



## Michigan Intrastate Crowdfunding and More

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*Foster Swift Business & Corporate Law Report*

May 30, 2014

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### **PRACTICE AREAS**

Business & Tax

On Dec. 30, 2013, Gov. Snyder signed Public Act 264 of 2013 into law (the "**Act**"). The Act makes two important changes to the Michigan Uniform Securities Act ("**MUSA**"). First, the Act permits intrastate crowdfunding. Second, the Act expands Michigan's intrastate offering rule (MUSA §202(1)(n)) to allow offers and sales to 50 Michigan residents (up from 25 Michigan residents under the old law).

### **INTRASTATE CROWDFUNDING**

The Act makes crowdfunding legal in Michigan. What does that mean for your business? Let's start with the basics.

Federal and state law prohibit a business from selling a security unless: (A) the security is registered at the federal and state level, or (B) an exemption from registration is applicable. Registration is expensive, so nearly all businesses try to satisfy an exemption from registration. Historical exemptions have made it difficult for businesses to receive investment from "non-accredited" investors and flat out prohibit "general solicitation" (i.e., public advertising of the investment, including advertising on the Internet). Those historical difficulties, however, have recently been eased.

The Act amends MUSA to provide an exemption from securities registration for intrastate crowdfunding. Crowdfunding is the process of raising small amounts of investment from a large number of people. The Act permits an issuer to sell securities to non-accredited investors and utilize general solicitation if specific (but reasonable) requirements are satisfied. Specifically, under the Act, an issuer will be deemed to satisfy an exemption from securities registration if the requirements noted below are satisfied.

- **Requirement 1.** The issuer must be incorporated or organized in the State of Michigan.



- **Requirement 2.** Each investor must be a Michigan resident and the offer must meet the requirements for the federal exemption for intrastate offerings under Section 3(a)(11) of the Securities Act of 1933. In general, this means that the issuer must do most of its business in the State of Michigan, but additional restrictions apply.
- **Requirement 3.** The total amount raised by the issuer cannot exceed \$1 million (or \$2 million if the issuer has audited financial statements).
- **Requirement 4.** The issuer does not accept more than \$10,000 from any single "non-accredited" investor (accredited investors can invest more).
- **Requirement 5.** The issuer provides a disclosure statement to the investors that includes information about the issuer, including, but not limited to: (i) the issuer's business plan, (ii) the intended use of the offering proceeds, (iii) the identity of the issuer's management, (iv) the terms and conditions of the securities being offered, (v) a disclosure that the securities being offered are not registered under federal or state securities law and that the securities being offered are subject to limitations on transfer or resale, (vi) the risks of investing, and (vii) the minimum and maximum amount of the securities being offered.
- **Requirement 6.** All proceeds from the offering are directed to and held by a bank located in the State of Michigan pursuant to an escrow agreement, which specifies that the proceeds will be: (i) released to the issuer only when the capital raised from all investors is equal to or greater than the minimum target offering amount, or (ii) returned to the investors if the minimum target offering amount is not reached.
- **Requirement 7.** At least 10 days before an offer or sale is made, the issuer must file a notice with the State of Michigan that: (i) states that the issuer intends to conduct an offering in reliance on the exemption, (ii) encloses a copy of the disclosure statement provided to potential investors, and (iii) encloses a copy of the escrow agreement. The issuer must pay a \$100 filing fee in connection with the notice.
- **Requirement 8.** The issuer cannot pay commissions to an officer or director of the issuer (or other individual performing similar functions) for offering or selling securities unless such person is a registered broker-dealer or investment adviser.
- **Requirement 9.** If the offering and sale of the securities are made through a website, then the: (i) website operator must file a written notice with the State of Michigan, and (ii) issuer and the website operator must keep records of the offers and sales of securities made through the website.
- **Requirement 10.** Each investor acknowledges in writing that the (i) investment is risky, (ii) offering has not been reviewed or approved by any state or federal securities commission, (iii) securities are illiquid and that no market exists for the securities, (iv) investor may be subject to tax on his or her share of taxable income and losses of the issuer, (v) investor is a Michigan resident, and (vi) investor cannot resell the securities to a non-Michigan resident within 9 months after the closing of the offering.
- **Requirement 11.** The term of the offering does not extend 12 months after the date of the first offer.
- **Requirement 12.** The issuer must provide quarterly reports to the investors that contain information regarding the business operations and officer/director compensation.



If these requirements are satisfied, then the offer and sale of the securities will be exempt from federal and state securities laws, even if general solicitation is utilized and sales are made to "non-accredited" investors.

#### **EXPANDED INTRASTATE OFFERING EXEMPTION**

The Act also amended MUSA §202(1)(n), which is another exemption available to issuers engaged in intrastate offerings.

MUSA §202(1)(n) provides an exemption from registration for a sale or an offer to sell securities if: (A) there are not more than 50 purchasers in the State of Michigan during any consecutive 12 months, other than "institutional investors," (B) there is no general solicitation used in connection with the offer to sell or sale of the securities, (C) no commission is paid to a person (other than a registered broker-dealer) for soliciting a purchaser, and (D) the issuer believes that all of the purchasers (other than institutional investors) are purchasing for investment.

The Act expanded the MUSA §202(1)(n) intrastate offering exemption by increasing the number of purchasers from 25 to 50. The definition of "institutional investor" has also been expanded. As noted above, persons that qualify as "institutional investors" are excluded from the 50 purchaser limitation. Under prior law, "institutional investors" included certain plans, trusts, and organizations with total assets in excess of \$10 million. The Act lowered that amount to \$2.5 million.