

Massachusetts Securities Division Solicits Preliminary Comments on Proposed Regulations

Preliminary Request for Public Comment on Proposed Massachusetts Notice Filing Regulations for Offerings Under SEC Regulation A+, Tier 2, Federal Crowdfunding Offerings, and Funding Portals

October 28, 2016

The Massachusetts Securities Division is circulating the following proposed regulations for preliminary comments:

- I. A proposed notice filing for Regulation A+, Tier 2 offerings.
- II. Two proposed regulations relating to federal crowdfunding under Title III of the JOBS Act of 2012. These regulations are: (a) a notice filing for crowdfunding issuers conducting an offering as described in Title III of the JOBS Act and (b) a notice filing requirement for Funding Portals as described in Title III of the JOBS Act.

The Securities Division anticipates that this preliminary solicitation of comments will be followed by a formal solicitation of public comments pursuant to the Massachusetts Administrative Procedure Act. Notice Filing for Regulation A+, Tier 2 Offerings. The Division solicits comments on a proposed regulation requiring a notice filing from an issuer that is conducting a Regulation A+, Tier 2 offering in the Commonwealth.

Title IV of the JOBS Act of 2012 amended Section 3(b)(2) of the Securities Act of 1933 to provide for Tier 2 Regulation A+ offerings. That exemption allows sales of up to \$50,000,000 worth of securities in a 12-month period. Under SEC regulations, securities sold under Tier 2 are federal covered securities under Section 18 of the Securities Act.

The filing under the proposed regulation will use the notice form adopted by the North American Securities Administrators Association for its model notice filing for Tier 2 offerings, along with Form U-2A (if applicable) and a filing fee.

Notice Filing for Federal Crowdfunding Offerings. The Division solicits comments on a proposed regulation that requires a short notice filing from a crowdfunding issuer that is conducting its crowdfunding offering in the Commonwealth of Massachusetts and (a) such issuer has its principal place of business in the Commonwealth or (b) 50% or greater of the aggregate amount of the offering has been purchased by residents of the Commonwealth.

Title III of the JOBS Act of 2012 created a new federal exemption from registration for crowdfunding offerings under Section 4(a)(6) of the Securities Act of 1933. The exemption allows sales of up to \$1,000,000 during a 12-month period, imposes investment limits for investors, and requires the offering to be made through either a registered broker-dealer or funding portal.

The JOBS Act preempted state filing and fee requirements with respect to offerings conducted under the federal crowdfunding exemption except for a state: (i) that is the principal place of business of the issuer or (ii) where purchasers of 50% or greater of the aggregate amount of the offering reside.

The proposed regulation would require the filing of a notice, the materials filed with the SEC (including SEC Form C), a consent to service of process on Form U2, and Form U-2A (if applicable). The regulation also sets forth renewal and amendment requirements for federal crowdfunding offerings.

Funding Portals in the Commonwealth. The Division solicits comments on a proposed regulation that requires a notice filing from any Funding Portal having a principal place of business in the Commonwealth.

Title III of the JOBS Act of 2012 created a limited exemption from the requirement to register as a broker-dealer under the Securities Exchange Act of 1934. This exemption allows Funding Portals to act as intermediaries in a transaction involving the offer or sale of securities for the account of others.

The proposed regulation would require the notice filing of a copy of Form Funding Portal (FP) as filed with the SEC, Form FP-NMA as filed with FINRA, and a consent to service of process on Form U2 along with Form U-2A (if applicable). The regulation also sets forth amendment and withdrawal instructions for Funding Portals.

- [Notice Filing Reg A Tier 2](#) (PDF)
- [Uniform Reg A - Tier 2 Notice Filing Form](#) (PDF)
- [Notice filing for Crowdfunding](#) (PDF)
- [Funding Portal Regulations](#) (PDF)

Comments may be submitted by clicking the "Submit a Comment" button, below. If you have questions about the proposed regulations, you may contact Peter Cassidy, Esq. (regarding the crowdfunding issuer notice filing and/or the Regulation A+, Tier 2 notice filing) or Estefania Salomon, Esq. (regarding the Funding Portal notice filing) at (617) 727-3548.