

## Second Wave of States Address Crowdfunding

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While the SEC's crowdfunding rules remain proposed since October 23, 2013, and a first set of states have since adopted crowdfunding provisions, a second wave of jurisdictions now have crowdfunding laws and/or rules in the promulgation pipeline. A summary of the crowdfunding provisions in the first set of states: *Alabama, Maine, Michigan, Texas, Washington* and *Wisconsin* may be found [here](#). This paper will address the second wave of jurisdictions—*District of Columbia, Idaho, Indiana, Massachusetts, New Mexico, Oregon* and *Pennsylvania*—that have proposed and/or adopted crowdfunding provisions.

### Background

**Federal crowdfunding rules.** The SEC's proposed crowdfunding rules (Release No.33-9470) contain eight main provisions:

- *Investment advice*—prohibiting funding portals from offering investment advice, making recommendations, or soliciting purchases, sales or offers to buy the securities offered or displayed on their websites.
- *Offers and sales*—permitting companies to raise \$1 million through crowdfunding offers during any 12-month period and permitting investors to either: (1) invest during any 12-month period up to \$2,000 or 5 percent of their annual income or net worth, whichever is greater, if both their annual net income and net worth are less than \$100,000; or (2) invest up to 10 percent of their annual income or net worth, whichever is greater, if either equals or exceeds \$100,000.
- *Investor limits*—prohibiting investors from buying more than \$100,000 of securities through crowdfunding during any 12-month period.
- *Commissions*—imposing restrictions on compensating people for soliciting offers and sales, and prohibiting funding portals from holding, possessing, or handling investor funds or securities, but allowing a safe harbor where funding portals can engage in certain activities consistent with those restrictions.
- *Resales*—prohibiting securities purchased in a crowdfunding transaction from being resold for a year, but not counting security holders toward the threshold that requires a company to register with the SEC pursuant to Exchange Act, Section 12(g).
- *Intermediaries*—mandating: (1) that crowdfunding transactions take place through an SEC-registered intermediary, which is either a broker-dealer or a funding portal; (2) that intermediaries conduct the offering through online platforms; and (3) that intermediaries provide investors with educational materials outlining the investment risks, and take steps to reduce those risks.

- *Disclosure requirements*—(1) requiring companies conducting crowdfunding offerings to file certain information with the SEC and make that information available to investors and to the intermediary used to facilitate the offering; (2) requiring company offering documents to include information about the officers, directors, and holders of more than 20 percent of the issuer’s securities, and to include a business description, a description of how the offering proceeds will be used and the price of the offered securities; (3) requiring company disclosures to include related-party transactions, as well as a description of the company’s financial condition and financial statements; and (4) requiring company offering documents to be updated to include material changes, and to provide the progress made on reaching the targeted offering amount.
- *Annual reports*—requiring issuers to file annual reports with the SEC and provide those reports to investors.

The second wave of states’ inclusion (or exclusion) of the above eight federal provisions in their respective intrastate crowdfunding exemptions, along with these jurisdictions’ adoption of certain state-mandated crowdfunding provisions is addressed below.

The following 15 crowdfunding provisions (which include the eight main federal crowdfunding provisions), together with state-specific provisions, have been adopted by six of the following seven jurisdictions (New Mexico’s crowdfunding exemption is still proposed):

<a href="#">District of Columbia:</a>	District of Columbia-only securities offering exemption rule, effective October 24, 2014
<a href="#">Idaho:</a>	Administrative order: Idaho January 20, 2012 response to a no-action letter exemption request from Treasure Valley Angel Fund LLC
<a href="#">Indiana:</a>	Subsecs. (26) and (27) of statutory section 23-19-2-2, effective July 1, 2014, and corresponding emergency rule exemptions, also effective July 1, 2014
<a href="#">Massachusetts:</a>	Rule exemption, effective January 1, 2015
<a href="#">New Mexico:</a>	Proposed rule exemption
<a href="#">Oregon:</a>	Intrastate Offering Exemption (OIO) rules, effective January 15, 2015
<a href="#">Pennsylvania:</a>	Act exemption (for Internet portal activities only); Pennsylvania’s exemption will be the SEC crowdfunding exemption when the SEC’s proposed crowdfunding rules take effect and, therefore, will not be addressed in the following provisions, except within the Internet portal provision.

## Eligibility

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

**District of Columbia:** Securities offers and sales are exempt from registration, provided: (1) the issuer is a District of Columbia-organized entity, authorized to do business in the District, whose principal place of business is in the District; and (2) the transaction meets Securities Act of 1933, Section 3(a)(11) and SEC Rule 147 requirements.

**Idaho:** A fund, to be exempt, must be an Idaho-organized business registered with the Idaho Secretary of State, and: (1) At least 80 percent of the fund’s assets (at the end of its most recent semiannual period before the offering) must be located in Idaho; (2) At least 80 percent of the fund’s gross revenues (during its most recent fiscal year before the offering) must be derived from the fund’s Idaho investments; and (3) The fund must use at least 80 percent of the offering’s net proceeds in connection with a business operation (or operations) within Idaho.

**Indiana:** Any offer or sale of securities conducted after June 30, 2014 may be exempt, provided: (1) the issuer is organized and authorized to do business in Indiana; and (2) the transaction meets the requirements of the federal intrastate offering exemption in Securities Act, Section 3(a)(11)/SEC Rule 147. Within ten (10) days of receiving the notice on Form D (see requirement below), the Indiana Securities Commissioner may require the issuer to submit additional information about the issuer’s qualifications.

**Massachusetts:** Issuers, to be eligible for the exemption, must be Massachusetts-formed business entities authorized to do business in the state with their principal place of business in the state. Issuers must ensure that their transactions comply with Securities Act, Section 3(a)(11) and SEC Rule 147.

**New Mexico:** An issuer, to claim the proposed crowdfunding exemption, must either be a New Mexico resident doing business in the state or a New Mexico-organized -and licensed for-profit business entity providing evidence that: (1) 80 percent of its last year’s gross revenues came from New Mexico business operations; (2) it holds in New Mexico at least 80 percent of its assets (i.e., assets that exist at the end of its most recent semi-annual period before the offering); (3) it will use 80 percent of its offering proceeds for New Mexico business operations; and (iv) it will, if a newly formed

company, use, derive and hold 80 percent of its earnings in New Mexico.

**Oregon:** To be exempt: (1) the offering must relate to an Oregon business in good standing; and (2) the offer and sale must comply with the Securities Act of 1933, Section 3(a)(11) or SEC Rule 147.

- *Prospective purchasers must reside in the state*

**District of Columbia:** No provisions.

**Idaho:** No provisions.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption. The statutory section 23-19-2-2 (27) exemption permits Indiana-organized entities to offer or sell securities to Indiana residents. Issuers must file with the Indiana Securities Division a notice on SEC Form D which clearly states “Indiana Only” on page one.

The Internet web site operator must restrict website access to Indiana residents (for offers and sales).

**Massachusetts:** Securities may be offered and sold only to Massachusetts residents.

**New Mexico:** If the exemption is adopted, offers and sales must be made solely to persons whose New Mexico residency or local business status has been established. An “investor” is a New Mexico resident or local business that purchased a security in accordance with the crowdfunding exemption rules.

A “local business” is a for-profit business entity organized, registered and located in New Mexico which: (1) holds (or expects to hold) at least 80 percent of its assets in New Mexico; (2) gained in a previous year (or expects to gain) at least 80 percent of its gross revenue from New Mexico business operations; (3) will use at least 80 percent of its proceeds within New Mexico; and (4) otherwise meets the federal Securities Act, Section 3(a)(11)/SEC 147 investor residency requirements.

The Internet portal must display a disclaimer reflecting that access for securities purchases or sales is limited to New Mexico residents whose residency was previously verified.

**Oregon:** The securities may be offered or sold only to natural persons who are Oregon residents. Additionally, an interested person must make an affirmative

declaration to the issuer or third party platform that the interested person is an Oregon resident before the issuer or third party platform makes an offer to the interested person. Furthermore, the issuer, before a sale is made, must have a reasonable, documentary basis for believing that the prospective investors are Oregon residents (documents proving Oregon residency may include a current Oregon driver’s license, voter registration, or evidence of Oregon principal residence ownership).

## Unavailability

**District of Columbia:** Issuers which, either before or as a result of the offering, are Investment Company Act of 1940, Section 3-defined “investment companies” (or entities that would be investment companies but for the Section 3(c) exclusions) will be disqualified from the exemption. Issuers subject to Securities Exchange Act, Section 13 or 15(d) reporting requirements, and development stage company issuers without a specific business plan will, likewise, be disqualified from the exemption. Lastly, issuers who, themselves, or whose officers, shareholders, employees, or contractors are subject to Regulation A, Rule 262 “bad boy” provisions are disqualified from the exemption.

**Idaho:** A fund must not, either before or as a result of the offering, be a 1940 Act, Section 3 defined “investment company” or a company subject to Exchange Act, Section 13 or 15(d) requirements. The exemption is unavailable if the fund or its officers, directors or agents are subject to specified “bad boy” disqualification provisions. This exemption’s availability is conditioned on the fund, as well as its officers, directors and agents complying with the Idaho Uniform Securities Act’s anti-fraud and other provisions.

**Indiana:** The issuer may not be a 1940 Act investment company or be subject to Exchange Act, Section 13 or 15(d) reporting company requirements. The exemption is unavailable if the issuer or its affiliates are subject to prescribed “bad boy” disqualification provisions (unless waived by the Commissioner by, for example, showing good cause for a waiver). The exemption does not alleviate issuers from having to comply with the Indiana Uniform Securities Act’s other provisions, including antifraud, or with any Commissioner-ordered requirements, unless relief from compliance is expressly stated.

**Massachusetts:** Issuers whose officers, directors or majority shareholders are subject to specified “bad boy” provisions, e.g., securities fraud or misrepresentation,

are disqualified from the exemption. The exemption is also prohibited for blind pool and blank check offerings, investment companies, hedge funds, commodity pools, oil, gas or mining exploration/extractive industries, and issuers subject to Exchange Act reporting requirements.

**New Mexico:** To claim the exemption if adopted, an issuer may not be a 1940 Act, Section 3 investment company or be subject to Exchange Act, Section 13 or 15(d) reporting requirements. Also, an issuer may not be a company with an undefined business operation or a company planning to merge or acquire an unspecified business entity.

**Oregon:** The exemption is prohibited for “bad actors,” i.e., issuers or their affiliates subject to specified “bad boy” disqualification provisions. Persons relying on the Oregon Intrastate Offering Exemption (OIO) rules have the burden of proving in a civil, criminal or administrative action that they complied with the exemption’s conditions.

OIO-prohibited offerings include those by development stage companies without a specific business plan or by issuers indicating a plan to merge or acquire an unidentified company. Offerings involving sales of securities other than notes, stocks or debentures are also prohibited as are petroleum, mining or other extractive industry offerings, or investment company offerings.

## Additional conditions

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

**District of Columbia:** No provisions.

**Idaho:** A fund will not be granted a crowdfunding exemption in combination with any other Idaho Securities Act exemption, except for offers and sales to a fund’s controlling persons.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption. The statutory section 23-19-2-2 (27) exemption may not be combined with any other exemption, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding 12-month period.

**Massachusetts:** No provisions.

**New Mexico:** No provisions.

**Oregon:** No provisions.

## 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*

**District of Columbia:** The total cash and other consideration received from all security sales made under the exemption may not exceed: (1) \$500,000, if the issuer has financial statements (consisting of balance sheets), income statements and cash flow statements for the past three years (or for as much of that time as the issuer has been in operation) that are certified as true and correct by the issuer’s principal executive officer; (2) \$1 million, less the aggregate amount received for all of the issuer’s security sales within the 12 months before the first offer or sale made under the exemption, if the issuer has undergone a GAAP-compliant financial statement review of its most recently completed fiscal year; or (3) \$2 million less the aggregate amount received for all issuer security sales within the 12 months before the first offer or sale made under the exemption, if the issuer has undergone a GAAP-compliant financial statement audit of its most recently completed fiscal year.

Securities offers or sales made to the issuer’s officers, directors, partners, trustees or similarly situated persons under the exemption do not count toward reaching the above cash/consideration limits. No offer or sale of a different security class or series is considered to have been made by the issuer under the exemption during the immediately preceding 12-month period.

**Idaho:** The sum of all cash and consideration received for all sales of a fund’s interest for this exemption must not exceed \$2 million.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption. For the statutory section 23-19-2-2 (27) exemption, 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: (1) \$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 Commissioner audited financial statements or reviewed financial statements for the issuer’s most recently completed fiscal year; or (2) \$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 Commissioner audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year; An offer or sale to an officer, director, partner, trustee, or individual who occupies a similar status with, or performs similar functions to, the issuer or to a person owning 10 percent or more of the outstanding shares of any class or classes of the issuer's securities does not count toward the monetary limitation.

**Massachusetts:** The exemption, available to Massachusetts-based corporations, LLPs and LLCs, allows issuers to raise up to \$1 million in a 12-month period, and up to \$2 million if they have audited financial statements (This limitation does not apply to offerings made to the issuer's officers, directors, partners, trustees, persons owning at least 10 percent of the outstanding shares, or persons occupying similar status with the issuer).

Issuers may offer both equity and debt securities on the Internet.

**New Mexico:** No provisions on aggregate sales/consideration.

If the exemption is adopted, individual offerings may comprise equity or debt securities but not both.

**Oregon:** The aggregate purchase price of all OIO securities may not exceed \$250,000. OIO securities are limited to notes, stocks and debentures.

## 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"*

**District of Columbia:** Unless the purchaser is a District of Columbia Securities Act-defined "accredited investor," the issuer is prohibited from accepting: (1) more than \$10,000 from any single natural person purchaser whose annual gross income is less than \$100,000; (2) more than \$25,000 from any single natural person purchaser whose annual gross income is less than \$200,000; or (3) an offer from any purchaser other than a natural person, unless the purchaser's annual gross income or net worth is more than \$1 million.

**Idaho:** The fund may not accept more than \$2,500 from any single purchaser, unless the purchaser is an SEC Regulation D, Rule 501-defined "accredited investor."

**Indiana:** No provisions for the statutory section

23-19-2-2 (26) exemption. For the statutory section 23-19-2-2 (27) exemption, the issuer may not accept more than \$5,000 from any single purchaser unless the purchaser is a federal Regulation D, Rule 501 "accredited investor."

*It's the states, through real crowdfunding offerings permitted by these jurisdictions' exemptions, and not the SEC, that are actually achieving the JOBS Act's purpose to create jobs and raise capital for U.S. business growth.*

**Massachusetts:** The exemption allows investors to purchase an amount of securities either greater than \$2,000 or 5 percent of their annual income or net worth if both the income and net worth are less than \$100,000. Investors may, alternatively, buy an amount of securities up to 10 percent of their income or net worth if the income or net worth is \$100,000 or more, subject to an investment limit of \$100,000.

**New Mexico:** If the exemption is adopted, issuers may not accept more than \$10,000 from any single investor unless the investor completed and filed with the portal a *New Mexico Crowdfunding Large Investment Form*.

**Oregon:** The amount the issuer can accept from any individual investor may not exceed \$2,500.

## 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*

**District of Columbia:** An issuer may publish general solicitation or advertising in connection with an offering made to D.C. residents under the exemption if at least 20 calendar days before any security sale the issuer submits to the Insurance, Securities and



Banking Department Commissioner a notice containing the offering's material terms, as well as copies of the advertising intended for use. The Commissioner must not, however, have disallowed the exemption, by order, within 10 business days after receiving the issuer's filing.

**Idaho:** No provisions.

**Indiana:** The statutory section 23-19-2-2 (26) exemption prohibits issuers or their affiliates from using any form of general solicitation, including the Internet, to offer or sell securities.

No provisions for the statutory section 23-19-2-2 (27) exemption.

**Massachusetts:** No provisions.

**New Mexico:** If the exemption is adopted, advertisements used for an offering must contain prescribed disclaimers.

**Oregon:** Issuers and third party platform providers may generally advertise or solicit OIO securities, provided: (1) the issuer sends the Finance and Corporate Securities Division Director a copy of the materials at least 7 days before they are used; (2) the materials are directed only to Oregon residents; and (3) the materials contain only certain limited information such as the issuer's name and contact information, and a brief, general description of the issuer's business. A person whose Oregon residency cannot be affirmatively certified may not view the advertising materials.

## Commissions

- *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*

**District of Columbia:** No provisions.

**Idaho:** Commissions and other remuneration for participating in the offering may not be paid to any person unless the person is an Idaho-registered broker-dealer or agent.

**Indiana:** For the statutory section 23-19-2-2 (26) exemption, a commission, discount, or other remuneration for sales of securities in Indiana must be paid or given only to Indiana-licensed dealers or salespersons.

There are no provisions for the statutory section 23-19-2-2 (27) exemption.

**Massachusetts:** Commissions (or other remuneration) may not be paid to any person for soliciting prospective purchasers, unless the person is a Massachusetts-registered broker-dealer or agent.

**New Mexico:** If the exemption is adopted, non-New Mexico registered persons may not be compensated for solicitation activities.

**Oregon:** Commissions and other remuneration are prohibited for persons soliciting or selling to prospective purchasers.

## 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*

**District of Columbia:** An offering document must inform investors that the securities are not federally or state registered, and are subject to transfer restrictions.

**Idaho:** A fund must inform purchasers that the fund interests have not been registered under the Idaho Uniform Securities Act and, therefore, cannot be resold unless registered or qualified for an Idaho Uniform Securities Act exemption.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption.

For the statutory section 23-19-2-2 (27) exemption, the issuer must inform all prospective purchasers that the securities have not been registered under federal or state securities law, and are subject to limitations on resale. The issuer must conspicuously display on the disclosure document's cover page a legend informing prospective purchasers that the securities are not federally- or state-registered and are subject to transfer and resale restrictions.

**Massachusetts:** Issuers must disclose certain risk disclosures such as the fact that the offering is not registered under federal or state securities law and cannot be resold unless the securities are registered or qualify for an available exemption under federal and state securities law.

**New Mexico:** No provisions.

**Oregon:** OIO securities may not be resold during the nine-month period immediately after purchase. OIO

securities may be sold after the nine-month period in accordance with an Oregon statutory or rule exemption.

## 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*

**District of Columbia:** No provisions.

**Idaho:** No provisions.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption.

For the statutory section 23-19-2-2 (27) exemption, the issuer must obtain from each purchaser evidence that the purchaser is an Indiana resident and, if applicable, an accredited investor.

**Massachusetts:** No provisions.

**New Mexico:** If the exemption is adopted, the Internet website must obtain a prescribed acknowledgment from investors before permitting their online investments.

**Oregon:** Prospective purchasers must sign an acknowledgment of the offering's risks.

## 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*

**District of Columbia:** Issuers must include in their notice to the Commissioner a copy of the offering document to be delivered to prospective investors, containing specified information about the issuer and offering, as well as the escrow agreement with the named depository institution that will hold the investor funds.

**Idaho:** The funds received from investors must be deposited in escrow, in a bank or depository institution authorized to do business in Idaho. The funds must be used according to the representations made to investors. The funds must be held in escrow until \$1 million is raised.

The notice must specify the name and address of the fund, the persons who will be involved in the fund's offers and sales, and the bank or depository institution holding the investor funds in escrow.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption.

*Texas companies can raise up to \$1 million in a 12-month period, and do it simply through a privately run Internet portal—and without having to make any annual filings, unlike the annual filing requirement in the SEC's proposal.*

The issuer, for the statutory section 23-19-2-2 (27) exemption to be available, must comply with notice filing and fee requirements, which includes providing the Commissioner a copy of the escrow agreement entered into with the applicable depository institution. The issuer may not access the escrowed funds until the aggregated funds from all investors equals or exceeds the minimum amount specified in the escrow agreement. An investor may cancel the investment commitment if the target offering amount is not raised before the time stated in the escrow agreement.

Investors may cancel an investment commitment for any reason up to 48 hours before the identified deadline in the issuer's offerings materials. The issuer may, however, close the offering prior to the deadline by reaching the target offering amount before that date, provided: (1) the offering has been open for a minimum 21 days; (2) the Internet web site operator provides notice to potential and investment committed investors of the new anticipated offering deadline, as well as the investors' right to cancel the commitment for any reason up to 48 hours before the new

anticipated offering deadline; (3) the new anticipated offering deadline is scheduled for, and occurs at least, five business days after the notice is provided to the Division; and (4) the issuer continues to meet or exceed the minimum target offering amount at the time of the new anticipated offering deadline.

**Massachusetts:** Issuers must place all funds received from investors in an escrow account at a Massachusetts-authorized insured bank or depository institution. Investor funds must remain at this institution until the minimum offering amount is reached.

Issuers must set a minimum amount to be raised, which must be set at a level sufficient to implement the plan of business disclosed in the offering materials, but not less than 30 percent of the maximum offering amount set by the issuer and disclosed in the offering materials. The issuer must return the funds to investors if the minimum offering amount is not met within one year of the offering's commencement or the offering's first Internet posting, whichever event occurs first.

**New Mexico:** If the exemption is available, investors' payments must be held in escrow by a New Mexico depository institution.

**Oregon:** Issuers must send the Oregon Division of Finance and Corporate Securities Director a prescribed sales report no later than 30 calendar days after the offering expires. The sales report must provide the total offering amount raised, how many investors bought securities through the offering, and whether funds were released to the issuer if they were held in escrow.

OIO sale proceeds must be used in accordance with: (1) the issuer's representations to investors; and (2) the disclosure documents.

## Internet portal

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

**District of Columbia:** A person acting as an Internet site operator for the offering must be an issuer, District of Columbia-licensed broker-dealer, or funding portal in compliance with all District, SEC, and FINRA requirements. Funding portals, additionally, need to make any required notice filings with the Department. The Internet site operator must comply with all

District, SEC and FINRA Internet intrastate offering requirements, as well as maintain records of the Internet site-effected offers and sales.

A "funding portal" is any person acting as an intermediary solely in a Securities Act, Section 4(6) transaction for others' accounts that does not: (1) offer investment advice or recommendations; (2) solicit purchases, sales or offers to buy the securities offered or displayed on its website or portal; (3) compensate employees, agents, or other persons for solicitations or based on the securities sales displayed or referenced on its website or portal; (4) hold, manage, possess or otherwise handle investor funds or securities; or (5) engage in other activities that the SEC, by rule, determines are inappropriate.

**Idaho:** No provisions.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption.

For the statutory section 23-19-2-2 (27) exemption, the issuer must use one or more Internet websites to facilitate an offering under the state's crowdfunding exemption. The issuer, before a securities offer or sale, must provide the Internet website operator with evidence of the issuer's being organized under Indiana law and authorized to do business in Indiana. Additionally, the Internet web site operator must: (1) register by complying with the statement filing, fee and additional information requirements in Sec. 23-19-2-2.3 but is not required to register as a broker-dealer if prescribed conditions are met including the operator's being registered as an Exchange Act broker-dealer; (2) inform the Commissioner of any changes affecting the web site's registration exemption, within 30 days after the change occurs; (3) maintain and preserve certain records; (4) restrict website access to Indiana residents (for offers and sales); and (5) may neither be an investor nor hold investor funds.

Internet web site operators required to register in Indiana must pay a \$100 fee, and furthermore: (1) Maintain a minimum \$50,000 surety bond; (2) Be a U.S. citizen or a FINRA-approved non-resident funding portal; and (3) Maintain all offering-related records for five years. Registered broker-dealers or investment advisers simultaneously serving as Internet web site operators must register with the Securities Division but are waived from paying the \$100 fee with evidence of licensure.



An issuer's or web site operator's general announcement of an offering being made under Section 23-19-2-2 (27) is not considered an "offer" under (27) if the issuer or Internet web site operator provides investors with only: (1) a statement that the issuer is conducting an offering, the Internet web site operator's name, and a link to the operator's platform; (2) the maximum amount of the offering; and (3) the issuer's name, address, phone number, web site, brief business description, and representative's email address. An issuer's general announcement of an offering being made under (27) must contain a clear statement that the offering is directed only to Indiana residents.

**Massachusetts:** Issuers must disclose to offerees and investors all material facts pertaining to the company and offering, i.e., a description of the intended use of the offering proceeds, the identity of any person the issuer retains to assist with the offering (including any Internet website operator) and the names and addresses of each website the issuer will use for the offering.

**New Mexico:** If the exemption is adopted, offerings (and all transactions comprising an offering) must be made exclusively through a New Mexico-registered crowdfunding portal.

*Broker-dealer exclusion and exam waiver.* A New Mexico-registered -and complying crowdfunding portal will be excluded from the state's "broker-dealer" definition. A New Mexico crowdfunding portal will be exempt from the state's broker-dealer and agent written examination requirements.

*Registration and restrictions.* A crowdfunding portal must:

- Be a New Mexico organized and authorized business entity that does not operate a securities secondary market;
- Operate an Internet website which: (1) displays a disclaimer reflecting that access for securities purchases or sales is limited to New Mexico residents whose residency was previously verified; (2) obtains a prescribed acknowledgment from investors before permitting their online investments; (3) provides specified information about the issuer and offering, channels through which investors can communicate with each other and the issuer, the fees charged to the issuer, and disclosures that investments are restricted to New Mexico residents; (4) provides the Securities Division with website access no less than 20 days before uploading an issuer's investment

opportunity; (5) conducts a background check of each issuer; (6) maintains and preserves prescribed records of offer and sale transactions; and (7) does not: (a) offer investment advice (or make recommendations), (b) compensate non-New-Mexico-registered persons for solicitation activities, (c) handle investor funds, or (d) affiliate, or be under common control, with, or receive a compensatory financial interest from, any of the website's crowdfunding issuers;

- File with the Securities Division no less than 20 days before going live for public use: (1) a complete *New Mexico Crowdfunding Portal Registration Form* (including schedules and supplements); (2) a Form U-4, *Uniform Application for Securities Industry Registration or Transfer*, for each to-be-registered agent; (3) a copy of the portal's articles of incorporation (or similar documents); (4) a schedule of the fees charged to the issuer; (5) a \$300 registration fee; and (6) any other Securities Division-requested information demonstrating the portal's qualifications, business repute and/or financial responsibility;
- Disclose in the portal's initial application or within 20 days of initiated proceedings or final orders, specified federal or state administrative proceedings or final orders, including criminal actions, convictions or bankruptcy petitions, against the portal's owners, affiliates, directors, managers or principals; and
- Be subject to New Mexico Uniform Securities Act criminal and/or civil or administrative liability for failure to comply with the crowdfunding portal provisions.

**Oregon:** Issuers, before offering or selling OIO securities, need to have reviewed their business plan in person with a business technical service provider.

*General requirements.* Websites used to advertise or offer OIO securities must obtain an affirmative declaration from interested persons of their Oregon residency before allowing the interested persons access to the OIO offering information. Websites advertising, offering or selling OIO securities must take reasonable steps to ensure that investors' financial and personal information is properly secured and kept private.

*Oregon businesses using their own Internet website.* Oregon businesses using their own website to facilitate an OIO offering must place the OIO advertising, offer and sale information on a separate webpage from the general public-accessible webpages.

*Third party platforms.* Third party platform providers may post OIO advertising materials, provided their platform: (1) is used to host not less than five OIOs; and (2) does not solicit, sell or effect securities transactions unless the provider is a registered broker-dealer. Third party platform providers may, however, allow investors to transmit their funds directly to the issuer or other specified persons, and collect certification and documentary evidence of interested persons' Oregon residency.

**Pennsylvania: Exemptions.** The following persons are exempt from broker-dealer, agent, investment adviser and investment adviser representative licensing: (Sec. 302, (e.3)) An Exchange Act, §3(a)(80)-defined SEC-registered "funding portal" that has its principal place of business in Pennsylvania. The funding portal, however, is subject to Department of Banking and Securities inspections under Section 304(d), as well as investigations and subpoenas under Section 510(f).

*Post-registration provisions.* The Department may examine an (e.3) funding portal, provided that the Department does not apply any Pennsylvania Securities Act or rule provision or take any administrative action which is in addition to, or different from, the SEC requirements for SEC registered funding portals.

*Investigations and subpoenas.* Nothing in the Pennsylvania Securities Act prevents the Department from investigating and bringing administrative proceedings against an (e.3) funding portal for fraud, deceit or unlawful conduct, provided that the Department does not apply any Pennsylvania Securities Act or rule provision or take any administrative action which is in addition to, or different from, the SEC requirements for SEC registered funding portals.

## Notice filing

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

**District of Columbia:** A notice must be filed, consisting of the issuer's intention to claim the exemption for an offering, accompanied by a \$250 fee. The issuer is also required to send the Commissioner a copy of the offering document to be delivered to prospective investors, containing specified information about the issuer and offering, as well as the escrow agreement with the named depository institution that will hold the investor funds.

**Idaho:** A fund must send the Department of Finance Director a print or electronic notice for approval before making any offers or sales. The notice must specify: (1) The name and address of the fund, the persons who will be involved in the fund's offers and sales, and the bank or depository institution holding the investor funds in escrow; (2) A copy of the offering documents to be provided to investors; (3) The advertising to be used to solicit fund investments; and (4) The GAAP-prepared fund balance sheet and income statement.

**Indiana:** For the statutory section 23-19-2-2 (26) exemption, the issuer must file a notice with the Indiana Securities Division on SEC Form D within thirty (30) days after the first sale in Indiana. The notice must clearly state "Indiana Only" on page one of Form D, contain a cover letter identifying that the filing is for the Section 23-19-2-2 (26) exemption, and include a \$100 fee (no filing fee is required to submit SEC-filed Form D amendments). Within ten (10) days of receiving Form D, the Commissioner may require the issuer to submit additional information about the issuer's qualifications.

For the statutory section 23-19-2-2 (27) exemption, issuers must file with the Securities Division a notice on SEC Form D which clearly states "Indiana Only" on page one, contains a cover letter identifying that the filing is for the Section 23-19-2-2 (27) exemption, and includes a \$100 fee. The exemption does not alleviate issuers from having to comply with the Act's other provisions, including anti-fraud, or with any Commissioner-ordered requirements, unless relief from compliance is expressly stated.

**Massachusetts:** Issuers must file a notice with the Secretary of State no later than 15 days after the first Massachusetts sale of a security under the exemption. The notice must indicate that the issuer is conducting an offering under this crowdfunding exemption, and contain: (1) The issuer's officers,' directors,' and control persons' names and addresses; (2) The persons to be involved in the securities offer and sale on the issuer's behalf; (3) The bank or depository institution where the issuer will deposit the invested funds; (4) A copy of the material used for the solicitation, offer or sale of the issuer's securities, including the required disclosures; and (4) A Form U2, *Uniform Consent to Service of Process*.

**New Mexico:** If the exemption is adopted, the Internet portal must file with the Securities Division no less than 20 days before going live for public use: (1) A complete *New Mexico Crowdfunding Portal Registration Form* (including

schedules and supplements); (2) A Form U-4, *Uniform Application for Securities Industry Registration or Transfer*, for each to-be-registered agent; (3) A copy of the portal's articles of incorporation (or similar documents); (4) A schedule of the fees charged to the issuer; (5) A \$300 registration fee; and (6) Any other Securities Division-requested information demonstrating the portal's qualifications, business repute and/or financial responsibility.

Issuers may not accept more than \$10,000 from any single investor unless the investor completed and filed with the portal a *New Mexico Crowdfunding Large Investment Form*.

**Oregon:** Issuers must send the Director a written notice of the OIO offering not less than 7 days before the offer or sale of any OIO security. The notice, accompanied by a \$200 fee payable to the Department of Consumer and Business Service, must contain: (1) The issuer's name and address, as well as the names and addresses of the directors', officers', principals', managing members', and shareholders', having a 20 percent (or more) interest in the issuer's business; (2) A copy of the proposed advertising materials (including a URL if a website will be used for the offering) and the name of the third party platform provider (if applicable); (3) A brief description of the business and specific project comprising the offering; (4) The offering's proposed minimum and maximum amounts; (5) A copy of the offering documents; and (6) A Director-approved form verifying the issuer's in-person meeting with a business technical service provider to review the issuer's business plan. The filing must be signed by the issuer or by the issuer's duly authorized representative verifying the information's material accuracy and completeness. The notice filing requirement may be alternatively met by the issuer submitting either a Director-approved form or all the above-required numbered items.

## 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)*

**District of Columbia:** An issuer may publish general solicitation or advertising in connection with an offering made to D.C. residents under the exemption if at least 20 calendar days before any security sale the issuer submits to the Commissioner a notice containing the offering's material terms, as well as copies of the advertising intended for use. The Commissioner must

not, however, have disallowed the exemption, by order, within 10 business days after receiving the issuer's filing.

**Idaho:** The notice filed with the Director must contain the advertising to be used to solicit fund investments.

**Indiana:** No provisions.

**Massachusetts:** The notice must include a copy of the material used for the solicitation, offer or sale of the issuer's securities.

**New Mexico:** No provisions.

**Oregon:** The notice filing must contain a copy of the proposed advertising materials (including a URL if a website will be used for the offering) and the name of the third party platform provider (if applicable).

Advertising amendments must be filed with the Director.

Advertisements, including those on a website, must clearly state that they do not constitute an offer to sell a security. The advertisements must additionally include contact information notifying interested persons how they can obtain the required disclosure information, in writing, free of charge. Advertising to the general public without regard to residency (or advertising outside this rule's scope) is prohibited.

## 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*

**District of Columbia:** The notice filing must include a copy of the offering document to be delivered to prospective investors, containing specified information about the issuer and offering, as well as the escrow agreement with the named depository institution that will hold the investor funds.

The offering document needs to: (1) Be delivered to each prospective investor at least 24 hours before any sale made under the exemption; (2) Inform investors that the securities are not federally- or state-registered, and are subject to transfer restrictions; and (3) Conspicuously display a boldface, all capital letter legend on the cover page about the offering's risks.

**Idaho:** The notice filing for the Director must include a copy of the offering documents to be provided to investors.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption.

For the statutory section 23-19-2-2 (27) exemption, the notice provided to the Commissioner must include a copy of the disclosure document given to prospective purchasers at the time of the offer.

The issuer must inform all prospective purchasers that the securities have not been registered under federal or state securities law, and are subject to limitations on resale. The issuer must conspicuously display on the disclosure document'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. The issuer must obtain from each purchaser evidence that the purchaser is an Indiana resident and, if applicable, an accredited investor.

Issuers, in their prospective investor-disseminated disclosure materials, must include the following percentages and dollar amounts for both the minimum and maximum proposed offering amounts: (1) The issuer's expected offering proceeds; (2) The issuer's intended use of the proceeds (which would include compensation paid to existing security holders); and (3) The estimated amount of proceeds to be used for each purpose.

The issuer must also provide each prospective purchaser with a disclosure document containing: (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; and (7) The name and address of any website that the issuer intends to use in connection with the offering.

**Massachusetts:** Issuers must disclose to offerees and investors all material facts pertaining to the company and offering, i.e., a description of the intended use of the offering proceeds, the identity of any person the issuer retains to assist with the offering (including any Internet website operator) and the names and addresses of each website the issuer will use for the offering. Issuers must disclose certain risk disclosures such as the fact that the offering is not registered under federal or state securities law and cannot be resold unless the securities are registered or qualify for an available exemption under federal and state securities law.

**New Mexico:** If the exemption is adopted, the offering-required Internet website must, among other things, provide specified information about the issuer and offering, channels through which investors can communicate with each other and the issuer, the fees charged to the issuer, and disclosures that investments are restricted to New Mexico residents.

**Oregon:** Each prospective investor, before being offered or sold an OIO security, must receive a single document containing written disclosures about the offering and business owner. Additionally, the issuer must inform all investors that the exempt securities are not Oregon-registered and are subject to resale restrictions. Lastly, prospective purchasers must sign an acknowledgment of the offering's risks.

## Reports, statements and other requirements

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

**District of Columbia: Annual report.** Issuers must provide their investors (free of charge) and the Department of Insurance, Securities and Banking with an annual report for each of the issuer's first three fiscal years, with the first report provided after the offering has begun. Issuers may meet this delivery requirement by making the information available on the issuers' website, provided the information is made available within 60 days after the fiscal year-end and remains available until the succeeding annual report is issued. An annual report must include, among other things, the compensation paid to each executive officer and director including bonuses, stock options and other rights.

**Idaho:** No provisions.

The notice filing must include the GAAP-prepared fund balance sheet and income statement.

**Indiana:** No provisions for the statutory section 23-19-2-2 (26) exemption.

For the statutory section 23-19-2-2 (27) exemption, the issuer must provide a *quarterly report*, free of charge, to the purchasers until none of the issued securities are outstanding. The report must contain: (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.

**Massachusetts:** *Sales report.* The issuer must submit to the Secretary of State a sales report showing, for the offering, the number and value of securities sold, as well as the number of purchasers, when the first of the following events occurs: (1) the offering completes; (2) the offering terminates; or (3) 12 months from the offering's commencement.

**New Mexico:** No provisions.

**Oregon:** *Half-year report.* Issuers, at least twice a year, must provide a report to all individuals having an outstanding security interest obtained through the OIO exemption. Issuers, to meet this requirement, must make the information available on a website, provided the information is made available within 45 days of the end of each fiscal half-year, and remains available for at least 60 days. Issuers must simultaneously file a copy of the written report with the Director when it is provided to investors. Issuers must, on request, provide shareholders with a free copy of the report in whatever format (paper, electronic) it is requested. The report must contain the amount of compensation, including stock options and bonuses, received by each director and executive officer (or person occupying a substantially similar role), and an explanation and discussion of the issuer's business operations and financial condition. The Director may require the issuer to provide periodic reports about the offering's progress.

*Sales report.* Issuers must send the Director a prescribed sales report no later than 30 calendar days after the offering expires. The sales report must provide the total offering amount raised, how many investors bought securities through the offering, and whether funds were released to the issuer if they were held in escrow.

## About the Author

*Jay Fishman* is a Senior Writer/Analyst in the Securities group of *Wolters Kluwer Law & Business*. Jay contributes regularly to the industry standard *Blue Sky Law Reporter* and is a regular contributor to *Securities Regulation Daily*. In addition, he posts state securities updates and other articles on Jim Hamilton's World of Securities blog at <http://jimhamiltonblog.blogspot.com>. Jay has been tracking, analyzing and writing about state securities laws, regulations, policy statements and interpretive opinions for over 20 years. He developed the *Blue Sky Smart Charts*, a tool for creating custom charts that compare the requirements of 54 jurisdictions on multiple topics. Jay has spoken publicly on various state securities law topics. He received a law degree from the John Marshall School of Law in Chicago and is licensed to practice law in Illinois.

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