

# Small Business Notes

Minnesota Department of Employment and  
Economic Development (MN DEED)

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## **U.S. Securities and Exchange Commission Issues Final Rules on Federal Crowdfunding Exemption.**

### **Minnesota Department of Commerce Publishes Proposed Rules for Minnesota's MNVest Crowdfunding Offerings.**

On October 30, 2015 the U.S. Securities and Exchange Commission (SEC) released its final rules on the federal crowdfunding exemption from federal securities registration authorized by the JOBS Act of 2012. The rules come after a more than year long review by the SEC of more than four hundred eighty five comments on the rules in proposed form. The rules are effective 180 days after their publication in the November 16, 2015 *Federal Register* [80 FR 71387]. In addition to the *Federal Register* site the rules may be viewed at the SEC's website [www.sec.gov](http://www.sec.gov) (Click on "Regulations," then "Final Regulations." The rules are release 33-974.)

A number of questions remain for both potential issuers of securities under the crowdfunding exemption and potential offering portals (called "intermediaries" in the rules).

- Given the limit of \$1 million that can be raised in a crowdfunding offering, will potential issuers find the costs of the rules' disclosure requirements too expensive? Those rules require, for example, GAAP prepared financial statements; reports on the progress of offering subscriptions, and an annual report. These are in addition to the initial required disclosures on the issuer, use of proceeds, capital structure, risk factors, management's analysis, and other factors.
- Given that a major purpose of the crowdfunding exemption is to open up investments to non-accredited investors, and given that the rules permit investments at low levels, will an issuer be interested in having many small, unsophisticated minority shareholders?
- Will the rules' requirement of an investor's acknowledgement of risk be adequate to inform inexperienced and unsophisticated investors of the risks of loss, the non-transferability of the securities, and the fact that no market for the securities exists and may not develop?

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- Will a network of funding portals develop given their exposure under the new rules to suits by private parties? Will the requirements for portals that are not broker dealers, including the requirement that they be members of FINRA (which has its own rules on crowdfunding transactions) be too burdensome to allow for non broker dealer portals?

On November 30, 2015 the Minnesota Department of Commerce published proposed rules for the MNVest crowdfunding exemption authorized by 2015 Minnesota legislation (Comments due by December 31, 2015). The rules can be read at 40 *State Register* 619 through 625.

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- Unlike the federal rules, the proposed Minnesota rules permit an issuer to become a portal. Would such effort –presumably for a one time offering– be worth the effort?
- The SEC has proposed amending Rule 147 which appears to make difficult using state crowdfunding initiatives since Rule 147 limits both offers and sales to instate residents and so appears to restrict the use of the Internet for offerings. Will the procedures of the Minnesota statute to verify residency be adequate if the amendment is not (soon) successful?

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