

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.605(1), the Insurance Division (the Division) hereby amends Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

These amendments implement Iowa Code chapter 502, the Iowa Uniform Securities Act, which regulates the sale of securities in Iowa. The amendments do the following:

- Update the current rules to bring them into accord with recent amendments to changes in Statements of Policy adopted by the North American Securities Administrators Association, Inc. (NASAA), as indicated in the new or amended rules.
- Add notice filing requirements for federal crowdfunding offerings.
- Update notice filing requirements for issuers planning to offer and sell securities in Iowa in an offering exempt under Tier 2 of 17 CFR Section 230.251 et seq. (“federal Regulation A”) and Sections 18(b)(3) and 18(b)(4) of the Securities Act of 1933.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 19, 2017, as **ARC 3200C**. A public hearing was held on August 8, 2017, and written comments were accepted through that date. No persons attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice, except for the addition of implementation sentences to new rules 191—50.91(502) and 191—50.92(502).

The Insurance Division’s general waiver provisions of 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact on the State.

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

These amendments are intended to implement Iowa Code chapter 502.

These amendments will become effective November 15, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 50.66(14) as follows:

50.66(14) Preferred stock. A public offering of preferred stock may be allowed by the administrator if the administrator determines that the offering substantially complies,—as determined by the administrator, with the NASAA Statement of Policy Regarding Preferred Stock as adopted by the NASAA membership on April 27, 1997, and as amended March 31, 2008, and published in CCH NASAA Reports at paragraph 3004 and September 11, 2016 (<http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/SOP-Regarding-Preferred-Stock-Amended0916.pdf>).

ITEM 2. Amend subrule 50.66(18) as follows:

50.66(18) Use of proceeds. The registration of a security may be disallowed if it the administrator determines that the registration does not substantially comply,—as determined by the administrator, with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as adopted amended by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3834 and September 11, 2016 (http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/SPECIFICITY_IN_USE_OF_PROCEEDS-Amended0916.pdf).

ITEM 3. Adopt the following **new** subrule 50.66(20):

50.66(20) Promoters’ equity investment. The registration of a security may be disallowed by the administrator if the administrator determines that the registration does not substantially comply with the NASAA Statement of Policy Regarding Promoters’ Equity Investment as amended by the NASAA membership on April 27, 1997, March 31, 2008, and September 11, 2016 (http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/PROMOTERS_EQUITY_INVESTMENT-revised0916.pdf).

ITEM 4. Adopt the following **new** subrule 50.66(21):

50.66(21) Unequal voting rights. The registration of a security may be disallowed by the administrator if the administrator determines that the registration does not substantially comply

with the NASAA Statement of Policy Regarding Unequal Voting Rights as adopted by the NASAA membership on October 24, 1991, and as amended March 31, 2008, and September 11, 2016 (http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/SOP_Unequal_Voting_Rights-Amended0916.pdf).

ITEM 5. Adopt the following **new** subrule 50.66(22):

50.66(22) *Use of electronic offering documents and electronic signatures.*

a. Definitions. For purposes of this subrule, the following definitions apply.

“*Offering documents*” means documents that include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, bylaws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits.

“*Sales materials*” means materials that include only those materials to be used in connection with the solicitation of purchasers of the securities approved as sales literature or other related materials by the SEC, FINRA, and the states, as applicable.

“*Security breach*” means the unauthorized accessing, acquisition, or disclosure of any data that compromises the security or confidentiality of confidential personal information maintained by the person or business; provided, however, that for this purpose a “security breach” shall relate only to a system, technology, or process that is used in connection with or is introduced into a securities offering in order to implement the use of electronic offering documents or electronic signatures.

b. Use of electronic offering documents and subscription agreements.

(1) An issuer of securities or agent acting on behalf of the issuer may deliver offering documents over the Internet or by other electronic means, or in machine-readable format, provided all of the following requirements are met:

1. Each offering document:

- Is prepared, updated, and delivered in a manner consistent and in compliance with state and federal securities laws;
- Satisfies the formatting requirements applicable to printed documents, such as font size and typeface, and is identical in content to the printed version (other than electronic instructions or procedures as may be displayed and nonsubstantive updates to daily net asset value which can be updated more efficiently in the electronic version);
- Is delivered as a single, integrated document or file; when delivering multiple offering documents, the documents must be delivered together as a single package or list;
- Where the offering documents include a hyperlink to external documents or content, provides notice to investors or prospective investors that the document or content being accessed by the hyperlink is provided by an external source; and
- Is delivered in an electronic format that intrinsically enables the recipient to store, retrieve, and print the documents;

2. The issuer or agent acting on behalf of the issuer:

- Obtains informed consent from the investor or prospective investor to receive offering documents electronically;
- Ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic offering document has been delivered;
- Employs safeguards to ensure that delivery of offering documents occurred at or before the time required by law in relation to the time of sale; and
- Maintains evidence of delivery by keeping records of its electronic delivery of offering documents and makes those records available on demand by the securities administrator.

(2) Subscription agreements may be provided electronically by an issuer or agent acting on behalf of the issuer for the prospective investor to review and complete, provided the subscription process is administered in a manner that is similar to the administration of subscription agreements in paper form, as follows:

1. Before completion of any subscription agreement, the issuer or agent acting on behalf of the issuer shall review with the prospective investor all appropriate documentation related to the prospective investment including documents and instructions on how to complete the subscription agreement;

2. Mechanisms shall be established to ensure a prospective investor reviews all required disclosures and scrolls through the document in its entirety prior to initialing or signing; and

3. Unless otherwise allowed by the securities administrator, a single subscription agreement shall be used to subscribe a prospective investor in no more than one offering.

(3) Security breach.

1. In the event of discovery of a security breach at any time in any jurisdiction, the issuer or its agents, as appropriate, shall take prompt action to do all of the following:

- Identify and locate the breach.
- Secure the affected information.
- Suspend the use of the particular device or technology that has been compromised until information security has been restored.

• Provide notice of the security breach to any investor whose confidential personal information has been improperly accessed in connection with the security breach and to the securities administrator of each state in which an affected investor resides.

2. Compliance with subparagraph 50.66(22) “b”(3) after the discovery of a security breach or any other breach of personal information shall not substitute or in any way affect other requirements or obligations, including notification, imposed on an issuer or its agents pursuant to applicable laws, regulations, or standards.

(4) Delivery requires that the offering documents be conveyed to and received by the investor or prospective investor, or that the storage media in which the offering documents are stored be physically delivered to the investor or prospective investor in accordance with numbered paragraph 50.66(22) “b”(1) “1.”

(5) Each electronic document shall be preceded by or presented concurrently with the following notice: **“Clarity of text in this document may be affected by the size of the screen on which it is displayed.”**

(6) Informed consent to receive offering documents electronically pursuant to the first bulleted paragraph of numbered paragraph 50.66(22) “b”(1) “2” may be obtained in connection with each new offering or globally, either by the issuer or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer. Generally, a consent is considered to be informed when an investor is apprised that the document to be provided will be available through a specific electronic medium or source, and that there may be costs associated with delivery. In addition, for a consent to be informed an investor must be apprised of the time and scope parameters of the consent.

(7) Investment opportunities shall not be conditioned on participation in the electronic offering documents and subscription agreements initiative.

(8) Investors or prospective investors who decline to participate in an electronic offering documents and subscription agreements initiative shall not be subjected to higher costs—other than the actual direct cost of printing, mailing, processing, and storing offering documents and subscription agreements—as a result of their lack of participation in the initiative, and no discount shall be given for participating in an electronic offering documents and subscription agreements initiative.

(9) Entities participating in an electronic initiative shall maintain, and shall require participating underwriters, dealer-managers, placement agents, broker-dealers, or other selling agents to maintain, written policies and procedures covering the use of electronic offering documents and subscription agreements.

(10) Entities and their contractors and agents having custody and possession of electronic offering documents, including electronic subscription agreements, shall store them in a nonrewriteable and nonerasable format.

(11) Subrule 50.66(22) does not change or waive any other requirement of law concerning registration or presale disclosure of securities offerings.

c. Use of electronic signatures.

(1) An issuer of securities or agent acting on behalf of the issuer may provide for the use of electronic signatures if all of the following are true:

1. The process by which electronic signatures are obtained:

- Shall be implemented in compliance with the Electronic Signatures in Global and National Commerce Act and the Uniform Electronic Transactions Act, and, where applicable, shall include required federal disclosures;

- Shall include an appropriate level of security and assurances of accuracy;

- Shall employ an authentication process to establish signer credentials;

- Shall employ security features that protect signed records from alteration; and

- Shall provide that either the issuer or agent acting on behalf of the issuer retain, in compliance with applicable laws and regulations, electronically signed documents;

2. An investor or prospective investor shall expressly opt in to the electronic signature initiative, and participation may be terminated at any time; and

3. Investment opportunities shall not be conditioned on participation in the electronic signature initiative.

(2) Entities that participate in an electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other selling agents to maintain, written policies and procedures covering the use of electronic signatures.

(3) Documentation of an investor's election to participate in an electronic signature initiative by following the requirements of numbered paragraph 50.66(22) "b"(1)"2" may be obtained in connection with each new offering, or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.

ITEM 6. Adopt the following **new** rule 191—50.91(502):

191—50.91(502) Notice filing requirement for federal crowdfunding offerings. This rule applies to offerings made under 17 CFR Section 227, federal Regulation Crowdfunding, General Rules and Regulations, and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 (referred to collectively as "federal Regulation Crowdfunding").

50.91(1) Initial filing.

a. An issuer that offers and sells securities in this state in an offering that is exempt under federal Regulation Crowdfunding and that either (1) has its principal place of business in this state or (2) sells 50 percent or greater of the aggregate amount of the offering to residents of this state shall file with the administrator the following related to that exempt offering:

(1) A completed Uniform Notice of Federal Crowdfunding Offering form (Form U-CF, accessible through <http://www.nasaa.org/industry-resources/uniform-forms/>) or copies of all documents the issuer filed with the Securities and Exchange Commission related to that exempt offering;

(2) If the issuer is not filing on the Uniform Notice of Federal Crowdfunding Offering form, a completed consent to service of process form (Form U2, accessible through <http://www.nasaa.org/industry-resources/uniform-forms/>); and

(3) A filing fee of \$100.

b. If the issuer has its principal place of business in this state, the filing required under paragraph 50.91(1) "a" shall be filed with the administrator when the issuer makes its Initial Form C filing with the SEC under the federal Regulation Crowdfunding concerning the offering with the SEC. If the issuer does not have its principal place of business in this state but residents of this state have purchased 50 percent or greater of the aggregate amount of the offering, the filing required under paragraph 50.91(1) "a" shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than 30 days from the date of completion of the offering.

c. The initial notice filing is effective for 12 months from the date of the filing with the administrator.

50.91(2) *Renewal.* For each additional 12-month period in which the same offering described in paragraph 50.91(1)“a” is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing with the administrator the following on or before the expiration of the notice filing:

a. A completed Uniform Notice of Federal Crowdfunding Offering form (Form U-CF, accessible through <http://www.nasaa.org/industry-resources/uniform-forms/>), marked “renewal,” or a cover letter or other document requesting renewal; and

b. A renewal filing fee of \$100.

This rule is intended to implement Iowa Code section 502.202.

ITEM 7. Adopt the following **new** rule 191—50.92(502):

191—50.92(502) Notice filing requirement for Regulation A – Tier 2 offerings. This rule applies to an issuer offering and selling securities in this state in an offering exempt under Tier 2 of 17 CFR Section 230.251 et seq. (“federal Regulation A”) and Sections 18(b)(3) and 18(b)(4) of the Securities Act of 1933:

50.92(1) *Initial filing.*

a. An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following to the administrator at least 21 calendar days prior to the initial sale in this state:

(1) Either a completed Uniform Notice Filing of Regulation A – Tier 2 Offering form (accessible through <http://www.nasaa.org/industry-resources/uniform-forms/>) or copies of all documents the issuer filed with the Securities and Exchange Commission related to that Tier 2 offering;

(2) If the issuer is not filing on the Uniform Notice Filing of Regulation A – Tier 2 Offering form, a completed consent to service of process form (Form U2, accessible through <http://www.nasaa.org/industry-resources/uniform-forms/>); and

(3) A filing fee of \$400.

b. The initial filing is effective for 12 months from the date of the filing with the administrator.

50.92(2) *Renewal.* For each additional 12-month period in which the same offering described in paragraph 50.92(1)“a” is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing with the administrator the following on or before the expiration of the notice filing:

a. One of the following: the Uniform Notice Filing of Regulation A – Tier 2 Offering form (accessible through <http://www.nasaa.org/industry-resources/uniform-forms/>), a notice filing form marked “renewal,” or a cover letter or other document requesting renewal; and

b. A renewal filing fee of \$400.

This rule is intended to implement Iowa Code section 502.303.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/11/17.