

CLIENT ADVISORY:

MASSACHUSETTS ADOPTS LIMITED CROWDFUNDING EXEMPTION

Overview

On January 15, 2015, the Massachusetts Securities Division adopted new regulations which permit so-called “crowdfunding” securities offerings by some Massachusetts companies to Massachusetts residents. The stated purpose in adopting these new regulations is to foster job creation by providing small and early stage Massachusetts companies easier access to capital with which to fund growth. The exemption includes offerings conducted over the internet, where a company is seeking a relatively small amount of money from a large number of investors. Offers and sales of securities include both debt and equity securities, which may be sold to both accredited and non-accredited investors.

Eligible Company Issuers

In order to be eligible, the corporation, limited liability company or limited partnership offering the securities must be a business entity organized under Massachusetts law and maintain its principal place of business in Massachusetts. However, the exemption is not available to all Massachusetts business entities. The new rules state that the exemption will not be available to (i) hedge funds, blind pool offerings, investment companies or similar entities; (ii) companies without a specific business plan or purpose or which are organized to enter into a merger or acquisition of an unidentified company; or (iii) a company whose officers or directors are “bad actors” who have engaged in fraud or violation of securities laws in the past.



It is also important to note that the offering must be conducted in full compliance with Rule 147 and certain other provisions of federal securities laws. Rule 147 is not a commonly used exemption and compliance is somewhat subjectively determined. Also, failure to comply with Rule 147 will disqualify the offering from qualification under the Massachusetts Crowdfunding exemption.

Dollar Limitations

The exemption allows companies to issue up to \$1 million of securities per year. That amount may be increased to \$2 million per year if the company provides audited financial statements prepared by an independent CPA firm.

There are also dollar limitations that apply to Massachusetts residents. If a person’s income or net worth (excluding the person’s primary residence) are both less than \$100,000, that person’s maximum investment is the greater of \$2,000 or 5% of their annual income or net worth.

Investors whose income or net worth (excluding their primary residence) is at least \$100,000 may invest up to 10% of their income or net worth, not to exceed an investment of \$100,000.

Disclosure Requirements

Companies must also meet the disclosure requirements of the Massachusetts crowdfunding exemption and Rule 147, including but not limited to: (a) a description of the issuer and its business; (b) the address, telephone number and the website address of its principal office; (c) use of proceeds of the

offering; (d) risk factors including any pending litigation or other legal proceedings; (e) information regarding officers, directors and persons owning 10% or more of the company and (f) any web site that will be used in connection with the offering of the securities.

No commissions can be paid to anyone who is not a registered securities broker dealer.

If we can provide any additional information, please contact your regular PLDW attorney or William F. Miller, telephone: 508-771-1360 or 401-824-5100; email: wmiller@pldw.com.

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William F. Miller is a Partner with Pannone Lopes Devereaux & West LLC and a member of the Corporate & Business Law Team. He is a highly skilled attorney with more than 30 years of experience who focuses his practice on corporate and business law matters, including mergers and acquisitions, angel, venture capital and private equity financing, commercial contract matters, intellectual property protection and licensing, and entity and investment fund formation. Mr. Miller frequently advises early stage technology companies, manufacturers, service and distribution companies as well as investors in such companies.



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