

NOTICE OF REQUEST FOR PUBLIC COMMENTS REGARDING A PROPOSED NASAA MODEL RULE AND UNIFORM NOTICE FILING FORM FOR FEDERAL CROWDFUNDING OFFERINGS

May 16, 2016

The North American Securities Administrators Association (“NASAA”) is requesting public comments on a proposed model rule and uniform notice filing form. The proposed model rule requires a notice filing for issuers conducting a federal crowdfunding offering in those states where either the issuer has its principal place of business or where 50% or greater of the aggregate amount of the offering has been purchased by residents. The proposed uniform notice filing form simplifies the filing process for issuers by incorporating documents filed on EDGAR and including consent to service of process language within the form.

Comments are due by June 17, 2016. To facilitate consideration of comments, please send comments to Michael Pieciak (Michael.Pieciak@vermont.gov), Chair of the Corporation Finance Section; Faith Anderson (Faith.Anderson@dfi.wa.gov), Chair of the Small Business/Limited Offerings Project Group; Anya Coverman (nasaacomment@nasaa.org), NASAA Deputy Director of Policy and Associate General Counsel; and Mark Stewart (nasaacomment@nasaa.org), at the NASAA Corporate Office. We encourage, but do not require, comments to be submitted by e-mail. Hard copy comments may be submitted at the address below.

NASAA Legal Department
Mark Stewart, Counsel
NASAA
750 First Street, NE, Suite 1140
Washington, DC 20002

Background

Title III of the JOBS Act of 2012 created a new exemption from registration for crowdfunding offerings under Section 4(a)(6) of the Securities Act of 1933.¹ The exemption allows sales of up to \$1,000,000 during a 12-month period, imposes investment limits for investors, and requires the offering to be made through either a registered broker or funding portal. The SEC adopted final rules under this new exemption on October 30, 2015 and those rules go into effect on May 16, 2016.

The JOBS Act preempted state filing and fee requirements with respect to offerings conducted under the federal crowdfunding exemption except by a state that is either the principal place of business of the issuer or where purchasers of 50% or greater of the aggregate amount of the offering reside. To facilitate state notice filings in a uniform manner, a proposed model notice

¹ 15 USC 77d(a)(6)

filing rule and a proposed uniform notice filing form has been drafted that may be adopted in those states that want to require notice filings.

Proposed Model Rule

The proposed model rule would implement a notice filing requirement for crowdfunding offerings made in reliance on Regulation Crowdfunding. In summary, the rule would require the filing of a short form with basic information about the issuer and the offering along with the payment of a filing fee. A consent to service of process is incorporated within the proposed model form. As an alternative to filing the proposed uniform notice filing form, the proposed model rule permits issuers to file all materials filed with the SEC in connection with the offering, including the Form C, together with a completed consent to service of process on Form U-2. The rule also sets forth renewal and amendment requirements for federal crowdfunding offerings.

The proposed model rule for crowdfunding offerings is attached as Exhibit A.

Proposed Model Notice Filing Form

Accompanying this memo is the proposed federal crowdfunding uniform notice filing form that states may allow issuers to file in connection with these offerings. In drafting this form, an attempt was made to simplify the filing process for issuers by:

- Drafting a form that may be filed in multiple jurisdictions with checkboxes for each jurisdiction to which the filing is directed;
- Incorporating documents filed on EDGAR by reference; and
- Including consent to service of process language in the signature block of the form so that a separate Form U-2 will not be necessary.

The proposed model form for federal crowdfunding offerings is attached as Exhibit B.

Exhibit A

Proposed Model Rule for Federal Crowdfunding Offerings

Note: The text of the model rule set forth below is intended to provide model language that states may adopt to require notice filings in connection with crowdfunding offerings made under federal Regulation Crowdfunding. While states are preempted from requiring the registration of such offerings, a state that either is home to the principal place of business of the issuer or in which residents have purchased 50% or greater of the aggregate offering amount may require the filing of all documents filed with the SEC, together with a consent to service of process and the fee that would otherwise be required in the absence of preemption, solely for notice purposes. State authority to adopt such a rule may derive from statutory provisions under state law that authorize notice filings in connection with offerings of covered securities or offerings under Section 18(b)(4).

Rule _____. Notice Filing Requirement for Federal Crowdfunding Offerings

The following provisions apply to offerings made under federal Regulation Crowdfunding (17 CFR §227) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:

(1) Initial filing.

- (a) An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding, and that either (1) has its principal place of business in this state or (2) sells 50% or greater of the aggregate amount of the offering to residents of this state, shall file the following with the [Securities Administrator]:
 - i. A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission;
 - ii. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding Offering form; and
 - iii. The filing fee prescribed by [code section].
- (b) If the issuer has its principal place of business in this state, the filing required under paragraph (a) shall be filed with the [Securities Administrator] when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission. If the issuer does not have its principal place of business in this state but residents of this state have purchased 50% or greater of the aggregate amount of the offering, the filing required under paragraph (a) shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than fifteen (15) days from the date of completion of the offering.
- (c) The initial notice filing is effective for twelve (12) months from the date of the filing with the [Securities Administrator].

(2) **Renewal.** For each additional twelve-month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew [the unsold portion of] its notice filing by filing the following on or before the expiration of the notice filing:

- (a) A completed Uniform Notice of Federal Crowdfunding Offering form marked “renewal” and/or a cover letter or other document requesting renewal; and
- (b) The renewal fee prescribed by [code section] [to renew the unsold portion of securities for which a filing fee has previously been paid].

[(c) If the amount of securities subject to the notice filing is being increased, the fee prescribed by [code section] to cover the increase in the amount of securities to be offered.]

[(3) **Amendment.** An issuer may increase the amount of securities offered in this state by submitting a completed Uniform Notice of Federal Crowdfunding Offering form marked “amendment” or other document describing the transaction and a fee calculated pursuant to [code section] to cover the increase in the amount of securities being offered prior to selling additional securities in this state.]

Note: The bracketed language may be used by those states that require a notice filing fee that is scaled based on the amount offered in that state.

Exhibit B

UNIFORM NOTICE OF FEDERAL CROWDFUNDING OFFERING

Form U-CF

Pursuant to Section 18(b)(4)(C) of the Securities Act of 1933

Item 1. Issuer's Identity

Name of Issuer <input type="text"/>	Previous Name(s) <input type="checkbox"/> None <input type="text"/> <input type="text"/> <input type="text"/>	Entity Type (Select one) <input checked="" type="radio"/> Corporation <input type="radio"/> Limited Partnership <input type="radio"/> Limited Liability Company <input type="radio"/> General Partnership <input type="radio"/> Business Trust <input type="radio"/> Other (Specify) <input type="text"/>
Jurisdiction of Incorporation/Organization <input type="text"/>		
Year of Incorporation/Organization: <input type="text"/>		
CIK Number for Issuer: <input type="text"/>		

Item 2. Principal Place of Business

Street Address Line 1 <input type="text"/>	Street Address Line 2 <input type="text"/>	
City <input type="text"/>	State/Province/Country <input type="text"/>	ZIP/Postal Code <input type="text"/>
Phone No. <input type="text"/>	Website <input type="text"/>	

Item 3. Contact Person

Directions: Provide the name and contact information for the person to contact with questions about the filing of this notice.

Last Name <input type="text"/>	First Name <input type="text"/>	Firm Name <input type="text"/>
Street Address Line 1 <input type="text"/>	Street Address Line 2 <input type="text"/>	
City <input type="text"/>	State/Province/Country <input type="text"/>	ZIP/Postal Code <input type="text"/>
Phone No. <input type="text"/>	Fax <input type="text"/>	E-mail <input type="text"/>

Item 4. Information about the Offering

Type of filing: New Notice Amendment Renewal Total offering amount \$

SEC File Number for this offering: Date of first sale:

Does the issuer intend this offering to last more than one year? Yes No

Has 50% or more of the aggregate offering amount in this offering been sold to residents of a state other than the state where the issuer has its principal place of business? Yes No

If yes, indicate the state where 50% or more of the offering amount has been sold:

Item 5. Identification of Intermediary

Name of funding portal or broker

CRD Number

Jurisdiction of principal place of business

Identification of electronic crowdfunding platform (e.g. website address or app.)

Item 6. Related Persons

Directions: Provide contact information for all executive officers, directors, and promoters.

Last Name

First Name

Middle Name

Street Address Line 1

Street Address Line 2

City

State/Province/Country

ZIP/Postal Code

Relationship(s): Executive Officer Director Promoter

Clarification of Response (if Necessary)

Last Name

First Name

Middle Name

Street Address Line 1

Street Address Line 2

City

State/Province/Country

ZIP/Postal Code

Relationship(s): Executive Officer Director Promoter

Clarification of Response (if Necessary)

Last Name

First Name

Middle Name

Street Address Line 1

Street Address Line 2

City

State/Province/Country

ZIP/Postal Code

Relationship(s): Executive Officer Director Promoter

Clarification of Response (if Necessary)

Identify additional related persons by checking this box and attaching Item 6 Continuation Page(s).

Item 7. Sales Compensation

Directions: Enter the requested information for each person that has been or will be paid directly or indirectly any commission or other similar compensation in cash or other consideration in connection with sales of securities in the offering, including finders. If more than five persons to be listed are associated persons of the same broker or dealer, enter only the name of the broker or dealer, its

CRD number and street address, and the jurisdictions in which the named person has solicited or intends to solicit investors.

Recipient Recipient CRD Number No CRD Number

(Associated) Broker or Dealer (if applicable) (Associated) Broker or Dealer CRD Number No CRD Number

Street Address Line 1 Street Address Line 2

City State/Province/Country ZIP/Postal Code

Jurisdictions of Solicitation: All States

AL AK AZ AR CA CO CT DE DC FL GA HI ID
 IL IN IA KS KY LA ME MD MA MI MN MS MO
 MT NE NV NH NJ NM NY NC ND OH OK OR PA
 RI SC SD TN TX UT VT VA WA WV WI WY
 Puerto Rico U.S. Virgin Islands

Identify additional person(s) being paid compensation by checking this box and attaching Item 7 Continuation Page(s).

Item 8. Signature and Submission

By filing this notice, the issuer hereby represents that:

- All documents previously or subsequently filed with the Securities and Exchange Commission under the file number for this offering indicated above are hereby incorporated by reference with this notice.
- The issuer hereby irrevocably appoints the Securities Administrator or other legally designated officer of the jurisdiction(s) in which this notice is filed as its agent for service of process upon whom may be served any notice, process or pleading in any action or proceeding against it arising out of, or in connection with, the sale of securities and the undersigned does hereby consent that any such action or proceeding against it may be commenced in any court of competent jurisdiction and proper venue within the jurisdiction in which this notice is filed by service of process upon the officers so designated with the same effect as if the undersigned was organized or created under the laws of that jurisdiction and have been served lawfully with process in that jurisdiction. It is requested that a copy of any notice, process, or pleading served hereunder be mailed to:

Name

Address

- The issuer has ensured that any funding portal, broker-dealer, issuer-dealer, or securities salesperson licensing requirements have been satisfied in those jurisdictions where it is required.
- The issuer has included the required filing fees (if any) with the submission of this notice to each jurisdiction indicated.

The issuer has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Signature

Name of Signer (Print)

Title

Date

Item 6. Related Persons, Continuation Page

Directions: Provide contact information for all executive officers, directors, and promoters. Attach additional continuation pages if necessary.

Last Name	First Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Street Address Line 1	Street Address Line 2	
<input type="text"/>	<input type="text"/>	
City	State/Province/Country	ZIP/Postal Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Relationship(s):	<input type="checkbox"/> Executive Officer <input type="checkbox"/> Director <input type="checkbox"/> Promoter	
Clarification of Response (if Necessary)		
<input type="text"/>		

Last Name	First Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Street Address Line 1	Street Address Line 2	
<input type="text"/>	<input type="text"/>	
City	State/Province/Country	ZIP/Postal Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Relationship(s):	<input type="checkbox"/> Executive Officer <input type="checkbox"/> Director <input type="checkbox"/> Promoter	
Clarification of Response (if Necessary)		
<input type="text"/>		

Last Name	First Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Street Address Line 1	Street Address Line 2	
<input type="text"/>	<input type="text"/>	
City	State/Province/Country	ZIP/Postal Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Relationship(s):	<input type="checkbox"/> Executive Officer <input type="checkbox"/> Director <input type="checkbox"/> Promoter	
Clarification of Response (if Necessary)		
<input type="text"/>		

Last Name	First Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Street Address Line 1	Street Address Line 2	
<input type="text"/>	<input type="text"/>	
City	State/Province/Country	ZIP/Postal Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Relationship(s):	<input type="checkbox"/> Executive Officer <input type="checkbox"/> Director <input type="checkbox"/> Promoter	
Clarification of Response (if Necessary)		
<input type="text"/>		

Item 7. Sales Compensation, Continuation Page

Directions: Enter the requested information for each person that has been or will be paid directly or indirectly any commission or other similar compensation in cash or other consideration in connection with sales of securities in the offering, including finders. If more than five persons to be listed are associated persons of the same broker or dealer, enter only the name of the broker or dealer, its CRD number and street address, and the jurisdictions in which the named person has solicited or intends to solicit investors. Attach additional continuation pages if necessary.

Recipient Recipient CRD Number No CRD Number

(Associated) Broker or Dealer (if applicable) (Associated) Broker or Dealer CRD Number No CRD Number

Street Address Line 1 Street Address Line 2

City State/Province/Country ZIP/Postal Code

Jurisdictions of Solicitation: All States

AL AK AZ AR CA CO CT DE DC FL GA HI ID
 IL IN IA KS KY LA ME MD MA MI MN MS MO
 MT NE NV NH NJ NM NY NC ND OH OK OR PA
 RI SC SD TN TX UT VT VA WA WV WI WY
 Puerto Rico U.S. Virgin Islands

Recipient Recipient CRD Number No CRD Number

(Associated) Broker or Dealer (if applicable) (Associated) Broker or Dealer CRD Number No CRD Number

Street Address Line 1 Street Address Line 2

City State/Province/Country ZIP/Postal Code

Jurisdictions of Solicitation: All States

AL AK AZ AR CA CO CT DE DC FL GA HI ID
 IL IN IA KS KY LA ME MD MA MI MN MS MO
 MT NE NV NH NJ NM NY NC ND OH OK OR PA
 RI SC SD TN TX UT VT VA WA WV WI WY
 Puerto Rico U.S. Virgin Islands

Attach additional Item 7 continuation pages if necessary.