

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, the Insurance Division (the Division) hereby amends Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

Iowa Code chapter 502, among other things, prescribes the terms and conditions under which broker-dealers, investment advisers and securities offerings operate. This amendment to Chapter 50 implements 2015 Iowa Acts, House File 632, section 3, to allow intrastate crowdfunding as an exemption under Iowa Code section 502.202 and to establish procedures for persons to conduct intrastate crowdfunding on or after January 1, 2016. The effective date of 2015 Iowa Acts, House File 632, section 3, is January 1, 2016.

Notice of Intended Action (the Notice) was published in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2172C**. Written comments were accepted through October 21, 2015, and a public hearing was held on October 21, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa. No comments were received.

This Adopted and Filed version of the amendment is identical to the version published under Notice.

The amendment is subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

This amendment will impose no fiscal impact to the State.

After review and analysis of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632, section 3.

This amendment shall become effective January 1, 2016.

The following amendment is adopted.

Adopt the following **new** rule 191—50.90(502):

191—50.90(502) Intrastate crowdfunding exemption.

50.90(1) Purpose and authority.

a. The purpose of this rule is to set out the requirements, procedures and fees relating to the registration and conduct of intrastate crowdfunding, as established by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3.

b. This rule is authorized by Iowa Code section 502.605 and Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, and is intended to implement 2015 Iowa Acts, House File 632.

50.90(2) Definitions. For purposes of this rule, the definitions in Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632, and the following definitions shall apply unless the context requires otherwise:

“*Administrator’s Web site*” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“*Issuer*” means a person that has filed a certificate of formation with the Iowa secretary of state and is authorized to do business in Iowa and has been approved by the administrator as a crowdfunding issuer pursuant to paragraph 50.90(8)“*a.*”

“*Management*” means an issuer’s directors or executive officers or the individuals who perform such functions for the issuer.

“*Portal Web site*” means the Internet Web site through which a registered Iowa crowdfunding portal provides intrastate crowdfunding offers and sales of exempt securities in Iowa.

“*Purchaser*” means an investor or person that purchases crowdfunding securities through an Iowa crowdfunding intermediary.

50.90(3) Intermediary registration. To act as a registered intermediary as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3:

a. A broker-dealer shall comply with the registration requirements of Iowa Code section 502.401; or

b. An entity that is not a broker-dealer acting as an Iowa crowdfunding portal shall register with the administrator by filing an Iowa crowdfunding portal registration, pursuant to subrule 50.90(4), and receiving approval of the registration by the administrator.

50.90(4) Iowa crowdfunding portal registration. To request administrator approval of a registration as an Iowa crowdfunding portal as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, a person shall submit all of the following to the administrator:

a. A completed Iowa crowdfunding portal registration form, available on the administrator's Web site, including all required schedules and supplemental information.

b. A completed Form U-4, available on the administrator's Web site, for each agent as defined in Iowa Code section 502.102(2).

c. Any other information requested by the administrator to determine the financial responsibility, business reputation, or qualifications of the Iowa crowdfunding portal.

d. The registration fee of \$100.

50.90(5) Registration renewal. Registration as an Iowa crowdfunding portal expires at the close of the calendar year. An Iowa crowdfunding portal may renew registration for the succeeding year by submitting to the administrator the appropriate renewal fee and a written request for renewal, including any material changes to the information submitted in the prior application. The administrator may request additional information as necessary.

50.90(6) Duties of an Iowa crowdfunding portal.

a. *Creation, maintenance and availability of portal Web site.* A registered Iowa crowdfunding portal shall create the portal Web site and shall maintain the portal Web site and make information and services available on or through the portal Web site in compliance with this rule.

b. *Background and regulatory checks.* Prior to offering securities to residents of Iowa, the Iowa crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal Web site and of each of the issuer's control persons. "Control persons" for purposes of this subrule means the issuer's officers or directors; other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20 percent of the outstanding equity of the issuer. The Iowa crowdfunding portal shall deny an issuer access to the portal Web site if:

(1) The issuer or any of its control persons are subject to a disqualification under Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, [new Iowa Code section 502.202(24)"b"(5)] or this rule;

(2) The issuer has engaged in or is engaging in or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person; or

(3) The Iowa crowdfunding portal cannot adequately or effectively assess the risk of fraud by the issuer or the issuer's potential offering.

c. *Purchaser screening.* Before a security is sold through an Iowa crowdfunding portal, the Iowa crowdfunding portal shall ensure that the purchaser does all of the following:

(1) Reviews the information provided in the offering documents.

(2) Provides to the Iowa crowdfunding portal an acknowledgment in writing from the purchaser that the purchaser received and acknowledged the disclosure statement provided to the purchaser by the issuer pursuant to paragraph 50.90(8)"b."

(3) Provides to the Iowa crowdfunding portal an affirmative representation that the purchaser is an Iowa resident.

d. *Information about the issuer and the offering.* The Iowa crowdfunding portal shall make available on the portal Web site information about the issuer and the offering. The information shall include all of the following:

(1) A copy of the disclosure statement required by paragraph 50.90(8)"b."

(2) A summary of the offering, including all of the following:

1. A description of the entity; its form of business, principal office, history, and business plan; and its intended use of the offering proceeds, including compensation paid to any owner, executive officer, director, or manager.

2. 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 percent of the ownership interests of any class of securities of the company.

3. 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.

e. Portal Web site forum. The Iowa crowdfunding portal shall maintain a forum on its portal Web site. The forum shall be available to all potential purchasers as well as to the administrator. The portal Web site shall contain a disclaimer which states that access to securities offered on the portal Web site is limited to Iowa residents and that offers and sales of the securities appearing on the portal Web site are limited to persons that are Iowa residents. Potential purchasers may ask questions and receive answers concerning the terms and conditions of the offering and may obtain any additional information which the crowdfunding issuer possesses or can acquire without unreasonable effort or expense necessary to verify the accuracy or clarify the information provided on the portal Web site.

f. Enforcement of investment limits. The Iowa crowdfunding portal shall take reasonable measures to ensure that no purchaser exceeds the sales limits set forth in Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 [new Iowa Code section 502.202(24) “c” and “d”].

g. Administrator access. The Iowa crowdfunding portal shall provide the administrator purchaser-level access at all times to the portal Web site, pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 [new Iowa Code section 502.202(24) “g”(8)].

50.90(7) Prohibited conduct for Iowa crowdfunding portals. An Iowa crowdfunding portal and individuals of the Iowa crowdfunding portal’s management:

a. Shall have no ownership or other financial interest in the crowdfunding issuer.

b. Shall not hold, manage, possess, or otherwise handle purchaser funds or securities.

c. Shall not compensate employees, agents or other persons not registered with the administrator for soliciting offers or sales of securities displayed or referenced on the Iowa crowdfunding portal.

d. Shall not hold, manage, possess or otherwise handle purchaser funds or securities.

e. Shall not be affiliated with or under common control with an issuer whose securities appear on the portal Web site.

f. Shall not hold a financial interest in any issuer offering securities on the portal Web site.

g. Shall not receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer.

50.90(8) Duties of a crowdfunding issuer:

a. Notice to administrator. Pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, at least 30 days prior to the offer of any security in this state in reliance upon the exemption provided by this rule, the crowdfunding issuer shall file with the administrator for approval a crowdfunding exemption notice application form, available on the administrator’s Web site.

(1) The following entities may not act as issuers nor may they file a crowdfunding exemption notice application form:

1. A company that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities.

2. A company that has not yet defined its business operations, that has no business plan, that 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.

(2) For a filing to be approved, the crowdfunding issuer shall demonstrate to the satisfaction of the administrator the following:

1. The crowdfunding issuer is an Iowa entity that has filed a certificate of formation with the Iowa secretary of state and is authorized to do business in Iowa;
2. The principal office of the issuer is located in Iowa;
3. At least 80 percent of the issuer's gross revenue during its most recent fiscal year prior to the offering is derived from the operation of a business in Iowa;
4. At least 80 percent of the issuer's assets at the end of its most recent semiannual period prior to the offering are located in Iowa; and
5. At least 80 percent of the net proceeds of this offering will be used by the issuer in connection with the operation of its business within Iowa.

b. Disclosure document. A disclosure document shall be made readily available and accessible on the portal Web site to each potential purchaser at the time the offer of securities is made to the potential purchaser. The disclosure document shall contain all of the following information:

(1) That no ready market exists for the sale of the securities acquired from the offering; that it may be difficult or impossible for a purchaser to sell or otherwise dispose of the investment; and that a purchaser may be required to hold and bear the financial risks of this investment indefinitely.

(2) That 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.

(3) That, in making an investment decision, purchasers shall rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved.

(4) That 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 the portal Web site.

(5) All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. Guidance on information to be included may be found by reviewing the small corporate offering registration (SCOR) information provided on the administrator's Web site. Topics to be addressed include, but are not limited to:

1. General description of the issuer's business;
2. History of the issuer's operations and organization;
3. Management of the company and principal stockholders;
4. How the proceeds from the offering will be used;
5. Target offering amounts and escrow requirements, related to subrule 50.90(11);
6. Financial information about the issuer;
7. Description of the securities being offered; and
8. Litigation and legal proceedings.

(6) Current financial statements certified by the principal executive officer to be true and complete in all material respects and in accordance with generally accepted accounting principles (GAAP). If the issuer has prepared within the prior three years audited or reviewed financial statements, those shall also be provided to purchasers.

c. Provision of sales reports. An issuer shall provide to the administrator a sales report detailing the amount of securities sold in Iowa at the close of the offering. The administrator may request additional reports at any time.

50.90(9) Compensation and fees.

a. 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 acting as an Iowa crowdfunding portal pursuant to subrule 50.90(3) or is an agent identified by the Iowa crowdfunding portal pursuant to paragraph 50.90(4) "b."

b. The issuer shall not provide a financial interest in the issuer as compensation for services provided to or on behalf of the issuer to a person acting as an Iowa crowdfunding portal pursuant to subrule 50.90(3) or as an agent identified by the Iowa crowdfunding portal pursuant to paragraph 50.90(4) "b."

50.90(10) Advertising and communications.

a. The crowdfunding issuer shall not advertise the specific details of the offering, except for notices which direct potential purchasers to the portal Web site. Notwithstanding the foregoing, the issuer may distribute a notice within Iowa that the issuer is conducting an offering of securities and that includes the name of the registered Iowa crowdfunding portal through which the offering is being conducted and a link directing the potential investor to the registered Iowa crowdfunding portal. The notice shall contain a disclaimer that the offer or sale of the security is limited to persons that are Iowa residents.

b. Communications. All communications between the issuer and potential purchasers taking place during the offer of securities pursuant to this rule shall occur through the portal Web site of the registered Iowa crowdfunding portal. During the time the securities are being offered on the portal Web site, the Iowa crowdfunding portal shall, pursuant to paragraphs 50.90(6) “*d*” and “*e*,” provide channels through which potential purchasers can communicate with one another and with the issuer about the securities being offered. These communications shall be visible to all those with access to the portal Web site.

(1) An issuer shall respond within ten days to requests for information made by potential purchasers or by the administrator through the portal Web site.

(2) If such additional information is material and not previously included on the portal Web site, the crowdfunding issuer and the Iowa crowdfunding portal shall immediately amend the information contained on the portal Web site to provide such material information.

50.90(11) Target amount, offering period, and escrow requirements.

a. The crowdfunding issuer shall establish a target offering amount and include it in the disclosure document. More information regarding the establishment of a target amount may be found on the administrator’s Web site.

b. The offering period shall not exceed 12 months from the date of filing of the notice required by paragraph 50.90(8) “*a*.”

c. All offering proceeds shall be held in an escrow account, maintained in a custodial account in a state or federal financial institution located in Iowa, until offering proceeds (less any offering proceeds from the crowdfunding issuer or its management or affiliates) totaling at least the target offering amount are received.

d. If the target offering amount is not received by the end of the offering period, the proceeds shall be returned to the purchasers within 30 days.

e. All purchasers shall have the right to withdraw their investments, without deduction of any kind, until such time as offering proceeds totaling at least the target offering amount are received and the offering proceeds are released by the qualified custodian from the escrow account to the crowdfunding issuer.

50.90(12) Offering price. The offering price of the securities offered and sold pursuant to this exemption shall be the same for all purchasers and shall not be increased during the offering period. The offering price may be lowered, but only if all previous purchasers in the particular offering are notified of the change and allowed to rescind their previous investment and participate at the lower offering price.

50.90(13) Resales of securities. On the document that is to serve as evidence of ownership, the issuer shall place a prominent notice which states that the securities have not been registered and which sets forth limitations on resale contained in SEC Rule 147(e), 17 CFR §230.147(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 Iowa residents.

This rule is intended to implement Iowa Code section 502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632.

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