

Alabama Crowdfunding Exemption Town Hall Meetings

Alabama Securities Commission

- Comprised of Seven Members
 - The Attorney General – State of Alabama
 - The State Superintendent of Banks
 - The Commissioner of Insurance
 - Two Attorneys – Appointed by the Governor from list recommended by the Alabama State Bar.
 - Two CPAs - Appointed by the Governor from list recommended by the Alabama Board of Certified Public Accountants.

The Alabama Securities Act

The purpose of the Alabama Securities Act is to guard against securities fraud and to preserve legitimate capital markets.

The Alabama Securities Act

- (1) By requiring the registration of securities, or exemption from registration, prior to public offer or sale;
- (2) By requiring the registration of dealers, agents, investment advisers, and investment adviser representatives and by regulating their activities;
- (3) By providing civil remedies for violations of the Act; and
- (4) By providing administrative, civil and criminal penalties for those who violate the Act.
- (5) Through Investor Education



What is a Sale?

- **SALE:** It is defined in Section 8-6-2(8): "Sale" and "sell" **includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.** "Offer" or "offer to sell" includes every attempt to offer or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

What is a Offer?

- SALE: It is defined in Section 8-6-2(8): "Sale" and "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. **"Offer" or "offer to sell" includes every attempt to offer or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.**

Section 8-6-4 - Registration of securities — Required; exceptions

It is unlawful for any person to offer or sell any security in this state unless:

- (1) It is registered under this article;
- (2) The security is exempt from registration under Section 8-6-10; or
- (3) The transaction is exempt under Section 8-6-11.

Crowdfunding Exemption

8-6-11(a)(14)

Registration of securities - Exempt transactions.

- (a) Except as hereinafter in this section expressly provided, Sections 8-6-3 through 8-6-9 shall not apply to any of the following transactions:
- (14) An offering of securities conducted solely in this state to residents of this state in which:
- a. The issuer of the security shall be a for-profit corporation or other for-profit entity, or business cooperative with its principal place of business in the State of Alabama and registered with the Secretary of State.



All issuers must be careful to direct communications aimed at soliciting investment only to residents of the state of Alabama. Any solicitation directed in a manner which becomes readily accessible by a person in another state may cause the offering to be in violation of section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147

“Use of the Internet would not be incompatible with a claim of exemption under Rule 147 if a portal implements adequate measures so that offers of securities are made only to persons resident in the relevant state or territory. In the context of an offering conducted in accordance with state crowdfunding requirements, such measures would include, at a minimum, disclaimers and restrictive legends making it clear that the offering is limited to residents of the relevant state under applicable law, and limiting access to information about specific investment opportunities to persons who confirm they are residents of the relevant state (for example, by providing a representation as to residence or in-state residence information, such as a zip code or residence address). Of course, any issuer seeking to rely on Rule 147 for the offering also would have to meet all the other conditions of Rule 147.” [April 10, 2014] (Question 141.04 SEC Q&A relating to the use of third party internet portals)

8-6-11(a)(14) cont.

- b. The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147. As such, **securities must be offered to and sold only to persons who are residents of the state of Alabama** at the time of purchase. Prior to any offer or sale pursuant to this exemption, the seller shall obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe that such investor is a resident of the State of Alabama.
- c. The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption **shall not exceed one million dollars (\$1,000,000)**, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.
- d. The issuer shall not accept more than five thousand dollars (\$5,000) from any single purchaser unless the purchaser is an **accredited investor** as defined by Rule 501 SEC regulation D, 17 C.F.R. 230.501.

Accredited Investors

[Rule 501 of Regulation D](#) An accredited investor is;

1. a bank, insurance company, registered investment company, business development company, or small business investment company;
2. an employee benefit plan, within the meaning of the Employee Retirement Income Security Act...;
3. a charitable organization with assets exceeding \$5 million;
4. **a director, executive officer, or general partner of the company selling the securities;**
5. a business in which all the equity owners are accredited investors;
6. **a natural person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase, excluding the value of the primary residence of such person;**

Accredited Investors, continued

- 7. a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year; or**
- 8. a trust with assets in excess of \$5 million, not formed to acquire the securities offered, whose purchases a sophisticated person makes.**

8-6-11(a)(14), Cont.

- e. The issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security.
- f. A commission or remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under the act.
- g. All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Alabama, and all the funds shall be used in accordance with representations made to investors.

h. Not less than 10 days prior to the use of any general solicitation or within 15 days after the first sale of the security pursuant to this exemption (provided no general solicitation has been used prior to such sale), whichever occurs first, the issuer shall provide a notice to the commission in writing or electronically on Form CF1. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of the following persons:

1. The issuer;
2. Officers, directors and any control person of the issuer;
3. All persons who will be involved in the offer or sale of securities on behalf of the issuer; and
4. The bank or other depository institution in which investor funds will be deposited.

- i. The issuer shall not be, either before or as a result of the offering:
 - 1. An investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d); or
 - 2. An investment adviser as defined in Section 8-6-2(18) of this code, nor a person who otherwise provides investment advice as a service or for a fee.

- j. The issuer shall inform all purchasers that the securities have not been registered under the act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under Sections 8-6-4 through 8-6-11 of this code. In addition, the issuer shall make the disclosures required by subsection (f) or SEC Rule 147, 17 C.F.R. 230.147(f).

- k. This exemption shall not be used in conjunction with any other exemption under the act except the exemption to institutional investors in Section § 8-6-11(a)(8) of this code and for offers and sales to controlling persons of the issuer. Sales to controlling persons shall not count toward the limitation in paragraph (14)c.
- l. This exemption shall not be available if the issuer, or any of its officers, controlling people or promoters is subject to a disqualifier enumerated in Section 8-6-9 of this code.
- m. Nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions at Section 8-6-17 of this code, nor shall such exemption be construed to provide relief from any other provisions of this article other than as expressly stated.

- n. Every notice of exemption provided for in paragraph h. above shall be accompanied by a nonrefundable filing fee of \$150. Such filing fee shall be deposited in the Alabama Securities Commission Fund in the State Treasury to be drawn upon by the commission for its use in administration of this article.

But the Securities Commission may by rule or order, as to any security or transaction of any type of security or transaction, withdraw, further condition or expand this exemption.

Notice of Crowd-Funding Exemption
Pursuant to Section 8-6-11(a)(14) Code of Alabama, 1975.

Please fill out this form and submit to:

Alabama Securities Commission
Registration Division
PO Box 304700
Montgomery, AL 36130-4700
(334) 242-2984

(Please note that all sections of this notice must be completed and the filing fee (\$150.00), required at Section 8-6-11(a)(14)n.. *Ala Code*, 1975, must be submitted to perfect this notice filing.)

Name of Issuer: _____

Address of Issuer: _____

Phone Number: _____

(Please note that pursuant to §8-6-11(a)(14)a.. *Ala Code*, 1975, the issuer's principal place of business must be located within the State of Alabama and registered with the Secretary of State, State of Alabama.)

Contact Person for this filing:

Name of Contact: _____

Address: _____

Phone Number: _____

Email Address: _____

1. Does the issuer intend to utilize any type of public advertising or any type of general solicitation? (Please circle one and note the time filing requirements)

Yes: *this notice must be filed **10 days prior** to the use of any such advertising or general solicitation.*

No: *this notice must be filed no later than **15 days after** the first sale of the security pursuant to this exemption.*

2. Date sales are to commence, or the date sales commenced if no general solicitation or advertising were employed: _____

3. Total Amount of Funds to be raised by this Offering: _____

(Offering may not exceed \$1,000,000, less any amount received for sales of the issuer's securities in the preceding twelve months. §8-6-11(a)(14)c., Ala Code, 1975)

4. Name of Bank or Depository Institution in which investor funds shall be deposited:

Name of Bank: _____

Address of Issuer: _____

(All funds must be deposited in a bank or depository institution authorized to do business in Alabama. §8-6-11(a)(14)a..q Ala Code, 1975)

5. Please provide the following for all officers, directors and any control person of the Issuer:

Name: _____

Position: _____

Address: _____

Phone: _____

Email: _____

Name: _____

Position: _____

Address: _____

Phone: _____

Email: _____

Name: _____

Position: _____

Address: _____

Phone: _____

Email: _____

Name: _____

Position: _____

Address: _____

Phone: _____

Email: _____

Name: _____
Position: _____
Address: _____

Phone: _____
Email: _____

Name: _____
Position: _____
Address: _____

Phone: _____
Email: _____

6. Please provide the following if you intend to pay any type of compensation, either directly or indirectly, to an agent or Broker Dealer or any other person for the solicitation of these securities:

Name of Broker Firm: _____
Agent Name: _____
CRD # _____
Phone: _____
Email: _____

Please note that no one person may invest more than \$5000.00 unless such person qualifies as an "Accredited Investor" as that term is defined by Rule 501 of SEC Regulation D, 17 C.F.R. 230.501. Essentially, an "Accredited Investor" is any person who:

1. is a director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, or
2. Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000, or
3. Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

The securities offered pursuant to this exemption must be offered and sold only to persons who are residents of the State of Alabama at the time of purchase. **The issuer must obtain, prior to any offer or sale, documentary evidence from each prospective purchaser that such investor is a resident of the State of Alabama.** The issuer shall maintain records of such documentation for a minimum of five years, which may include of copy of the investors driver's license, passport, current voter registration card, or other legal document which indicates that the investor is an Alabama resident.

The issuer must reasonably believe that all purchasers of the securities offered and sold pursuant to this exemption are being purchased for investment and not for sale in connection with a distribution of the security.

The issuer shall inform all purchasers, prior to purchase, that the securities have not been registered under the Alabama Securities Act and may not be resold unless the securities are registered or they qualify for an exemption from registration.

Nothing in this exemption provides the issuer any relief from the Anti-Fraud provisions of the Alabama Securities Act as set forth at § 8-6-17.

Securities Fraud: Section 8-6-17

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to:

- (1) Employ any device, scheme, or artifice to defraud;
- (2) Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(1) Employ any device, scheme, or artifice to defraud;

- Ponzi Schemes, fictitious investment accounts, and outright lies.

(2) Make any untrue statement of a material fact or to **omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;**

- The seller fails to fully disclose the risks or other negative information necessary for the purchaser to make an informed decision.
- No such thing as “Caveat Emptor”, or “let the buyer beware”. Must make full and adequate disclosure of any and all material information.
- A lie or exaggeration which is made to entice a person to enter into the securities transaction.

(3) Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

- Relates to a legitimate business or idea.
- Business is operated in a manner not disclosed or intentionally as to unjustly enrich the operator.

What is Material?

- The basic test of materiality is “whether a reasonable man would attach importance to the fact disclosed or not disclosed in determining his choice of action in the transaction in question.”
- *SEC v. Texas Gulf Sulfur Company*, 401 F.2d 833 (2nd Cir. 1968).

Willful Conduct

A person acts willfully if it was his/her conscious objective or desire to engage in the conduct or cause the result--not that it was the person's conscious desire or object to violate the law, nor that the person knew that he/she was committing fraud in the sale of the security.