

Crowdfunding Arrives in Wisconsin

A new avenue for raising capital is now available for companies in Wisconsin. Companies formed and operating in Wisconsin that are willing to limit offers to Wisconsin residents can now use crowdfunding to raise capital. With its new crowdfunding law, Wisconsin has joined a handful of other states to adopt state-based crowdfunding while we continue to wait for the Securities and Exchange Commission (the SEC) to adopt final rules implementing the crowdfunding provisions in the JOBS Act nationwide.¹

Wisconsin's crowdfunding provisions are contained in amendments to the Wisconsin Uniform Securities Law that took effect on June 1, 2014.² These amendments also expanded a number of existing registration exemptions that should provide greater flexibility in raising capital in the state.

Crowdfunding in Wisconsin

Two new provisions of the Wisconsin Uniform Securities Law permit crowdfunding in securities offerings. The more traditional crowdfunding provision is in Wisconsin Statutes Section 551.202(26). It has the following requirements:

- The issuer of the security must be a business entity organized under Wisconsin law and authorized to do business in Wisconsin.
- The transaction must qualify for the federal intrastate offering exemption in Section 3(a)(11) of the Securities Act of 1933 and Rule 147 thereunder.
- There is a limit on sales in reliance on the exemption of \$1 million, which increases to \$2 million if audited financial statements are available. The limit applies to all sales made in reliance on the exemption within 12 months of the first offer or sale. The limit excludes sales to accredited investors, certified investors or institutional investors as well as to officers, directors, partners, trustees and individuals occupying similar status or performing similar functions, or to a person owning 10% or more of the outstanding shares of any class of securities of the issuer.
- No more than \$10,000 may be accepted from any single purchaser unless the purchaser is an accredited investor or certified investor.
- The offering must be made exclusively through one or more Internet sites that are registered with the Wisconsin Division of Securities. Wisconsin Statutes Section 551.205(1)(b) contains the requirements for a site to register.
- At least ten days before the commencement of the offering, the issuer must file

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- a notice with the Wisconsin Division of Securities that includes a copy of a disclosure statement that must be provided to investors and an escrow agreement with a bank or other financial institution chartered in Wisconsin that will hold the offering proceeds until the minimum offering amount specified in the disclosure statement is raised. The disclosure statement also must contain a deadline for the minimum offering amount to be raised. The escrow agent must notify the Wisconsin Division of Securities of the receipt of payments.
- The issuer must not be an investment company or a private fund or other type of entity that would be an investment company but for the exclusions in Section 3(c) of the Investment Company Act.
 - The disclosure to investors must include specific cautionary language and each purchaser must provide a specific acknowledgment (which in most cases should be placed in the subscription or purchase agreement for the offering).
 - The issuer must obtain evidence from each purchaser that the purchaser is a resident of Wisconsin and, if applicable, is an accredited investor or certified investor.
 - The issuer may not have offered or sold a different class or series of security pursuant to Wisconsin Statutes Section 551.202(26) or (27) during the immediately preceding 12-month period.
 - The "bad actor" disqualification in federal Rule 506(d) applies.
 - The issuer must provide quantity reports to all investors while the securities remain outstanding.
 - There are no express limits on how investors can be solicited, so it appears that an issuer can solicit investors and direct them to the Internet site where the offering is being conducted. However, the intrastate offering exemption in Section 3(a)(11) and Rule 147 does limit the ability to make offers to investors who are not residents of the state in which the issuer is located.

Wisconsin Statutes Section 551.202(27) provides an alternative crowdfunding vehicle in Wisconsin. Many of its requirements are the same as Section 551.202(27), including the issuer being organized in Wisconsin, the issuer meeting the requirements of the federal intrastate exemption, the limits on the offering size and the investment amount per investor, and compliance with the "bad actor" disqualification in federal Rule 506(d). Key differences include the following:

- There is no requirement to use a registered Internet site to conduct the offering.
- General solicitation or general advertising is prohibited unless it has been permitted by the Wisconsin Division of Securities.

- All funds received from investors must be deposited into a bank or other financial institution chartered in Wisconsin, and all funds must be used in accordance with representations made to investors. Note that this requirement appears to be something less than the escrow account requirement under Section 551.202(26).
- Before the 101st offer of the security, the issuer must file a notice with the Wisconsin Division of Securities. The statute does not contain any specific disclosure requirements for investors other than notifying investors that the securities have not been registered under the Wisconsin Uniform Securities Law and providing notice of the limitations on resale under Rule 147.

Other Amendments to Wisconsin Registration Exemptions

The amendments include a number of other changes to increase the flexibility of registration exemptions for offerings in Wisconsin.

- Exemption for Offers and Sales to Sophisticated Investors. Wisconsin Statutes Section 551.202(13) exempts offers or sales to institutional investors and accredited investors. The amendments expand the exemption to also cover certified investors, but only as long as the offering meets the requirements for the federal intrastate exemption under Section 3(a)(11) and Rule 147, and the issuer complies with "bad actor" disqualification provision in federal Rule 506(d).
- Exemption for Offers to Not More than 100 Residents. Wisconsin Statutes Section 551.202(14) exempts offerings to not more than 25 persons in Wisconsin (excluding institutional investors and accredited investors) subject to certain conditions. The amendments create a new exemption in Section 551.202(14m) that exempts any transaction pursuant to an offer directed to not more than 100 residents of Wisconsin, excluding institutional investors, accredited investors and certified investors. Other requirements for the new exemption include that the issuer be a business entity organized in Wisconsin with its principal office located in the state and a majority of its full-time employees working in the state, no general solicitation or general advertising unless it has been permitted by the Wisconsin Division of Securities, and compliance with the "bad actor" disqualification provision in Rule 506(d).
- Exemption for Not More than 100 Investors. Wisconsin Statutes Section 551.202(24) exempts an offering if, after completion of the offering, not more than 25 persons (excluding institutional investors and accredited

investors) hold the issuer's outstanding securities subject to certain conditions. The amendments create a new exemption in Section 551.202(24m) that exempts an offering if, after completion of the offering, not more than 100 persons directly or indirectly hold all of the issuer's outstanding securities, excluding institutional investors, accredited investors and certified investors. Other requirements for the new exemption include that the issuer be a business entity organized in Wisconsin with its principal office located in the state and a majority of its full-time employees working in the state, there is no general solicitation or general advertising unless it has been permitted by the Wisconsin Division of Securities, and compliance with the "bad actor" disqualification provision in Rule 506(d).

- Definition of Certified Investor. Most of the exemption provisions in the amendments reference a new category of investors called "certified investors," who are essentially individuals with net worth or income somewhat lower than the thresholds to be an accredited investor. A certified investor must have (1) net worth individually or jointly with a spouse of at least \$750,000, including the value of the individual's primary residence, or (2) individual income in excess of \$100,000, or joint income with a spouse in excess of \$150,000, in each of the two most recent years and a reasonable expectation of reaching the same income level in the current year.

¹ See our [November 14, 2013](#) alert for more detail on the SEC's proposed rules for crowdfunding. Crowdfunding is also permitted through sites that are limited to accredited investors as well as through crowdfunding sites that raise money other than through the offer and sale of securities.

² The amendments were adopted in 2013 Wisconsin Act 52 on November 7, 2013.

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