

Oregon Crowdfunding Regulations Released

February, 2015

The Oregon Division of Finance and Corporate Securities (DFCS) has released rules governing the conduct of "crowdfunding" (raising money through small investments from a large number of investors, generally via the Internet) by Oregon businesses. The rules provide an exemption from the registration requirements of Oregon securities law that would otherwise apply. Oregon now joins other states which have enacted crowdfunding rules, although most are less restrictive than Oregon's rules. The SEC has published proposed federal crowdfunding rules, but they have not yet been finalized.

- In brief, the company issuing the securities must be registered and doing business in Oregon and the securities can be offered only to Oregon residents;
- The company can provide limited advertising to Oregonians on the investment;
- An investor must receive and review required disclosure documents before an investment decision becomes final;
- No single investor can invest more than \$2,500 in any one investment.

Who may use the rules: the Oregon crowdfunding rules may only be used within Oregon and by **Oregon-based businesses**. The rules require that the offering comply with the "intra-state" limitations imposed by federal securities law. In order to use the exemption: (i) the entity (the issuer making the offering) must be incorporated (if a corporation) or organized (if an LLC) under Oregon law, (ii) the business must derive at least 80 percent of its gross revenues during its most recent fiscal year prior to the offering from the operation of its business in Oregon, (iii) at least 80 percent of the issuer's assets at the end of its most recent semi-annual period prior to the offering must be located in Oregon, (iv) the issuer must intend to use at least 80 percent of the net proceeds of the offering in connection with the operation of its business in Oregon, (v) its principal office must be located in Oregon, and (vi) it must have 50 or fewer employees. The exemption is not available for "blank check" companies (i.e., development stage companies with no specific business plan or purpose) or companies that are involved in petroleum exploration or production, mining, or any other extractive industries. The rules also prohibit the use of the exemption if issuers or their affiliates have been found guilty of certain securities-related offenses.

What you may offer: an Oregon crowdfunding offering is limited to maximum proceeds of **\$250,000**. Only stock (equity in a corporation), notes (secured debt), and debentures (unsecured debt) may be offered. According to DFCS, limited liability company (LLC) membership interests do not fall within the definition of "stocks" as listed in the rules; a no-action letter from DFCS would need to be obtained in order to use a crowdfunding offering to sell LLC membership interests.

Who may invest: only **Oregon residents** may invest, and each investor may invest no more than \$2,500. The investors need not be "accredited" (\$1 million in assets; income of \$200,000 per year) as required under other securities registration exemptions. Before advertising materials are provided to any prospective investor, that investor must certify that the investor is an Oregon resident. Before an investment may be taken from an Oregon resident, the issuer must have a "reasonable documentary basis to believe that the prospective purchaser is a resident of Oregon." "Reasonable documentary basis" is defined in the rules to include (i) a current Oregon driver's license or (ii) a "document that indicates the prospective purchaser owns or occupies property in the state as his or her principal residence, such as a current voter registration, or official business mail from a state or federal agency."

Advertising materials: Advertising under the rules is limited to no more than the following information:

- The name and contact information for the issuer.
- A brief description of the general type of business of the issuer.
- Whether the securities being offered are stock, notes, debentures, or a combination.
- The total offering amount.
- A brief description of how the issuer will use the funds.
- The duration of the crowdfunding offering and the funding deadline.
- The issuer's logo.
- A link to the issuer's website or third-party platform in which the securities will be offered or sold and required disclosures made available.

The advertising must specifically state that it is not an offer of securities, but may include contact or other relevant information about how to obtain the required disclosure information. Advertising to the general public without regard to residency is prohibited.

Use of the Internet: The securities offered may be advertised on an issuer's website or through a third-party platform website. Care must be taken with advertising in order to ensure that the offering complies with both Oregon and federal securities laws. Since a qualifying Oregon crowdfunding offering may only be made to Oregon resident, a prospective investor must make an "affirmative declaration" as to residency before viewing any advertising or offering materials.

What you must do:

- The issuer must meet with a "**business technical service provider**" (BTSP) to review its business plan. BTSPs are organizations that have been specifically organized to provide assistance to small businesses. DFCS has approved "Small Business Development Centers" and designated economic development districts to act as BTSPs. "Small Business Development Center" means a community college-based and state university-based center which helps small businesses develop and improve skill in such areas as marketing management and capital formation. In addition, other nonprofit accelerators and incubators may apply to be BTSPs; so far, DFCS has not approved any of these entities to act as BTSPs, but anticipates doing so within the 90 days from the 1/15/2015 enactment date of the rules.
- All **advertising materials** and **offering materials** must be **filed** with DFCS at least seven days prior to use. Along with the advertising materials, a notice must be provided to DFCS that includes: (i) the names and addresses of all officers, directors, principals, and 20% owners, (ii) a brief description of the business and the specific project or product that is the reason for the offering, (iii) the minimum and maximum amounts to be raised, (iv) a copy of all offering documents, and (v) certification that the issuer has met with a BTSP.
- Complete the offering **within 12 months**, unless an extension is allowed by DFCS upon application.
- Provide **offering disclosure materials**. The disclosure materials must identify: (i) the principals, officers and directors, including their "experience and qualifications," (ii) the business and the specific reason for the offering, (iii) a discussion in plain language of the significant factors material to the offering, including those that make the offering speculative or risky, (iv) the minimum and maximum sought to be raised, and (v) the

terms of the securities offered, including, in the case of shares of stock, the "percentage of ownership represented by a single share, or the total value of the Oregon business implied by the offering price." The issuer must state that the securities being offered are not registered with DFCS and are subject to resale restrictions. There are also certain mandatory legends that must be included.

Compliance with Federal law: all offerings of securities must comply with both state and federal law. In order for an Oregon crowdfunding offering to comply with federal law, it must be made solely to Oregon residents on behalf of Oregon-based businesses (see the "80%" rules described above). No filing with the SEC is required for compliance with the federal intra-state exemption.

Particular care must be taken with advertising: prospective issuers must take particular care with the form and content of advertising. The rules define an "offer" of crowdfunding or Oregon Intrastate Offering (OIO) securities to include: "every attempt to dispose of an OIO security for value. The publication of any information and statements, and publicity efforts – including any advertising materials – in advance of or in connection with an OIO that contributes to the conditioning of the public mind or arousing public interest in the issuer or is intended to arouse public interest investing in the issuer or purchasing its securities—even though it does not contain an express 'offer'—is an 'offer' of OIO securities for purposes of this definition." Inadvertently making an offer could result in an untimely filing of the offering with DFCS.

Prohibition on commissions: No person may receive a commission, fee or other remuneration for offering, soliciting or selling any crowdfunding security.

With the new rules, Oregon joins a growing number of other states that have embraced crowdfunding, although Oregon's rules are more restrictive than is generally the case in other states.