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## **Minnesota Enacts Equity Crowdfunding Legislation**

While businesses and investors still wait for the U.S. Securities and Exchange Commission's long delayed rules on equity crowdfunding under the JOBS Act, Minnesota has enacted its own equity crowdfunding legislation, MNvest, which provides for offering of equity securities via an online portal which can be a broker dealer, the issuer itself, or another entity approved for that purpose by the Minnesota Department of Commerce. Like the current intrastate exemption, the securities must be available only to Minnesota residents. The new legislation will be codified at Minn. Stat. 80A.461. It has an effective date of June 14, 2015 – the day after enactment – but its operation will be subject to rules to be developed and published by the Minnesota Department of Commerce. Some important elements of the new law are:

- The offering must meet the requirement for the federal exemption for intrastate offerings.
- The sale of the securities must be conducted *exclusively* through an online MNvest portal (emphasis added).
- The issuer can raise no more than \$2 million in a twelve month period if it has audited or reviewed financial statements, and no more than \$1 million if it does not have audited or reviewed financials.
- At least 80 percent of the proceeds of the offering must be used in connection with operation of the issuer's business within Minnesota.
- No single purchaser may purchase more than \$10,000 in securities in connection with the MNvest offering unless the investor is an accredited investor.
- All funds for purchase must be held in escrow until the minimum amount stated in the offering is reached. The escrow agent must be a bank, trust company, savings bank, savings association or credit union authorized to do business in Minnesota. Portal operators are explicitly prohibited from serving as escrow agents.
- The MNvest issuer and the portal operator may engage in solicitation and advertising of the offering provided the advertisement is clear that it is not the offering and is for informational purposes only and that the offering and sale are made through a portal to Minnesota residents only. The advertisement may contain other information like anticipated uses of funds to be raised and a link to the issuer's website.

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- The portal must conspicuously display a statement whose exact wording is contained in the statute and which makes clear that no agency of government has made any determination of the merits and risks of the investment. The portal must obtain a written or electronic certification from a potential investor that the investor is a Minnesota resident who understands and can bear the risk of loss in the securities and also understands that there is at time offering no market for the secondary sale of the securities.

The legislation also contains procedures for application to become a portal, details on portal operator's responsibility to keep purchaser information private, and a "bad actor" disqualification which disqualifies from a MNvest offering any issuer having any director or executive officer who has been subject to listed disqualifying events .

This exemption remains quite small with its \$2 million limit. It may be that potential offerors may up their anticipated offering to take advantage, instead, of the new rules for Regulation A+ (see Small Business Notes for March 2015).

## **Employer Motivation Not Knowledge Is Enough To Establish A Disparate – Treatment Claim Says U.S. Supreme Court**

In a long awaited decision that parses the language of the Civil Rights Act, the U.S. Supreme Court, on June 1, 2015, held that to prevail in a disparate treatment case a job applicant needs only to show that the applicant's need for an accommodation was motivating factor in an employer's decision not to hire, not that the employer has actual knowledge of the need for accommodation. The case [*Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*] involved a job applicant, Samatha Elauf, who as a practicing Muslim regularly wore a head scarf. Ms. Elauf applied for a retail sales job at an Abercrombie and Fitch outlet that had a "no caps" policy for all its sales people. At the interview she did not mention or ask for any need for Abercrombie to accommodate her religious practice by allowing wear of the head scarf.

Using Abercrombie's ordinary system for rating applicants, the interviewer gave her a rating which qualified her for hiring. The interviewer, however, was concerned that her head scarf might violate the stores "no caps" policy and sought guidance on this question from the district manager, Johnson. The interviewer told Johnson that the interviewer believed that Elauf wore the head scarf because of her religious belief. Johnson replied that wearing the head scarf would violate the Abercrombie & Fitch policy, as would all head wear, religious or not, and he directed the interviewer not to hire Elauf.

The EEOC sued Abercrombie on Elauf's behalf for violation of Title VII of the Civil Rights Act. The district court granted summary judgment and damages to Elauf but on appeal the Tenth Circuit Court of Appeals reversed and gave summary judgment to

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Abercrombie holding that an employer cannot be held liable for failure to accommodate religious practice of an applicant or employee until the applicant or employee provides the employer with actual notice of the need for an accommodation.

In an 8-1 decision the U.S. Supreme Court reversed. The Court's language reflects its thinking: "[T]he intentional discrimination provision prohibits certain *motives*, regardless of the state of the actor's knowledge. Motive and knowledge are separate concepts. An employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his *motive*. Conversely, an employer who acts with the *motive* of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed....Thus the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions."

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