

Small Business Notes

Minnesota Department of Employment and
Economic Development (DEED)

U.S. Securities and Exchange Commission (SEC) Adopts New Rules Amending Regulation D and Intrastate Offerings

In this issue:

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On October 26th the SEC adopted new amendments to rules affecting securities offerings under sections of Regulation D and intrastate offering exemptions from registration.

The amended rules increase the offering amount limitation under Rule 504 from \$1 million in a twelve month period to \$5 million in a twelve month period. The other provision of Rule 504 (e.g., no limitation on number of investors, filing of Form D with the SEC, and general solicitation or advertising permitted only in limited circumstances) will remain.

The amended rules also repeal Regulation D, Rule 505 which allows offerings of up to \$5 million in a given year but limits the offering to accredited investors or no more than 35 non-accredited investors.

In addition, amendments were made to Rule 147 (allowing intrastate offerings) to keep that rule as a safe harbor for issuers making offerings relying on current state law exemptions (e.g., the Minnesota MNvest crowdfunding offerings).

A new Rule 147A is substantially identical to Rule 147 except that it allows offers to be made to out-of-state residents and for the offering company to be organized or incorporated in another state. This would accommodate small offerors located in Minnesota but incorporated in another state like Delaware.

Both the new Rule 147A and the amended Rule 147 would require:

- That the issuer have its principal place of business in-state;
- That issuers use the rules' new "reasonable belief" standard for determining the residence of purchasers at the time of the sale of the securities;
- That issuers obtain a written residency statement from each purchaser;
- That for a period of six months from the sale by the issuer to the purchaser there is a limit on resale of the securities to persons residing in the state of the offering.

In addition the rules provide for an integration safe harbor for prior sales of securities made by the issuer under another securities law provision and for certain subsequent offerings after the completion of the Rule 147 or 147A offering.

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