

Comments of the Oklahoma Department of Securities with regard to:

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 227, 232, 239, 240 and 249

[Release Nos. 33-9470; 34-70741; File No. S7-09-13]

RIN 3235-AL37

CROWDFUNDING

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

We have set forth particular language of such release and placed the pertinent comment(s) directly under each such provision.

SUBPART A – General

§ 227.100 Crowdfunding exemption and requirements.

(b) *Applicability.* The crowdfunding exemption shall not apply to transactions involving the offer or sale of securities by any issuer that:

* * *

(6) Has no specific business plan or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

Comment 1

We suggest that “or other entity or person” be added to § 227.100(b)(6) [on page 476]. Such language is included in similar restrictions in other exemptions, e.g., the model accredited investor exemption.

SUBPART B – Requirements for Issuers

§ 227.201 Disclosure requirements.

An issuer offering or selling securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and in accordance with Section 4A of the Securities Act (15 U.S.C. 77d-1) and this part must file with the Commission on the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR), provide to investors and the relevant intermediary, and make available to potential investors the following information:

(a) The name, legal status (including its form of organization, jurisdiction in which it is organized and date of organization), physical address and website of the issuer;

Comment 2

We suggest that § 227.201(a) also request the phone number of the issuer and the agent for service of process for the issuer.

(b) The names of the directors and officers (and any persons occupying a similar status or performing a similar function) of the issuer, all positions and offices with the issuer held by such persons, the period of time in which such persons served in the position or office and their business experience during the past three years, including:

(1) Each person's principal occupation and employment, including whether any officer is employed by another employer; and

(2) The name and principal business of any corporation or other organization in which such occupation and employment took place.

Comment 3

We suggest that another provision be added under § 227.201(b) requesting the educational background for the officers, directors and similar persons.

* * *

(g) The target offering amount and the deadline to reach the target offering amount, including a statement that if the sum of the investment commitments does not equal or exceed the target offering amount at the offering deadline, no securities will be sold in the offering, investment commitments will be cancelled and committed funds will be returned;

Comment 4

Will the funds in § 227.201(g) be returned with or without interest?

* * *

(k) A statement that if an investor does not reconfirm his or her investment commitment after a material change is made to the offering, the investor's investment commitment will be cancelled and the committed funds will be returned;

Comment 5

Will such funds in § 227.201(k) be returned with or without interest?

Comment 6

We suggest that "material" change" for purposes of § 227.201(k) be clarified by a definition or additional instructions.

(p) A description of the material terms of any indebtedness of the issuer, including the amount, interest rate, maturity date and any other material terms;

Comment 6

We suggest that § 227.201(p) also require the identity of the creditor.

(q) A description of exempt offerings conducted within the past three years;
Instruction to paragraph (q). In providing a description of any prior exempt offerings, disclose:

(1) The date of the offering;

- (2) The offering exemption relied upon;
- (3) The type of securities offered; and
- (4) The amount of securities sold and the use of proceeds.

Comment 6 p.480

We suggest that § 227.201(q) be clarified requiring the filer to identify the name of any past exempt offerings.

§ 227.203 Filing requirements and form.

- (a) Form C – Offering Statement and Amendments (§ 239.900 of this chapter).

* * *

(2) *Amendments to Offering Statement.* An issuer must file with the Commission on EDGAR, provide to investors and the relevant intermediary, and make available to potential investors an amendment to the offering statement filed on Form C (§ 239.900 of this chapter) to disclose any material changes, additions or updates to information that it provides to investors through the intermediary’s platform, only if the offering has not yet been completed or terminated. The amendment must be filed on Form C: Amendment (Form C-A) (§ 239.900 of this chapter), and if the amendment reflects material changes, additions or updates, the issuer shall check the box indicating that investors must reconfirm an investment commitment within five business days or the investor’s commitment will be considered withdrawn.

Comment 7 pp. 487-488

We suggest that language be added to § 227.203(a)(2) to clarify when the five business day period begins to run, e.g., from the date of filing of the Form C.

§ 227.303 Requirements with respect to transactions.

(a) *Issuer Information.* An intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) must make available to the Commission and to investors any information required to be provided by the issuer of the securities under §§ 227.201 and 203(a).

* * *

(2) This information must be made publicly available on the intermediary's platform for a minimum of 21 days before any securities are sold in the offering, during which time the intermediary may accept investment commitments;

Comment 8

We suggest that language be added to § 227.203(a)(2) to clarify whether the 21 day minimum refers to business days or calendar days.

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