

# Equity Crowdfunding for Breweries, Wineries and Distilleries

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# Securities Laws – Generally

- Other than rewards or donation-based crowdfunding, almost all means by which a company raises capital online will involve securities laws. *See §2(a)(1) of Securities Act of 1933 for the definition of a security.*
- Securities laws regulate:



HOW YOU SELL  
THE  
SECURITIES



HOW MUCH  
MONEY YOU  
CAN RAISE



WHO YOU CAN  
TALK TO  
ABOUT YOUR  
OFFERING



HOW YOU  
TARGET  
POTENTIAL  
INVESTORS



RIGHTS OF  
INVESTORS TO  
GET THEIR  
MONEY BACK

# Current Regulatory Framework

- As a general rule, in order to comply with Federal securities laws, an issuer offering or selling a security must either (a) “register” such offer or sale with the SEC or (b) identify a specific exemption that allows such offer or sale to be conducted without registration.
  - In most circumstances, registration is time consuming and expensive.
  - Most small businesses are not able to easily comply with registration requirements.
- In addition, an issuer offering or selling securities must also adhere to blue sky laws in each state where the securities are being offered or sold, all of which vary from each other.

# Private Placement Offerings

- The most common federal exemption entrepreneurs rely on is Section 4(2) of the Securities Act, which exempts “transactions by an issuer not involving any public offering” – i.e., a **private placement**.
- The SEC has provided a clear set of “safe harbor” rules that issuers can follow to ensure that they are conducting a valid private placement under Section 4(2).
- In Regulation D, the SEC provides a clear set of “safe harbor” rules that issuers can follow to ensure that they are conducting a valid private placement under Section 4(2). The most common safe harbors that small companies have customarily relied upon in conducting private placements are Rule 504 and Rule 506 (*now called Rule 506(b)*).

# Common Private Placement Exemptions

	Rule 504	Rule 506 [now Rule 506(b)]
How much money can I raise?	Up to \$10M (Was \$1M and later \$5M)	Unlimited
Can I advertise the sale of my securities?	No, unless coupled with a state exemption or registration that allows advertising.	No.
To whom can I sell securities?	Anyone  However, counterpart state exemptions or registrations may impose additional restrictions on number of non-accredited investors.	Unlimited number of accredited investors  Up to 35 non-accredited investors if you believe they are “sophisticated”
Do I have to comply with the SEC’s formal information delivery requirements?	No, but counterpart state exemption or registration may impose additional requirements.	No, if only accredited investors are included  Yes, if any non-accredited investors are included
Do I have to verify that any accredited investors are truly accredited?	No, accredited investors can “self-certify.”	No, accredited investors can “self-certify.”

# No General Solicitation

- ▶ In order to keep an offering “private” under Rule 504 or Rule 506(b), companies cannot engage in “general solicitation.” This means:



# Congress Responds – JOBS Act

- As part of the JOBS Act of 2012, Congress directed the SEC to develop new rules that would make it easier for companies to raise capital from investors.



# JOB Act: Key Components

Advertising in  
Connection with  
Sales to Accredited  
Investors

## Title II

- ❖ Also called Rule 506(c).
- ❖ Became effective in October 2013.
- ❖ Growing in popularity.

Crowdfunding for All

## Title III

- ❖ SEC released proposed rules in October 2013.
- ❖ The proposed rules were almost universally criticized.
- ❖ Revised rules: Reg CF

Reg A+ | “Mini-IPOs”

## Title IV

- ❖ SEC released final rules in March 2015.
- ❖ Became effective in June 2015.

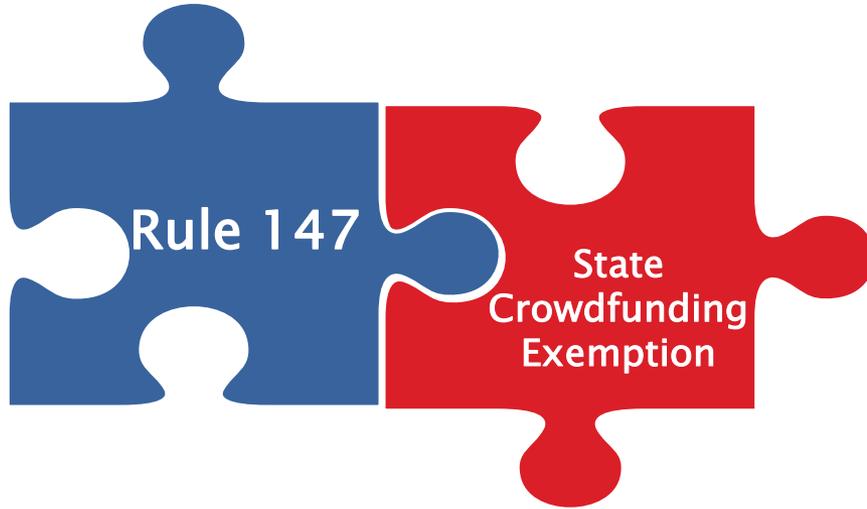
# Title II and Rule 506(c)

	Rule 504	Rule 506(b)	Rule 506(c)
How much money can I raise?	Up to \$10M	Unlimited	Unlimited
Can I advertise the sale of my securities?	No, unless coupled with a state exemption or registration that allows advertising.	No.	Yes.
To whom can I sell securities?	Anyone  However, counterpart state exemptions or registrations may impose additional restrictions on number of non-accredited investors.	Unlimited number of accredited investors  Up to 35 non-accredited investors if you believe they are “sophisticated”	Unlimited number of accredited investors
Do I have to comply with the SEC’s formal information delivery requirements?	No, but counterpart state exemption or registration may impose additional requirements.	No, if only accredited investors are included  Yes, if any non-accredited investors are included	No.
Do I have to verify that any accredited investors are truly accredited?	No, accredited investors can “self-certify.”	No, accredited investors can “self-certify.”	Yes, you must take “reasonable steps” to verify that the investors are, in fact, accredited.

# Intrastate Crowdfunding

- Frustrated by the SEC's inability to design a useable system, individual states have adopted their own Crowdfunding laws.
- These state Crowdfunding laws permit **intrastate crowdfunded offerings** between an issuer and residents residing within the same state.
  - **Intrastate offerings** are exempt from registration under Federal law [*See Section 3(a)(11) of the Securities Act or Rule 147 promulgated thereunder*].

# Intrastate Crowdfunding: Two Models



# Problems with Most Intrastate Crowdfunding Models

- ▶ Most intrastate crowdfunding laws require issuers to use Rule 147 for their Federal exemption. Rule 147 have potentially onerous requirements, such as:
  - The issuer must be incorporated in the state in which it is offering the securities;
  - The issuer must only sell the securities to individuals residing in that state;
  - 80% of the issuer's consolidated gross revenues must be derived from the state in which the offering is conducted;
  - 80% of the issuer's consolidated assets must be located within the state in which the offering is conducted;
  - 80% of the issuer's net proceeds must be intended to be used, and actually used, in connection with the operation of a business or real property, the purchase of real property located in, or the rendering of services, within the state in which the offering is conducted; and
  - **Advertising cannot result in offers to non-residents.**
    - Most use reasonable measures to make sure that advertisements do not reach out-of-state residents.

# MNvest – The Minnesota Solution

- Became law in June → Final rules pending.
- Only available to Minnesota-based companies.
- All investors must be Minnesota residents and all Minnesota residents can be investors.
- Offerings must be made online through a “MNvest Portal” registered with the Minnesota Department of Commerce.
  - Issuers may create their own MNvest portal or work with a third-party host platform.
- MNvest Portals do not need to be registered broker-dealers.
  - However, only registered BDs can charge “transaction based” fees; Non-BDs can only charge flat fees.



# Additional MNvest Requirements

- Non-accredited investors can invest up to \$10,000 per deal.
- Companies subject to annual caps on amount of funds raised via MNvest.
  - \$2M with audited or review financial statements
  - \$1M with internally prepared financial statements
- Companies must provide detailed disclosure documents that comply with statutory requirements.
- Investor funds must be held in escrow until minimum funding target is reached.
- MNvest Portals subject to stringent recordkeeping requirements and general oversight by the Minnesota Department of Commerce.



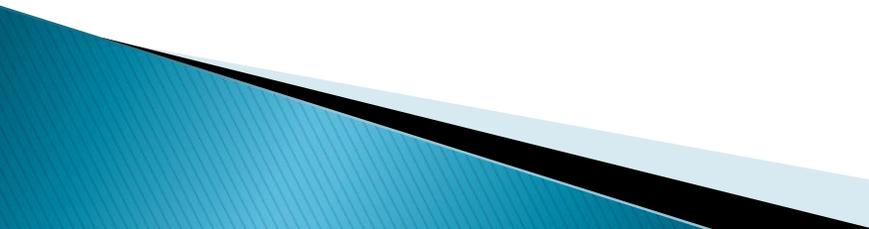
# Title IV and Reg A+ | The “Mini-IPO”

- SEC released rules in March under JOBS Act Title IV
- Reg A+ become effective in June
- Companies able to raise up to \$50M from general public
- Pros:
  - General solicitation allowed; non-accredited investors can participate
  - State preemption (under Tier 2)
- Cons:
  - Raises under \$20M (Tier 1) subject to state review
  - Likely cost prohibitive for startups and earlier stage companies (filing offering circular, financial audit, and ongoing reporting under Tier 2)
  - Tier 2 offerings could take up to 6 months to receive SEC approval

# Title III and Regulation CF

- ▶ Went into effect on May 16, 2016
- ▶ Section 4(a)(6) of the Securities Act of 1933
- ▶ Issuer may raise up to \$1,070,000 in any 12-month period
- ▶ A crowdfunding offering must be made through an SEC-registered intermediary, either a broker-dealer or an internet-based crowdfunding platform (funding portal).
- ▶ If either the annual income or the net worth of the investor is less than \$100,000, the investor is limited to the greater of \$2,000 or 5% of the lesser of his or her annual income or net worth.
- ▶ If the annual income and net worth of the investor are both greater than \$100,000, the investor is limited to 10% of the lesser of his or her annual income or net worth, to a maximum of \$100,000.

# Title III and Regulation CF

- ▶ Amended effective as of March 2021
  - ▶ 12-month limit increased to \$5,000,000
  - ▶ \$250,000 + : Reviewed financials
  - ▶ \$1,070,000 +: Audited financials
  - ▶ Accredited investors exempted from investor limits
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# Title III and Regulation CF

- ▶ Offering Prospectus: Form C
  - ▶ Filed with SEC prior to portal site going live
  - ▶ Detailed information required regarding business summary, entity structure, terms of offering, management, capitalization, use of proceeds, risk factors, etc.
  - ▶ Financial statements and other material documents to be included
  - ▶ If utilizing a video on portal site, include script with Form C.
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# Comparison of Fundraising Models

Method	\$ Limit	Advertising?	Non-Accredited Investors?	Detailed Prospectus?
Rule 504 + state exemption	\$10M	✘	✓	✘
Rule 504 + state registration (SCOR)	\$10M	✓	✓	✓
Rule 506(b)	Unlimited	✘	✓	✓ *
Rule 506(c) / Title II	Unlimited	✓	✘	✘
Reg A+ / Title IV	Tier 1: \$20M Tier 2: \$50M	✓	✓	✓
Reg CF	\$5M	✓	✓	✓

*\*Assuming non-accredited investor participation*

# Questions?

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