

The Legal Strategist

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TEXAS ESOTERIC FACTS

For those new to the concept, crowdfunding refers to a method of raising money from a large number of small investors, typically through an online portal or platform, in order to finance a new business venture. Entrepreneurs who raise money through crowdfunding often use social media to share their efforts, which increases traffic to their crowdfunding page. This method of fundraising allows the exemption for “non-accredited” investors to be able to participate in an “offering” without meeting the stringent criteria of the SEC.

If Texas was allowed to secede it would be the 46th most populated nation and have the 13th largest economy, which is comparable to Australia.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office.

Scott Barrett

The Dallas Cowboys haven't played football in Dallas since 1971.

FEATURE TOPIC: TEXAS CROWDFUNDING

The Texas State Securities Board has enacted an exemption for “crowdfunding” of small businesses. This exemption provides that any issue of securities offered only to investors residing within Texas, where the issuer is a resident of Texas, is exempt from registration under the federal securities laws.

Eligible businesses may raise up to \$1 million per 12 month period:

An issuer must be a Texas entity to be eligible for the crowdfunding exemption, and it may only offer securities in Texas. The eligibility and residency requirements mirror those set forth in Rule 147, enacted pursuant to the federal intrastate offering exemption. In order to meet the residency requirements, an issuer must be able to demonstrate the following:

- ◆ The issuer must be organized in and have its principal place of business in Texas;
- ◆ At least 80% of the issuer's gross revenues during its most recent fiscal year prior to the offering must be derived from the operation of a business in Texas;
- ◆ At least 80% of the issuer's assets at the end of its most recent semiannual period prior to the offering are located in Texas; and
- ◆ At least 80% of the net proceeds of the offering must be used in connection with the operation of the issuer's business within Texas.

Non Accredited investors may contribute up to \$5,000 per offering:

- ◆ Investments pursuant to the proposed crowdfunding exemption are limited to \$5,000 per investor, unless the investor is an accredited investor as defined in Rule 501 under the Securities Act of 1933. If an issuer wishes to raise larger amounts from accredited investors, it must verify the investor's accredited status first. Investor funds must be placed in escrow until the specified minimum offering amount has been raised.
- ◆ In addition, only investors resident in the State of Texas may participate in crowdfunding offerings. Investors will be required to submit a Texas driver's license number, voter registration card or property tax records to prove that they are Texas residents. Before purchasing any securities, prospective investors must confirm their acknowledgment of certain customary disclaimers.

Offerings must be carried out online through a registered dealer or crowdfunding portal:

- ◆ The responsibility for verifying eligibility of investors lies with each online dealer or crowdfunding portal. Each site must review any documents submitted by a prospective investor and confirm the investor's residency in Texas before allowing access to the portal. In addition, crowdfunding portals must conduct background and regulatory checks on each issuer and each of the issuer's directors, officers, and other control persons to determine eligibility with the crowdfunding exemption and the potential risk of fraud

Issuers are required to submit limited disclosures:

- ◆ Issuers raising money through crowdfunding must claim an exemption from registration by filing new Form 133.17 with the State Securities Board. Issuers must post a summary of the offering and an offering disclosure on a registered crowdfunding portal or dealer site at least 21 days before any securities may be sold. The disclosure must include risk factors, a description of the issuer's business, operations, and management, a description of the securities and other material information. However, the required disclosure will be brief compared to disclosures required for larger offerings.
- ◆ All communications with investors must occur on the portal via open message boards accessible to other prospective investors. Issuers are permitted to distribute a limited notice stating that the issuer is conducting an offering and providing a link to the crowdfunding portal that will host the offering, but the notice may only be distributed to investors located in Texas. This provision limits the possibility of advertising crowdfunding offerings through social media.
- ◆ Notably, issuers relying on the crowdfunding exemption will not be required to provide reviewed or audited financial statements unless audited financial statements are already available for any of the three years prior to the offering. Issuers may instead have their CEO certify that the issuer's financial statements are accurate and complete as of the date of the offering.