$100,000; or (2) 10 percent of the investor's annual income or net worth, as applicable, up to \$100,000, if either the annual income or net worth is \$100,000 or more.

## **6. Advertising and general solicitation**

- *Issuers are prohibited from using general solicitation or general advertising in connection with the securities offer or sale unless permitted by the state administrator/commissioner/director*

Four of the six states—*Maine, Michigan, Texas and Washington*—do not mention this prohibition.

*Alabama*'s notice filing mentions that issuers must, not less than 10 days before using any general solicitation or within 15 days after a security's first sale under the exemption (if no general solicitation was used before the sale), whichever event occurs first...

*Wisconsin* adopts this provision verbatim for the exemptions at Wisconsin Uniform Securities Act, Section 551.202 subsections (14m) and (27). The exemption at subsection (24m) prohibits advertising published in connection with the offer to sell or sale of securities unless permitted by the Securities Division. The exemption at subsection (26) does not impose a general advertising/general solicitation prohibition.

## **7. Commission**

- *Persons other than state-registered broker-dealers or agents may not receive commissions or remuneration to participate in an offer or sale under the exemption*

*Alabama* and *Wisconsin* adopted this provision verbatim. *Wisconsin* specifically adopts this provision for its Uniform Securities Act Section 551.202 subsection (14m), (24m), (26) and (27) exemption. This provision does not apply, however, to the subsection (27) exemption if the securities offer or sale is made to a certified investor.

*Maine* and *Washington* do not have this provision.

*Michigan* modifies the provision by prohibiting an issuer from paying direct or indirect commissions or remuneration to the issuer's executive officers or other affiliates unless they are Michigan-registered broker-dealers, investment advisers or investment adviser representatives.

Michigan, Washington and Wisconsin require an issuer's quarterly report to disclose the compensation received by the issuer's executive officer or director.

*Texas* modifies the provision by prohibiting direct or indirect commissions or remuneration unless paid to a crowdfunding portal, or to a Texas-registered dealer or agent. Also, an issuer is prohibited from compensating a general dealer or portal by providing a financial interest in the issuer as payment for services provided to the issuer or on the issuer's behalf.

## **8. Resale restriction**

*• Issuers must reasonably believe that purchasers are buying the securities for investment, not resale, and must inform the purchasers that the securities have neither been registered under the state's securities act nor may be sold unless the securities are registered in the state or qualify for a state exemption*

*Alabama* adopted this provision verbatim.

*Maine* does not have the provision.

*Michigan* and *Wisconsin* require issuers to conspicuously provide on their disclosure statement's cover page a legend informing prospective purchasers that the securities are not federally- or state-registered and that the securities are subject to transfer and resale restrictions. *Wisconsin* requires issuers to provide a copy of the disclosure document to each prospective investor at the time the securities offer is made to the prospective investor.

*Texas* requires that issuers and their officers, directors and employees make SEC Rule 147(e) and (f) disclosures, and place a legend on the securities certificate evidencing that the securities are not registered, and setting forth the SEC Rule 147(e) resale limitations, including a restriction that all resales, for a nine-month period from the date of the issuer's last sale of the offered securities, be made only to Texas residents.

*Washington* requires issuers to reasonably believe that purchasers are buying the securities for investment, not resale. Purchasers of securities issued under the crowdfunding exemption may not transfer their securities for a one-year period from the purchase date, unless the securities are transferred: (1) To the issuer; (2) To an accredited investor; (3) In accordance with an effective registration statement under the Securities Act of Washington; or (4) To the purchaser's family member or equivalent, or in connection with a death, divorce or similar circumstance, in the Director's discretion.

## **9. Purchaser agreement**

*• Issuers must have each purchaser sign an agreement acknowledging the purchaser's understanding of the legend contents, including the transfer and resale restrictions, as well as the investment's riskiness and speculativeness*

*Alabama* requires issuers to make Rule 147(f) disclosures to purchasers.

*Maine* requires an issuer's disclosure document to contain the risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions.

*Michigan* adopted the provision verbatim.

*Texas* requires that issuers and their officers, directors and employees make SEC Rule 147(e) and (f) disclosures, and place a legend on the securities certificate evidencing that the securities are not registered, and setting forth the SEC Rule 147(e) resale limitations, which includes a restriction that all resales, for a nine-month period from the date of the issuer's last sale of the offered securities, be made only to Texas residents.

*Washington* requires that purchasers sign an agreement acknowledging their investment in high-risk, speculative securities that they can afford to lose.

*Wisconsin* requires purchasers to certify in writing or electronically their understanding of the investment's risks, and that they may subject to tax, and that they are Wisconsin residents and, if applicable, that they are accredited investors or certified investors.

## **10. Escrow**

- *Invested funds must be deposited in a state-located federally insured depository institution, with the funds being used in accordance with the representations made to investors*

*Alabama* adopted the provision verbatim.

*Maine* adopted the provision verbatim but adds that the issuer must return all funds to investors if the minimum offering amount is not met within one year of the offering's effective date.

*Michigan* requires issuers to submit to the Michigan Administrator at least ten days before an offer or the use of a publicly available website in connection with an offering under the exemption an escrow agreement with a Michigan-located bank or depository institution. All payments for the securities purchase must be made to the escrow agent. Also, all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors equals or exceeds the minimum target offering, and if the minimum target amount is not reached by the time stated in the disclosure statement, then investors will be returned their subscription funds.

*Texas* requires all payments for securities purchases to be deposited in escrow with a Texas-located bank or other depository institution organized under U.S. and Texas laws. The funds must be held in escrow until the aggregate capital raised from all purchasers equals or exceeds the minimum target offering amount specified in the disclosure statement necessary to implement the business plan. Moreover, investors must receive a return of all their subscription funds if the target offering amount is not raised by the time stated in the disclosure statement.

*Washington* requires that investor funds be placed in escrow with a Washington-located "escrow agent," as defined. The content to be included in the escrow agent agreement is specified. The escrow agent must agree to maintain its independence from the issuer, any



portal assisting with the offering, and the officers, directors, managing members, and affiliates of the issuer, or any portal assisting with the offering. Similarly, the escrow agent may not be affiliated with the issuer, any portal assisting with the offering, or any officers, director, managing member, or affiliate of the issuer, or any portal assisting with the offering.

A crowdfunding offering must specify a minimum target amount which must be met before the escrow agent will release any offering proceeds to the issuer. The minimum target offering amount must be raised in a period no longer than 12 months from the date the Securities Division declares the offering exempt.

*Wisconsin* requires that the investor funds are deposited with an escrow agreement at a bank, savings bank, savings and loan association, or credit union chartered under the laws of Wisconsin, providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the business plan as necessary to implement the business plan, and that all investors may cancel their commitments to invest if that target offering amount is not raised by the time stated in the disclosure document.

## **11. Internet portal**

• *Issuers use a website or funding portal to facilitate an offering under the state's crowdfunding exemption*

*Alabama* and *Maine* do not mention a website, Internet or funding portal.

*Michigan* states that offerings may not be made through an Internet website unless specified requirements are met. These include that the website operator files written notice with the Michigan Administrator. But offerings made through an Internet website will not be subject to broker-dealer, investment adviser or investment adviser representative registration if the website meets certain prescribed conditions.

In *Texas*, the Internet website, whether operated by a Texas-registered general dealer or by a Texas-registered crowdfunding portal, must contain a disclaimer indicating that access to the website's securities offerings, as well as offerings and sale of the website's securities are limited to Texas residents. Furthermore, the Internet website must contain an affirmative representation by an Internet website visitor of that visitor's Texas residency, as well as have other evidence of the person's Texas residency (e.g., valid Texas drivers license, current Texas voter registration or Texas property tax) before allowing these persons access to offering materials or the ability to purchase securities. Lastly, the registered general dealer or portal must give the Commissioner access to the Internet website both before making investment opportunities available to Texas residents, and throughout the terms of the offering.

Information about the issuer and the offering posted on the Internet website, conditioned on Texas residency and operated by a Texas-registered general securities dealer or Texas-

registered crowdfunding portal, must consist of: (1) a copy of the disclosure statement; and (2) a summary of the offering that includes, among other specified information, a description of the entity and offered securities, as well as the identity of the executive officers, their titles and ownership interest. NOTE: This information on the Internet website must be available to the Commissioner and potential investors for a minimum of 21 days before any securities are sold in the offering.

All communications between the issuer, prospective purchasers and/or investors taking place during the offer of securities must occur exclusively on the Texas-registered general securities dealer's or Texas-registered crowdfunding portal's Internet website. The website, during the time the offering appears on the Internet, must provide channels through which potential purchasers and investors can communicate about the offering with one another and with the issuer's representatives. These communications must be visible to all persons on the Internet website, providing these persons with access to the offering materials. The issuer, notwithstanding the above, may separately 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's or portal's Internet website. The notice must, however, contain a disclaimer reflecting that the Internet website's securities offering itself, as well as the offers and sales of the securities comprising the offering, are limited to Texas residents.

A Texas crowdfunding portal is a Texas-only dealer, able to use the exclusion from federal registration available to dealers whose business is exclusively intrastate. The portal's activities are limited to operating an Internet website for the Texas Intrastate Crowdfunding Exemption at Rule Section 139.25. The portal is prohibited from: (1) participating in secondary market transactions; (2) offering investment advice or recommendations; (3) holding, managing or possessing investor funds or securities; (4) being affiliated with (or under common control with) an issuer whose securities are on the Internet website; (5) holding a financial interest in any issuer whose securities are on the Internet website; or (6) receiving a financial interest in an issuer as compensation for services provided to the issuer or on the issuer's behalf.

The portal, before offering securities on the Internet website, must conduct background and regulatory checks of the issuer and the issuer's control persons. Furthermore, the Internet website must contain an affirmative representation by an Internet website visitor of that visitor's Texas residency, as well as have other evidence of the person's Texas residency (e.g., valid Texas drivers license, current Texas voter registration or Texas property tax) before allowing these persons access to offering materials or the ability to purchase securities. The portal must additionally obtain affirmative acknowledgments from investors of certain disclosures common to all crowdfunding offerings before sales can be made (i.e., there is no ready market for the securities sale acquired from this offering, the securities (having not been federally- or state-registered) may not be resold unless registered or qualified for another exemption, no federal or state agency has confirmed the offering's accuracy, and that the investor must rely on his or her own examination of the issuer, the offering's terms and its risks).

Portals must maintain and preserve a limited list of records rather than the extensive list at Rule Section 115.5 required for securities dealers, but a portal's records may be requested by the Commissioner for inspection. Portals are, however, exempt from maintaining a written supervisory system.

Applicants registering as a Texas crowdfunding portal must, instead of filing Form BD at Rule Section 115.2, send the Texas Securities Commissioner: (1) a complete Form 133.15, *Texas Crowdfunding Registration Portal* (including all applicable schedules and supplemental information); (2) a Form U-4, *Uniform Application for Securities Industry Registration or Transfer*, for the designated officer and each to-be-registered agent; (3) a Texas-certified copy of the articles of incorporation or other documents showing the organization's form/type; (4) any other Commissioner-required information needed to determine the portal's financial responsibility, business repute or qualifications; and (5) a \$275 initial fee.

Portal registration expires at the end of the calendar year but may be renewed for another year by submitting a written application and a \$270 renewal fee, without filing any additional information unless requested by the Commissioner. Amendments to filed information must be submitted on Form 133.15. Texas-registered crowdfunding portals are subject to the same reporting provisions mandated for Texas-registered dealers and agents at Rule Section 115.9 requiring portals to notify the Commissioner of specified judgments or orders against the portal, within 30 days after the judgment or order is entered. Withdrawal from Texas crowdfunding portal registration is accomplished by filing Form 133.16, *Texas Crowdfunding Portal Withdrawal of Registration* with the Commissioner.

In *Washington*, an Internet portal, before offering services to an issuer planning a crowdfunding offering, must require the following minimum information from the issuer, and forward that information to the Director: (a) A description of the issuer, including type of entity, location, and business plan, if any; (b) The applicant's intended use of proceeds from an offering under the Washington Securities Act; (c) The identities of officers, directors, managing members, and ten percent beneficial owners, as applicable; (d) A description of any outstanding securities; and (e) A description of any litigation or legal proceedings involving the applicant, its officers, directors, managing members, or ten percent beneficial owners, as applicable.

The portal, on receiving the above information, can offer services to the issuer (exemption applicant) that the portal considers appropriate or necessary to meet the exemption criteria. These services may include assisting the issuer with developing a business plan, ministerially assisting the issuer with completing the crowdfunding exemption filings, referring the issuer to legal services, referring the issuer to business consulting and accounting services (to assist the issuer with compiling and reporting required financial information), and providing technical assistance to help the issuer prepare for the crowdfunding offering.

A portal is prohibited from: (1) Providing investment advice unless the portal is a registered investment adviser; (2) Soliciting securities purchases or sales unless the portal is a registered broker-dealer; (3) Providing compensation for soliciting sales unless the portal is a registered

broker-dealer; (4) Handling investor funds or securities, or otherwise acting as an escrow agent, or engaging in underwriting or other activities which involve purchasing securities for distribution. **NOTE:** Portals must be alerted that certain securities offering-related activities may require registration, and a portal cannot rely on the crowdfunding exemption when performing those activities.

A "portal" is a port district, local associate development organization or broker-dealer registered with the Securities Division that files offering materials with the Director on behalf of issuers seeking to rely on the crowdfunding exemption, or that offers services to issuers.

*Wisconsin* defines a "funding portal" as having the same meaning as in Exchange Act Section 3(a)(80). For the exemption at Wisconsin Uniform Securities Act, Section 551.202 (14m) no general solicitation or general advertising may be used in connection with the offer to sell or sale of the securities unless it is permitted by the Administrator. For the exemption at (26), the notice claim that must be filed with the Administrator must include, among other specified information, the identity of any person the issuer has or will retain to assist in conducting the securities offering, including any internet site operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the issuer's operating business rather than capital raising assistance.

In addition, prior to any offer or sale of securities, the issuer must provide to the Internet site operator evidence that the issuer is organized under Wisconsin laws and is authorized to do business in this state. The Internet site operator must register with the Wisconsin Securities Division by filing a statement, which the administrator will make available as an electronic document on the department of financial institutions Internet site, accompanied by a \$100 fee that includes: (1) statements that the Internet site operator is a business entity organized under Wisconsin law and authorized to do business in this state; (2) that the Internet site is being used to offer and sell securities under the exemption under s. 551.202 (26); and (3) the identity and location of, and contact information for, the Internet site operator.

The Internet site operator must be registered as a broker-dealer in Wisconsin unless: (1) it does not offer investment advice or recommendations; (2) it does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet site; (3) it does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet site; and (4) it is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities.

The Internet site operator is also not required to register as a broker-dealer under s. 551.401 if the Internet site operator is registered as a broker-dealer under the Securities Exchange Act of 1934 (15 USC 78o) or is a funding portal registered under the Securities Act of 1933. The Internet site operator may not be subject to enumerated "bad boy" disqualification provisions. The issuer and the Internet site operator must maintain records of all offers and sales of securities effected through the Internet site and must provide ready access to the records to the Securities Division, on request.

## 12. Notice filing

- *Issuers must file a notice to claim the crowdfunding exemption*

In *Alabama*, issuers must, not less than 10 days before using any general solicitation or within 15 days after a security's first sale under the exemption (if no general solicitation was used before the sale), whichever event occurs first, send the Alabama Securities Commission an electronic or paper notice on Form CF1. The notice must state that the issuer is conducting an offering under the exemption and specify the names and addresses of: (1) the issuer; (2) the issuer's officers, directors, and control persons; (3) the persons offering or selling the securities for the issuer; and (4) the bank or institution for the deposited funds. The notice must be accompanied by a \$150 fee.

*Maine* requires that issuers file with the Administrator a Form FND-ME, *Fund-ME Offering Circular Form*, accompanied by a subscription agreement and \$300 fee for each type or class of security offered. Additionally, completed Form FND-ME and the subscription agreement must be delivered to each purchaser when the security is registered.

*Michigan* requires that issuers submit to the Michigan Administrator at least ten days before an offer or the use of a publicly available website in connection with an offering under the exemption: (1) a written or electronic notice indicating their reliance on the "Michigan invests locally exemption" that is accompanied by a \$100 fee; (2) a copy of the disclosure statement provided to prospective purchasers that contains prescribed information; and (3) an escrow agreement with a Michigan-located bank or depository institution.

NOTE: The offering term may not exceed 12 months after the date of the first offer. The Michigan Administrator must, every fifth year, cumulatively adjust specified dollar amounts to reflect the most recent consumer price index for all urban consumers published by the Federal Bureau of Labor Statistics, rounding the dollar limitation to the nearest \$100.

*Texas* requires qualified issuers, before using any publicly available Internet website to make a securities offering under the exemption, to file with the Commissioner: (1) a Form 133.17, *Crowdfunding Exemption Notice*; (2) a disclosure statement; and (3) a summary of the offering.

To claim an initial crowdfunding exemption in *Washington*, an issuer must file: (1) A *Washington Crowdfunding Form*; (2) Financial statements prepared in accordance with U.S. GAAP; (3) Its articles of incorporation or other applicable charter documents; (4) Its bylaws or operating agreement; (5) An escrow agreement for the impoundment of the minimum targeted offering amount; (6) A \$600 filing fee; and (7) A copy of the advertisements to be used with the offering.

A crowdfunding offering may be declared exempt for a maximum of 12 months, and may be renewed for an additional 12-month period.

An issuer can renew a crowdfunding offering declared exempt, by filing a renewal notice no later than 30 days before the initial/original exempt offering expires. A renewal notice must contain: (1) A report of sales as of the most recent practicable date; (2) A copy of the issuer's updated *Washington Crowdfunding Form*; (3) The issuer's financial statements as of the issuer's most recent fiscal year-end, prepared in accordance with U.S. GAAP; Issuers must also submit a GAAP-prepared unaudited balance sheet and GAAP-prepared unaudited statement of income or operations for the issuer's most recent fiscal quarter, if the most recent fiscal year-end date is more than 90 days before the renewal date; and (4) A \$100 filing fee. **NOTE:** A crowdfunding offering is not considered renewed until the Director declares the renewal offering exempt.

Material changes affecting the *Washington Crowdfunding Form*'s accuracy after the Director declares the offering exempt must be filed with the Director. **NOTES:** (1) An amended *Washington Crowdfunding Form* must be filed with the Securities Division and declared exempt by Director before an offering is made; and (2) The issuer must revise the *Washington Crowdfunding Form* no less often than every 12 months.

In *Wisconsin*, an offering under the exemption at Wisconsin Securities Act Section 551.202 (26) is made exclusively through one or more Internet sites registered in Wisconsin. The issuer, not less than 10 days before beginning an offering under this exemption, must file a notice with the administrator, in writing or in electronic form as prescribed by the administrator, which the administrator will make available as an electronic document on the department of financial institutions Internet site, containing all of the following: (1) a notice of claim of exemption from registration, specifying that the issuer will be conducting an offering under the exemption at subsection (26), accompanied by a \$50 filing fee; (2) a copy of the disclosure statement to be provided to prospective investors in connection with the offering, containing prescribed information; and (3) an escrow agreement.

To alternatively claim the exemption at Wisconsin Securities Act Section 551.202 (27), the issuer, before the 101st offer of the security, must provide a notice to the administrator in writing or in electronic form, accompanied by a \$50 filing fee. The administrator will prescribe the form required for the notice and make the form available as an electronic document on the department of financial institutions Internet site. The notice will be limited to containing the following information: (1) stating that the issuer is conducting an offering in reliance on the exemption at Subsec. (27); (2) identifying the names and addresses of all 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, savings bank, savings and loan association, or credit union where investor funds will be deposited.

**NOTE:** At 5-year intervals after January 1, 2014, the department of financial institutions will adjust the monetary amounts specified for the exemptions at subsections 551.202 (26) (c) 1. a. and 1. b. and (27) (c) 1. a. and 1. b., to reflect changes since January 1, 2014, in the consumer price index for all urban consumers, Milwaukee-Racine area average, as determined by the U.S. department of labor. Each adjustment will be rounded to the nearest multiple of \$50,000, and published on the department of financial institutions Internet site.

### **13. Advertising and sales literature filing**

- *Issuers must file a copy of all advertising intended for publication or mass distribution (including television and radio broadcast scripts)*

*Alabama, Maine and Texas* do not have this requirement.

*Michigan's* advertising/sales literature filing provision was amended to add the "Michigan invests locally exemption" to the list of exemptions for which issuers must comply with advertising and sales literature filing requirements.

In *Washington*, all advertisements directed to or to be furnished to investors for a crowdfunding offering must be filed with the Director no later than seven days before the advertisements are published or distributed. **NOTE:** Certain types of advertisements such as "tombstone" advertisements containing no more than certain specified information such as the issuer's name and address, as well as the security's title or identity, may be used without filing for prior Director authorization (unless the advertisements are specifically prohibited).

In *Wisconsin*, the exemption at Wisconsin Uniform Securities Act, Section 551.202, subsection (26) does not mention advertising. The exemptions at subsections (14m) and (27) prohibit general solicitation and general advertising. The exemption at subsection (24m) prohibits advertising published in connection with the offer to sell or sale of securities unless permitted by the Securities Division, so it must be filed for the Division to review and approve it.

### **14. Disclosure document**

- *Issuers must include with their exemption notice filing (or separately depending on the state) a disclosure document containing prescribed information. A copy of the disclosure document must be provided to prospective investors*

*Alabama* requires issuers, in the notice filing, to specify that the issuer is conducting an offering relying on this exemption, and include the names and addresses of: (1) the issuer; (2) the issuer's officers, directors, and control persons; (3) the persons offering or selling the securities for the issuer; and (4) the bank or institution for the deposited funds.

*Maine* requires an issuer to file with the administrator, and provide to investors and make available to potential investors an offering document setting forth the following: (1) the name, legal status, physical address and website address of the 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 percent 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 condition of the issuer, including prescribed information; (6) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer; (7) the offering amount, the deadline to reach the offering

amount and regular updates regarding the progress of the issuer in meeting the offering amount; (8) the price to the public of the securities or, if the price has not been determined, the method for determining the price as long as before the sale each investor is provided in writing the final price and all required disclosures with a reasonable opportunity to rescind the commitment to purchase the securities; and (9) a description of the ownership and capital structure of the issuer that includes, among other things, the risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, and transactions with related parties.

*Michigan's* disclosure statement, a copy of which is to be available to prospective investors in connection with the exemption, must contain: (1) a description of the issuer, including its type of entity, the address and telephone number of its principal office, its formation history, its business plan, and the intended use of the offering proceeds; (2) the identity of each person that owns more than 10 percent 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; (4) the terms and conditions of the securities being offered and of any outstanding securities of the issuer, and the minimum and maximum amount of securities being offered; (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 the securities, including the owner of any websites; (6) a description of any litigation or legal proceedings involving the issuer or its management; (7) the name and address of any website that the issuer intends to use in connection with the offering; and (8) an escrow agreement with a Michigan-located bank or other depository institution.

Issuers must conspicuously provide on the disclosure statement's cover page a legend informing prospective purchasers that the securities are not federally- or state-registered and that the securities are subject to transfer and resale restrictions. Issuers must additionally have each purchaser sign an agreement acknowledging the purchaser's understanding of the legend's contents and of the investment's riskiness and speculativeness.

*Texas* requires that a disclosure statement made readily available on the Internet website and accessible to each prospective purchaser contain the security offerings' material information and risk factors, as well as a general description of the issuer's business, a history of the issuer's operations and organization, a description of the company's management and principal stockholders, how the offering proceeds will be used, the issuer's financial statements, a description of the offered securities, and any litigation and legal proceedings against the issuer. Issuers must further disclose to prospective purchasers that there is no ready market for the sale of the securities acquired from this offering, and the securities, having not been federally- or state-registered, may not be resold unless registered or qualified for another exemption, and that no federal or state agency has confirmed the offering's accuracy, and finally that the investor must rely on his or her own examination of the issuer, the offering's terms and its risks.

*Washington* requires a quarterly report.



*Wisconsin* requires for the exemption at Wisconsin Uniform Securities Act Section 551.202 Subsection (26) that not less than 10 days before the offering begins, the issuer files with the Commission, among other prescribed documents, a disclosure document, a copy of which is to be provided to prospective investors, which contains: (1) a description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds; (2) the identity of all persons owning more than 10 percent of the ownership interests of any class of securities of the company; (3) the identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience; (4) the terms and conditions of the securities being offered and of any outstanding securities of the company, and the minimum and maximum amount of securities being offered; (5) the identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any Internet site operator; (6) a description of the consideration being paid to the person for such assistance, for each person identified as required under (5); (7) a description of any litigation, legal proceedings, or pending regulatory action involving the company or its management; (8) the names and addresses, including the Uniform Resource Locator, of each Internet site that will be used by the issuer to offer or sell securities under this exemption; and (9) any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky.

*Wisconsin* also requires issuers to conspicuously provide on their disclosure statement's cover page a legend informing prospective purchasers that the securities are not federally- or state-registered and that the securities are subject to transfer and resale restrictions.

NOTE: Issuers must provide a copy of the disclosure document to each prospective investor at the time the securities offer is made to the prospective investor.

## **15. Reports, statements and other requirements**

- *Issuers must file quarterly and/or other reports and financial statements*

*Alabama, Maine and Wisconsin* do not have this requirement.

*Michigan* requires that if the issuer's offer and sale of a security qualifies for this exemption, the issuer must provide a quarterly report to the purchasers until none of the issued securities are outstanding. All of the following apply to this required quarterly report: (1) the issuer provide the report free of charge to the purchasers; (2) the issuer may satisfy the report requirement by making the information available on an internet website if the information is made available within 45 days after the end of each fiscal quarter and remains available until the next quarterly report is issued; (3) the issuer must file each report with the administrator and must provide a written copy of the report to any purchaser on request; and (4) the report must include all of the following: (i) The compensation received by each director and executive officer of the issuer, including cash compensation earned since the previous report and, on an annual basis, any bonuses, stock options, other rights to receive securities of the

issuer or any affiliate of the issuer, or other compensation received; and (ii) An analysis by the issuer's management of the issuer's business operations and financial condition.

*Texas* requires issuers to provide investors with current financial statements that are certified by the issuers' principal executive officer to be materially true and complete. Issuers must additionally provide investors with any audited or reviewed financial statements prepared within the last three years.

*Washington* declares that provided the securities remain outstanding, issuer are required to give a quarterly report free-of-charge to its shareholders on the issuer's Internet web site, within 48 days of the end of each fiscal quarter. The report must contain: (1) The executive officers' and directors' compensation, including stock options and other rights to receive equity securities; (2) The names of the issuer's owners of 20 percent or more of a class of outstanding securities, as well the names of the directors, officers, managing members and/or other persons occupying similar status/performing similar functions on the issuer's behalf; and (3) A brief analysis of the issuer's business operations and financial condition. **NOTE:** Issuers having used the crowdfunding exemption but, during the previous two years, were non-compliant with the quarterly report requirement are ineligible to conduct a new offering under the crowdfunding exemption.

Issuers must file a final sales report at the close of the offering. The final sales report must contain the number of securities sold, the dollar amount of the securities sold, and the number of investors.