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## IOWA UNIFORM SECURITIES ACT IOWA CODE CHAPTER 502

### SECURITIES REGISTRATION AND NOTICE FILING REQUIREMENTS, SECURITIES EXEMPTIONS AND TRANSACTIONAL EXEMPTIONS

Iowa's Uniform Securities Act, Iowa Code Chapter 502, (the "Act") contains numerous provisions regarding securities defined as "federal covered securities," including some notice filing requirements. The Act and applicable administrative regulations require a notice filing for any Intrastate Crowdfunding offering and certain other types of offerings. Information about some of the most commonly encountered requirements, including the Act's provisions regarding a transactional exemption for the offer or sale of securities to certain specified investors under subsection 502.202(13) of the Act and the transactional exemption for limited offerings of securities commonly known as "private placements" under subsection 502.202(14) of the Act are summarized below.

#### I. DISCLOSURE REQUIREMENTS

Failure to provide an investor with material information sufficient to make an informed investment decision can result in a violation of the anti-fraud and/or civil liability provisions of the Act. Information concerning the issuer and the securities offering must be made available to all prospective purchasers prior to their purchase. In registered offerings this disclosure is provided in a disclosure document typically called a "prospectus". The name of a disclosure document used in securities offerings exempt from registration is usually something different such as "private placement memorandum."

In many cases, the disclosure requirements may be satisfied by using Form U-7, called the "SCOR FORM" that was developed for small company offerings of securities that are exempt from federal registration. Form U-7 may be used as a guide/format to create a disclosure document for a securities offering that is exempt from registration with the bureau. For registered offerings of securities, the requirements and disqualifications for permission to use Form U-7 are set forth in 191 IAC 50.61.

The use of electronic offering documents and subscription agreements is permitted if done in accordance with **191 IAC 50.66(22)**

#### II. EXEMPT TRANSACTIONS WITH SPECIFIED INVESTORS

**Iowa Code subsection 502.202(13)** and **191 IAC 50.88** grant an exemption from registration to an issuer's sale of securities when sold to any of the following:

- 1) An institutional investor, such as a bank, savings institution, trust company, insurance company, investment companies as defined under the Investment Company Act of 1940, pension or profit sharing trusts, and other financial institutions or institutional buyers or broker dealers, so long as the purchaser is acting for itself or in a fiduciary capacity.
- 2) A federal covered investment adviser.
- 3) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or any director, executive officer, or general partner of a general partner of that issuer.
- 4) Any natural person whose individual net worth, or joint net worth with that person's spouse at the time of the purchase exceeds \$1 million, excluding the value of the primary residence of the natural person.
- 5) Any natural person who had an individual income in excess of \$200,00 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.
- 6) Any venture or seed capital company. For this purpose, a venture or seed capital company is a corporation, partnership or association that has been in existence for five years or whose net assets exceed \$250,000 and whose primary business is investing in developmental stage companies or "eligible small business companies" as that term is defined in the regulations of the Small Business Administration.

These purchases do not count for purposes of the thirty-five (35) purchaser limitation imposed under section 502.202(14) and the two exemptions may be utilized together.

### III. EXEMPT LIMITED OFFERINGS AND PRIVATE PLACEMENTS

**Iowa Code subsection 502.202(14)** and **191 IAC 50.88** provide an exemption from registration to an issuer's sale of securities when the sales transactions are limited as follows:

- 1) The transaction is limited to not more than thirty-five Iowa purchasers during any twelve consecutive months, other than those designated in 502.202(13). The thirty-five purchaser limitation is based on a moving time period that changes and is re-established on a monthly basis.
- 2) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities. Under **191 IAC 50.86**, the Bureau may enter an order to deny or revoke this exemption if a public advertisement is used to promote the sale of securities relying on this exemption or the offering is part of a registered offering under the federal Securities Act of 1933.
- 3) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer or agent registered with the Bureau for soliciting a prospective purchaser in Iowa. The "commissions or other remuneration" language is interpreted broadly and includes, but is not limited to, sales commissions, finders' fees, discounts, and other direct or indirect remuneration on account of the sale of the securities.

- 4) The issuer reasonably believes that all the purchasers in this state, other than those designated in 502.202(13) are purchasing for investment. Issuers are urged to obtain a letter evidencing investment intent from each purchaser in Iowa. Resale of private placement securities, called “**restricted securities**” may occur after the security holder has met this investment intent requirement. A twelve month holding period is normally deemed to be a “safe-harbor” for the purpose of determining investment intent. If a resale of restricted securities is made pursuant to a bona fide unforeseen change of circumstances or if the restricted securities have been held for a sufficient length of time to establish that the original purchase was for investment rather than for resale, it may be presumed that the investment intent requirement is met. Any resale of private placement securities must be pursuant to an available exemption or the securities must be registered.

The sale of an issuer’s exempt securities under this exemption must be part of a single issue. The phrase “part of a single issue” refers to a securities concept known as integration where multiple, separate offerings may be integrated and deemed to be a single offering by the Bureau. Generally, offerings are integrated and considered part of a single issuance of securities when the sales involve the same class of securities, the same type of consideration is being received, the sales are being made at or about the same time, the sales are being made for the same general purpose and are part of a single plan of financing.

A filing with the Bureau is required when commissions or other remuneration is to be paid. Otherwise, this exemption is “self-executing,” which simply means that the issuer is not required to file any documents with the Bureau or pay a filing fee unless required under a separate provision such as the Regulation D notice filing required by 191 IAC 50.80.

If the purchaser is a legal entity, such as a trust, partnership or corporation, it is probable that every respective beneficiary, partner and shareholder, thereof, will be counted as a separate, additional purchaser if the legal entity was organized for the specific purpose of acquiring the securities being offered. However, it is the Bureau’s position that a husband and wife will be counted as one purchaser even if they purchase the securities separately.

#### **IV. NOTICE FILING REQUIREMENTS**

##### **A. Investment Company Securities Offerings.**

**191 IAC 50.60** sets forth the notice filing requirements for investment companies registered under the Investment Company Act of 1940 or that has a currently filed registration statement under the Securities Act of 1933. Prior to the initial offer of a federal covered security in Iowa, the investment company must submit to the Iowa Securities and Regulated Industries Bureau (the “Bureau”) a filing fee of \$400.00 with a notice of filing on Form NF and a consent to service of process.

Effective January 1, 2019, the notice filings shall be submitted electronically through the North American Administrators Association’s electronic filing depository system at [www.efdnasaa.org](http://www.efdnasaa.org).

Amendments to notice filings are made on Form NF and are effective upon receipt by the Bureau. Withdrawal or termination of a notice filing is made by filing Form NF or providing the administrator with notice of the withdrawal or termination in a similar format. An amendment, withdrawal, or termination is effective upon receipt by the administrator of the required notice and all fees.

The initial filing is effective for 12 months and may be renewed annually. Notice filings that are not

renewed by the annual renewal date shall expire.

**B. Federal Regulation D.**

**502.302(3)** and **191 IAC 50.81** require an issuer offering and selling securities in Iowa that are a covered security pursuant to Section 18(b)(4)(F) of the Securities Act of 1933, 15 U.S.C. §77r(b)(4)(F), must submit a filing fee of \$100, or if late \$250, to the Bureau and an electronic filing including Form D as promulgated by the securities and exchange commission, including the appendix and consent to service of process, through [www.efdnasaa.org](http://www.efdnasaa.org), under “filers and issuers.” The filing is due no later than 15 days after the first sale of the security in Iowa.

**C. Agricultural Cooperative Associations Issuing Notes or Other Evidence of Indebtedness.**

In order to qualify as exempt securities, if an agricultural cooperative association issues notes or other evidences of indebtedness a notice filing is required with the Bureau in accordance with **502.201(8B)(b)** and **191 IAC 50.82** thirty days before the security is initially sold that includes the following:

- 1) The name of the issuer, the date of organization of the issuer, and the name of a contact person.
- 2) A description of the class of persons to whom the offer of securities will be made. If the offering is being made to certain persons or within a specified area, a description of such offerees or area shall be included.
- 3) A description of the type of security to be offered which shall include information regarding interest and interest payment schedules, default, redemption, reinvestment, and other facts regarding the rights of holders that the issuer deems material to the offering.
- 4) Financial statements of the agricultural cooperative association including a balance sheet as of the end of its most recent year, prepared under generally accepted accounting principles and accompanied by an independent auditor’s report and any other audited financial statements of the association that are available. However, if the filing by the agricultural cooperative association is made within 90 days of the end of its most recent fiscal year and current financial statements are not yet available, the filing may consist of an audited balance sheet and other available audited financial statements for the previous fiscal year, prepared under generally accepted accounting principles and accompanied by an independent auditor’s report. The agricultural cooperative association shall file an audited balance sheet and any other available audited financial statements for the most recent fiscal year end as soon as they become available, but in no event later than 90 days after the end of its fiscal year.

**D. Nonprofit Securities Exemption.**

- 1). **Church extension funds or similar organizations making continuous offerings.**

Pursuant to **502.201(7)** and **191 IAC 50.87(1)**, a notice filing is required that includes an offering circular, a consent to service of process, all sales and advertising literature and the issuer must otherwise substantially comply with the NASAA statement of Policy Regarding Church Extension Funds as adopted by the NASAA membership on April 17, 1994 and amended by the NASAA membership on April 18, 2004. Unless disallowed by the Bureau within 15 days, the sale of the

securities is authorized for a period of 12 months and may be renewed annually.

2). **Church bonds and other one-time offerings for a single specific project.**

Pursuant to **502.201(7)** and **191 IAC 50.87(2)**, a notice filing is required that includes a consent to service of process, specifies the material terms of the offering and complies with the NASAA Statement of Policy Regarding Church Bonds as adopted by the NASAA membership on April 14, 2002.

**E. Intrastate Crowdfunding Exemption.**

Iowa Code subsection **502.202(24)** and **191 IAC 50.90** provide an exemption from registration to an issuer's sale of securities when the sales transactions are limited as follows:

- 1) The issuer establishes a minimum offering amount that is sufficient, together with other sources of financing, to implement the business plan of the issuer as disclosed in the submitted offering information and the aggregate amount of securities sold to all investors by the issuer during the twelve-month period preceding the date of the offer or sale, including any amount sold in reliance upon this exemption, excluding sales to Iowa resident institutional investors and sales to the Iowa resident issuer's management, does not exceed **five million dollars**.

The sale of an issuer's exempt securities under this exemption must be part of a single issue. The phrase "part of a single issue" refers to a securities concept known as integration where multiple, separate offerings may be integrated and deemed to be a single offering by the Bureau. Under 191 IAC 50.90(3) integration occurs if a) the sales are part of a single plan of financing, b) the sales involve the issuance of the same class of securities, c) the sales have been made at or about the same time, d) the same type of consideration is received and e) the sales are made for the same general purpose.

Offers and sales made in reliance upon 502.202(24) and 191 IAC 50.90 shall not be integrated with offers and sales made more than six months before the start of the offering or more than six months after completion of an offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same class or of a similar class as those offered or sold under this exemption, other than those offers or sales of securities under an employee benefit plan.

- 2) The issuer is at the time of any offers and sales a person that is a resident and doing business within the state of Iowa.

The issuer shall be deemed to be a "**resident**" of the state of Iowa if it has its principal place of business in Iowa.

**"Principal place of business"** means the state or territory from which the officers, partners, or managers of a corporation, partnership, limited liability company, trust or other form of business primarily direct, control and coordinate the activities of the business.

The issuer shall be deemed to be "doing business" within Iowa if the issuer satisfies at least one of the following requirements:

- a) The issuer derived at least 80 percent (80%) of its consolidated gross revenues from the operation of

a business or of real property located in or from the rendering of services within the state of Iowa.

b) The issuer had, at the end of its most recent semiannual fiscal year prior to an initial offer of securities in any offering or subsequent offering pursuant to this exemption, at least 80 percent (80%) of its assets and those of its subsidiaries on a consolidated basis located in the state of Iowa.

c) The issuer intends to use and uses at least 80 percent (80%) of the net proceeds to the issuer from sales made pursuant to this exemption in connection with the operation of a business within, the operation of real property within, the purchase of real property located in, or the rendering of services within the state of Iowa.

d) A majority of the issuer's employees are based in the state of Iowa.

- 3) Sales of Securities pursuant to this exemption are made only to residents of the state of Iowa or to persons who the issuer reasonably believes at the time of the sale, are residents of the state of Iowa.

An individual shall be deemed to be a resident of the state of Iowa if such individual has, at the time of sale, the individual's principal residence in the state of Iowa.

A trust that is not deemed by Iowa law to be a separate legal entity is deemed to be a resident of the state of Iowa only if all of the trust's trustees are residents of the state of Iowa.

For purposes of determining the residence of a purchaser:

a) A corporation, partnership, limited liability company, trust or other form of business organization shall be deemed a resident of the state of Iowa if, at the time of the sale to it, it has its principal place of business within the state of Iowa.

b) A corporation, partnership, trust or other form of business organization that is organized for the specific purpose of acquiring securities offered pursuant to this exemption shall not be a resident of Iowa unless all of the beneficial owners of such organization are residents of Iowa.

- 4) The issuer is not, before or as a result of the offering, any of the following:

a) An investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80 a-1 et. seq.).

b) A hedge fund, commodity pool, or similar investment vehicle.

c) A development stage company that either has no specific business plan or purpose or has indicated that the company's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

d) A company with a class of securities registered under the federal Securities Exchange Act of 1934.

- 5) The offering is sold in compliance with the requirements of SEC Rule 147A (17 CFR 230.147A), which is a federal safe harbor and intrastate offering exemption under Section 3(a)(11) of the Securities Act of 1933.

- 6) All offers and sales made in reliance upon this exemption are made through an intermediary's internet site.

"Intermediary" means any of the following:

a) A broker-dealer that is subject to the registration requirements of section 502.401 of the Act and that facilitates the offer and sale of securities by issuers to investors through an internet-based system that is open to and accessible by the general public.

b) A business entity that is all of the following:

(i) A funding portal that is registered with the securities and exchange commission pursuant to the Securities Act of 1933, including as provided in 15 U.S.C. § 77d-1.

(ii) A member of the financial industry regulatory authority, inc. pursuant to the Securities Exchange Act of 1934, including as provided in 15 U.S.C. §§ 78c and 78o-3, and 17 C.F.R. § 227.400.

c) A business entity that qualifies as an Iowa crowdfunding portal by meeting all of the following requirements:

(i) Is registered with the administrator.

(ii) Is engaged in intrastate crowdfunding offers and sales of exempt securities in this state through an internet site.

(iii) Does not operate or facilitate a secondary market in securities.

- 7) The issuer is required to provide full and fair disclosure to investors of all material facts relating to the issuer and the securities being offered. In addition to general disclosure requirements, 191 IAC 50.90(8) specifically requires risk disclosures to all prospective purchasers and investors that:

a) There is no ready market for the sale of the securities acquired in this offering and it may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely.

b) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosures provided.

c) In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved.

d) The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.

- 8) The offering price of the securities offered and sold pursuant to this exemption is the same for all purchasers and shall not be increased during the offering period. The offering period may be lowered, but only if all previous purchasers in the particular offering are notified of the change and allowed to rescind their previous investment and participate at the lower offering price.
- 9) Commissions, fees or other remuneration for soliciting any prospective purchaser in connection with the offering shall only be paid to intermediaries or any other persons who are appropriately registered

or licensed with the commissioner.

- 10) All advertising and communications is in compliance with the provisions of 191 IAC 50.90(14).
- 11) Any document that is to serve as evidence of ownership of the securities contains a prominent notice which states that the securities have not been registered and sets forth the limitations on resale contained in SEC Rule 147A(e) (17 CFR 230.147A(e), including that for a period of six months from the date of the last sale by the issuer of the securities in the offering, resale by any person shall be made only to Iowa residents.
- 12) The issuer must enter into an escrow agreement with an independent escrow agent in compliance with the provisions of **191 IAC 50.90(7)**.

**191 IAC 50.90(4)** contains a number of situations, known as “**bad actor disqualifications**,” under which this exemption would not be available to an issuer and should be carefully reviewed.

#### **F. Federal Crowdfunding Offerings.**

**191 IAC 50.91** requires an issuer offering and selling securities in Iowa in an offering that is exempt under federal Regulation Crowdfunding, 17 CFR Section 227, federal Regulation Crowdfunding, General Rules and Regulations, and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933, must submit a filing with the Bureau if the issuer has its principal place of business in Iowa or sells 50 percent or greater of the aggregate amount of the offering to Iowa residents.

In that event, the issuer must submit a \$100 filing fee and either 1) a completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents the issuer filed with the Securities and Exchange Commission or 2) a completed consent to service of process form (Form U-2).

If the issuer has its principal place of business in Iowa, the filing is filed when the issuer makes its initial Form C filing with the SEC. If the issuer does not have its principal place of business in Iowa, but Iowa residents purchase 50 percent or greater of the aggregate amount of the offering, the filing shall be made when the issuer become aware that such purchases have met this threshold and in no event later than 30 days from the date of completion of the offering.

The initial filing is effective for 12 months and may be renewed annually. Notice filings that are not renewed by the annual renewal date shall expire.

#### **G. Regulation A – Tier 2 Offerings.**

**191 IAC 50.92** requires an issuer offering and selling securities in Iowa in an offering exempt under Tier 2 of 17 CFR Section 230.251 et. seq. (“federal Regulation A”) and Sections 18(b)(3) and 18(b)(4) of the Securities Act of 1933 to submit a notice filing to the Bureau. At least 21 calendar days prior to the initial sale in Iowa, the issuer must submit a \$400 filing fee and either 1) a completed Uniform Notice Filing of Regulation A – Tier 2 Offering form or 2) a completed consent to service of process form (Form U-2).

The initial filing is effective for 12 months and may be renewed annually. Notice filings that are not renewed by the annual renewal date shall expire.



## CONCLUSION

This information is only a summary of some of the Act's registration and exemption provisions and anyone involved with the sale of securities in Iowa should carefully review the Act and applicable administrative regulations. This summary does not address the requirements for registration as a broker-dealer or an agent of the issuer in regard to the payment and receipt of sales commissions and other sales remuneration in connection with the sale of securities that may be applicable.

The requirements involved with selling securities in other state or provincial jurisdictions are not addressed above and you should check with any applicable securities regulatory agency. Also, federal securities laws apply to these transactions. The U.S. Securities and Exchange Commission website may be found at [www.sec.gov](http://www.sec.gov). Issuers selling securities in Iowa are encouraged to seek legal counsel and contact the Bureau if you have questions or need assistance.