

## §139.25. Intrastate Crowdfunding Exemption.

- (a) **General.** The State Securities Board, pursuant to the Texas Securities Act (Act), Section 5.T, exempts from the securities registration requirements of the Act, any offer or sale of securities of an issuer through a registered general dealer or a registered Texas crowdfunding portal, provided that all offers and sales made pursuant to the offering are made to Texas residents, completed solely within this state, and all the requirements of this section are satisfied.
- (b) **Issuer.**
  - (1) The issuer is a Texas entity that has filed a certificate of formation with the Texas Secretary of State and is authorized to do business in Texas and:
    - (A) At least 80% of the issuer's gross revenues during its most recent fiscal year prior to the offering are derived from the operation of a business in Texas;
    - (B) At least 80% of the issuer's assets at the end of its most recent semiannual period prior to the offering are located in Texas;
    - (C) The issuer will use at least 80% of the net proceeds of this offering in connection with the operation of its business within Texas; and
    - (D) The principal office of the issuer is located in Texas.
  - (2) The issuer is not, either before or because of the offering:
    - (A) A company that engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities;
    - (B) Subject to the reporting requirements of the Securities and Exchange Act of 1934, Section 13 or Section 15(d), 15 U.S.C. §78m and §78o(d); or
    - (C) a company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity.
- (c) **Coordination with federal securities laws.** Securities offered in reliance on the exemption provided by this section must also meet the requirements of the federal exemption for intrastate offerings in the Securities Act of 1933, Section 3(a)(11), 15 U.S.C. §77c(a)(11), and Securities and Exchange Commission Rule 147, 17 CFR §230.147.
- (d) **Offering.** The offering must be made exclusively through an Internet website operated by a registered general dealer or registered Texas crowdfunding portal. All consideration received for all sales of the securities in reliance on this exemption shall not exceed \$1 million in a 12-month period. This amount is reduced by the aggregate amount received for all sales of securities by the issuer in another offering that does not take place prior to the six month period immediately preceding or after the six month period immediately following any offers or sales made in reliance upon this section.

- (e) **Individual investments.** The issuer will not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor as defined in §107.2 of this title (relating to Definitions). The issuer must have a reasonable basis for believing that the purchaser of a security under this section is a Texas resident and, if applicable, an accredited investor.
- (f) **Escrow.** All payments for purchases of securities offered under this section are directed to and deposited in an escrow account with a bank or other depository institution located in Texas and organized and subject to regulation under the laws of the United States or under the laws of Texas, and will be held in escrow until the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan. Investors will receive a return of all their subscription funds if the target offering amount is not raised by the time stated in the disclosure statement.
- (g) **Communications.**
- (1) All communications between the issuer, prospective purchasers, or investors taking place during the offer of securities pursuant to this section must occur through the Internet website of the registered general dealer or Texas crowdfunding portal. During the time the offering appears on the Internet website, the website must provide channels through which potential purchasers and investors can communicate with one another and with representatives of the issuer about the offering. These communications must be visible to all those with access to the offering materials on the Internet website.
  - (2) Notwithstanding the foregoing, the issuer may distribute a notice within Texas limited to a statement that the issuer is conducting an offering, the name of the registered general dealer or portal through which the offering is being conducted and a link directing the potential investor to the dealer or portal's Internet website. The notice must contain a disclaimer that reflects that the offering is limited to Texas residents and offers and sales of the securities appearing on the Internet website are limited to persons that are Texas residents.
- (h) **Internet website.**
- (1) The Internet website operated by a registered general dealer or the Texas crowdfunding portal must meet the following requirements:
    - (A) the website must contain a disclaimer that reflects that access to securities offerings on the website is limited to Texas residents and offers and sales of the securities appearing on the website are limited to persons that are Texas residents;
    - (B) an affirmative representation by a visitor to the Internet website that the visitor is a resident of Texas is required before the visitor can view securities-related offering materials on the website;
    - (C) evidence of residency within Texas is required before a sale may be made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the

prospective purchaser is a Texas resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:

- (i) a valid Texas driver license or official personal identification card issued by the State of Texas;
    - (ii) a current Texas voter registration; or
    - (iii) general property tax records showing the individual owns and occupies property in this state as his or her principal residence; and
  - (D) prior to offering an investment opportunity to residents of Texas and throughout the term of the offering, the registered general dealer or registered portal shall give the Securities Commissioner access to the Internet website.
- (2) Information about the issuer and the offering posted on the Internet website, entry onto which is conditioned upon evidence of Texas residency, operated by the registered general dealer or registered portal consists of:
- (A) a copy of the disclosure statement required by subsection (i) of this section;
  - (B) a summary of the offering, including:
    - (i) a description of the entity, its form of business; principal office, history, business plan, and the intended use of the offering proceeds, including compensation paid to any owner, executive officer, director, or manager;
    - (ii) the identity of the executive officers, directors, and managers, including their titles and their prior experience and the identity of all persons owning more than 20% of the ownership interests of any class of securities of the company; and
    - (iii) a description of the securities being offered and of any outstanding securities of the company, the amount of the offering, and the percentage ownership of the company represented by the offered securities.
- (3) The information on the Internet website required by paragraph (2) of this subsection must be made available to the Commissioner and potential investors for a minimum of 21 days before any securities are sold in the offering.
- (i) **Disclosure statement.** A disclosure statement must be made readily available and accessible to each prospective purchaser at the time the offer of securities is made to the prospective purchaser on the Internet website. The disclosure statement must contain all of the following:
- (1) Material information and risk factors. All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. Guidance on the categories of information to include can be found by reviewing the small business offering

information provided by the Texas State Securities Board on its Internet website. Topics to be addressed include, but are not limited to:

- (A) general description of the issuer's business;
  - (B) history of the issuer's operations and organization;
  - (C) management of the company and principal stockholders;
  - (D) how the proceeds from the offering will be used;
  - (E) financial information about the issuer;
  - (F) description of the securities being offered; and
  - (G) litigation and legal proceedings.
- (2) Disclosures. The issuer shall inform all prospective purchasers and investors of the following:
- (A) There is no ready market for the sale of the securities acquired from this offering; it may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely;
  - (B) The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.
  - (C) In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved; and
  - (D) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on this Internet website.
- (3) Financial statements. Issuers must provide current financial statements certified by the principal executive officer to be true and complete in all material respects. If the issuer has audited or reviewed financial statements, prepared within the last three years, such financial statements must also be provided to investors.
- (j) **Notice filing.** Before using any publicly available Internet website in an offering of securities in reliance on this section, the issuer shall file with the Securities Commissioner:
- (1) Form 133.17, Crowdfunding Exemption Notice;
  - (2) the disclosure statement, required by subsection (i) of this section; and
  - (3) the summary of the offering, required by subsection (h)(2)(B) of this section.

- (k) **Resales of securities.** The issuer and all its officers, directors, and employees shall make the disclosures required by SEC Rule 147(e) and (f), 17 CFR §230.147(e) and (f). The issuer must place a legend on the certificate or other document evidencing that the securities have not been registered and setting forth the limitations on resale contained in SEC Rule 147(e), including that for a period of nine months from the date of last sale by the issuer of the securities in the offering, all resales by any person, shall be made only to Texas residents.
- (l) **Commissions and remuneration.** A commission or other remuneration shall not be paid or given, directly or indirectly, for the offer or sale of the securities unless the person receiving such compensation is registered in Texas as a dealer or agent or as a Texas crowdfunding portal. The issuer may not list its securities on the Internet website of a general dealer or portal that holds an interest in the issuer. The issuer may not compensate a general dealer or a portal by providing a financial interest in the issuer as compensation for services provided to or on behalf of the issuer. A general dealer or portal may not be affiliated with or under common control with an issuer whose securities appear on its Internet website.
- (m) **Disqualifications.**
- (1) For purposes of this subsection, “control person” means an officer; director; other person having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; or a person that owns 20% or more of any class of the outstanding securities of the issuer.
  - (2) This exemption is not available if the issuer, the issuer’s predecessors, any affiliated issuer, or any control person of the issuer:
    - (A) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
    - (B) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
    - (C) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
    - (D) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
  - (3) Paragraph (2) of this subsection shall not apply if:
    - (A) the party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

- (B) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
  - (C) the issuer establishes it did not know and exercising reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.
- (4) This exemption is not available to an issuer if:
- (A) a control person of the issuer is also a control person of another issuer that has made a securities offering in Texas within the previous 12-month period;
  - (B) a control person of the issuer is also a control person of another issuer that is concurrently conducting a securities offering in Texas; or
  - (C) the proceeds of the offering will be combined with the proceeds of a securities offering by another issuer as part of a single plan of financing.