

### **704-1:51-3.20. Crowdfunding – Fees and Notice Filing Forms**

- A. Not less than ten days before the commencement of an offering pursuant to the exemption from registration provided in section 11-51-308.5 (the Colorado Crowdfunding Act), the issuer shall pay a fee, which shall be determined and collected pursuant to section 11-51-707.
- B. Before acting as an on-line intermediary for an offering pursuant to the exemption from registration provided in section 11-51-308.5 (the Colorado Crowdfunding Act), the on-line intermediary shall pay a fee, which shall be determined and collected pursuant to section 11-51-707.
- C. The issuer notice filing required by section 11-51-308.5(3)(a)(IV)(A) of the Colorado Crowdfunding Act shall be made by filing Form CF-1 with the Securities Commissioner.
- D. The notice of intention to act as an on-line intermediary for an offering to be conducted pursuant to the Colorado Crowdfunding Act required by section 11-51-308.5(3)(c)(I)(E) shall be made by filing Form CF-3 with the Securities Commissioner.

### **704-1:51-3.21. Crowdfunding – Consent to Service of Process Form**

- A. The issuer consent to service of process required by section 11-51-308.5(3)(a)(IV)(A) of the Colorado Crowdfunding Act shall be made by filing NASAA Form U-2 with the Securities Commissioner at the same time that the issuer files Form CF-2 with the Securities Commissioner.

### **704-1:51-3.22. Crowdfunding – Disclosure Document**

- A. Not fewer than ten days before commencing an offering pursuant to the exemption from registration provided in the Colorado Crowdfunding Act, and to comply with section 11-51-308.5(3)(a)(IV)(C), the issuer of securities shall timely file with the Securities Commissioner a completed Form CF-2 together with the escrow agreement required to be filed with the Securities Commissioner pursuant to section 11-51-308.5(3)(a)(IV)(D). Before commencement of any offering pursuant to the Colorado Crowdfunding Act, the issuer shall also provide a completed Form CF-2 to the broker-dealer, sales representative, or on-line intermediary through which the offering pursuant to the Colorado Crowdfunding Act is being conducted, and provide a copy of the filed Form CF-2 to each offeree at the time the offer of securities is made. The issuer can comply with section 11-51-308.5(3)(a)(X) by ensuring that the broker-dealer, sales representative, or on-line intermediary provides a copy of the filed Form CF-2 to each offeree.
- B. Utilizing Form CF-2 to conduct an offering pursuant to the Colorado Crowdfunding Act through a broker-dealer, sales representative, or on-line intermediary shall not relieve the issuer of its obligation to provide full and fair disclosure to investors of all material facts relating to the issuer and the securities being offered as required by section 11-51-501(1).
- C. If the offering is for more than \$1 million, the Form CF-2 must include the issuer's financial statements for its most recently-completed fiscal year which have been audited by a certified

public accountant licensed to practice accountancy within the state of Colorado. If the end of the issuer's most recently completed fiscal year is of a date that is more than four months before the commencement of the offering pursuant to the Colorado Crowdfunding Act, interim financial statements, which must be reviewed by the same certified public accountant that performed the audit, as of a date within four months of the commencement of the offering must be included. No issuer may complete the sale of any securities pursuant to the Colorado Crowdfunding Act if the most recently audited or reviewed financial statements are for a period ending more than twelve months before the completion of the sale.

D. Within five (5) business days of any material change, addition, or update, an issuer shall file with the Division, and provide to the broker-dealer, sales representative, or on-line intermediary and to all other holders of the issuer's securities an amendment to the disclosure document to disclose any material changes, additions, or updates to information that it provided to investors if the offering has not yet been completed or terminated.

E. An issuer must disclose to the Division and (through the broker-dealer, sales representative, or on-line intermediary) to offerees and (directly by the issuer) to all other holders of its securities its progress in meeting the target offering amount no later than five (5) business days after the issuer reaches the minimum and maximum target offering amount, and after the date the offering proceeds are released from any escrow, or upon termination of the offering being conducted pursuant to the Colorado Crowdfunding Act when the offering is not completed and the offering proceeds are returned to the offerees who subscribed to purchase the securities in accordance with the escrow agreement.

### **704-1:51-3.23. Crowdfunding – Issuer Records**

A. Issuers shall make and preserve all records with respect to any offering conducted pursuant to the exemption provided by the Colorado Crowdfunding Act for five years after the completion or termination of the offering. These records shall include, at a minimum:

1. All organizational documents, including but not limited to, partnership agreements, operating agreements, articles of incorporation or organization, bylaws, minute books, and stock certificate books (or other similar type documents) and any agreements among the issuer's owners relating to voting or transferability of the owner's interests;
2. The issuer's Form CF-1, Form CF-2, including all exhibits, together with all amendments thereto, and Form ES-CF;
3. All records related to any person who purchases or attempts to purchase securities through the on-line intermediary, including evidence of residency from each such person in the offering as well as documentation obtained by the issuer showing that such person met any suitability standards set forth in the Form CF-2, including all records and information used to establish that an investor is an accredited investor as defined by the Securities and Exchange Commission's Rule 501 of Regulation D (17 CFR 230.501);

4. Records of all communications with all other holders of the issuer's securities, including all quarterly reports;
5. The escrow agreement executed in connection with the offering;
6. Any agreement between the issuer and any broker-dealer, sales representative, or on-line intermediary, and records reflecting the payment of compensation by the issuer or any person on behalf of the issuer to any broker-dealer, sales representative, or on-line intermediary; and
7. All records required to demonstrate compliance with section 11-51-308.5(3)(a)(VII).

B. The issuer may contract with the on-line intermediary or other service provider to collect such information and preserve such records, but the issuer retains the responsibility for the accuracy, completeness, and availability of such records.

#### **704-1:51-3.24. Crowdfunding – Additional Issuer Requirements**

##### *A. Investor Qualifications.*

1. Before accepting any investment, an issuer must verify that the aggregate amount sold by the issuer to any person during the twelve-month period preceding the date of sale does not exceed \$5,000, or take reasonable steps to verify that any person who has purchased an aggregate amount greater than \$5,000 from the issuer during any twelve-month period satisfies the accredited investor definition under the SEC's Rule 501 of Regulation D (17 CFR 230.501).
2. Before accepting any offer to purchase securities from any person pursuant to the Colorado Crowdfunding Act, an issuer must comply with the certification requirements of section 11-51-308.5(3)(a)(VII).

B. *Communications Between the Offerees and the Issuer.* After reviewing any Form CF-2 posted by an issuer through an on-line intermediary, any offeree may communicate directly with the issuer pursuant to the method described in the Form CF-2 to obtain further information or to provide the issuer with a notice that the offeree intends to make an investment in the offering as described in the Form CF-2.

C. *Notice of Investment Commitment.* After a person directs funds to the escrow account in an offering being conducted through an on-line intermediary, the issuer must promptly send to such person a notification disclosing:

1. The dollar amount of the investment commitment;
2. The price of the securities;
3. The name of the issuer;
4. The amount of the minimum offering and the maximum offering;

5. The amount of proceeds received in the escrow account as of the date of such notification; and

6. Whether such person has the right to cancel their investment prior to the deadline in the escrow agreement to reach the minimum offering amount and what such person must do to invoke that right.

D. *Notice of Completion of Transaction.* The issuer must, at or before the release of funds from escrow pursuant to Rule 51-3.24(F), send to each investor a notification disclosing:

1. The date of the transaction;

2. The type of security that such person is purchasing;

3. The identity, price, and number of securities being purchased by such person, as well as the number of securities sold by the issuer in the transaction through the date of the notification, and the price at which the securities were sold;

4. If a debt security, the interest rate and yield to maturity calculated from the price paid and the maturity date;

5. If a callable security, the first date that the security can be called by the issuer;

6. Whether the offering is being continued or is completed; and

7. Other information that the issuer determines is appropriate or necessary to provide to the person purchasing securities from the issuer in the offering being conducted pursuant to the Colorado Crowdfunding Act.

E. *Transmission of Funds.* The on-line intermediary and issuer shall direct investors to transmit all payments for the purchase of securities directly to the escrow account specified in the Form CF-2 until the offering is completed or terminated.

F. *Escrow Agreement.* For transactions occurring pursuant to section 11-51-308.5, C.R.S., issuers must place all funds received from investors in an escrow account which shall be established pursuant to a written agreement between the issuer (as depositor) and an unaffiliated depository institution, and other interested parties (if any). The written agreement shall meet the requirements of the Colorado Crowdfunding Act and these rules.

1. Each agreement for the establishment of an escrow account shall include:

a. The date of the agreement;

b. The names and addresses of the issuer, the depository, and any other parties to the agreement;

- c. The terms of the escrow, including a specific reference to section 11-51-308.5, C.R.S.;
  - d. A provision for the delivery of the purchased securities by the issuer to the investor at the time of, or prior to, the release of funds to the issuer;
  - e. Whether the escrowed funds will earn interest and, if so, a description of the manner in which interest accrued on the escrowed funds will be used or otherwise distributed;
  - f. A provision that prohibits the issuer from accessing the escrowed funds until the aggregate funds raised from all investors equals or exceeds the minimum offering amount in a timely fashion (as the minimum offering amount and the period of the offering are defined in the issuer's Form CF-2 as filed with the Commissioner), a provision detailing the conditions under which the escrowed funds are to be released to the issuer or are to be returned to the prospective investors, and whether, after any initial closing and distribution of funds to the issuer, the offering may continue with further funds being deposited into the escrow account; and
  - g. A statement that the escrowed funds may not be released to the issuer until the lapse of at least seven (7) days after the receipt by the Commissioner of notice of the proposed release of funds from such escrow, provided in paragraph 3 below, or upon written authorization of the Commissioner of any earlier release.
2. The Commissioner may, in his sole discretion, authorize release of escrowed funds pursuant to section 11-51-308.5, C.R.S. prior to the lapse of seven (7) days after receipt by the Commissioner of the notice provided in paragraph 3 below. In such cases, the Commissioner shall provide the issuer with such authorization in writing in a form that may be presented to the depository.
3. A notice of proposed release of funds from escrow under section 11-51-308.5, C.R.S. shall be filed with the Commissioner on Form ES-CF. Proof of filing the Form ES-CF with the Commissioner may be established by a receipt or other writing upon which the Commissioner, by stamp or other writing, evidences that the Form ES-CF was received.
4. The notice shall contain, at a minimum, the following information:
- a. The gross amount of aggregate proceeds received from the sale of any and all of the securities sold in the offering;
  - b. Whether the offering is completed;
  - c. Whether any additional funds may be received by the issuer in exchange for securities issued in the offering;
  - d. A description of each transaction, including the dates of each transaction, the parties to each transaction, the amount committed in each transaction, a description of how the proceeds

are to be spent under the terms of each transaction, including the specific lines of business, and a description of how the securities will be delivered to the purchaser; and

e. Any additional information the Commissioner may require as material to the Commissioner's determination.

G. *Single Intermediary*. An issuer shall not conduct an offering or concurrent offerings in reliance on the Colorado Crowdfunding Act using more than one on-line intermediary.

H. *Quarterly Report Timing*. Each quarterly report shall be provided to all holders of the issuer's securities and the Division within forty-five days after the end of each fiscal quarter.

I. *Issuer Distribution of Notice of Offering*. The issuer may, in accordance with section 11-51-308.5(3)(a)(XIV), distribute a statement that the issuer is conducting an offering. When used in section 11-51-308.5(3)(a)(XIV), the term "within Colorado" includes a statement distributed by, at the direction of, or on behalf of the issuer on the issuer's website or through electronic mail or social media if the statement includes (at a minimum) disclaimers and restrictive legends making it clear that the offering is limited to residents of Colorado and there is in fact a confirmation of residency before the recipient or viewer of such statement can access the Form CF-2 or other information related to the offering.

#### **704-1:51-3.25. Crowdfunding – On-line Intermediary Records**

A. An on-line intermediary shall make and preserve all records required to demonstrate compliance with the requirements of section 11-51-308.5(3)(c) and any applicable rules under the Colorado Securities Act, including the following records, for five (5) years after the completion or termination of an offering:

1. All records of compensation received for acting as an on-line intermediary, including the amount of compensation and method used to determine such amount, the name of the payor, the date of payment, and name of the issuer;
2. All records related to issuers who offer or attempt to offer securities through the on-line intermediary and the control persons of such issuers, including all information used to establish Colorado residency;
3. Records of all communications that occur on or through the on-line intermediary's website;
4. All records related to persons that use communication channels provided by an on-line intermediary to promote an issuer's securities or communicate with potential investors;
5. To the extent received by the on-line intermediary, all records and information used to establish that an investor is an accredited investor as defined by the Securities and Exchange Commission's Rule 501 of Regulation D (17 CFR 230.501);

6. All notices provided by such on-line intermediary to issuers and investors generally through the on-line intermediary's website or otherwise, including, but not limited to, notices addressing hours of on-line intermediary operations (if any), on-line intermediary malfunctions, changes to on-line intermediary procedures, maintenance of hardware and software, instructions pertaining to access to the on-line intermediary and denials of, or limitations on, access to the on-line intermediary;

7. All agreements and contracts between the on-line intermediary and an issuer or investor;

8. All information that the on-line intermediary is required to collect from persons pursuant to Rule 51-3.28;

9. Any other records of all offers of securities effected through the on-line intermediary's website; and

10. Any written supervisory procedures or policies as required by section 11-51-308.5(3)(c)(II)(C).

B. An on-line intermediary shall make and preserve during the operation of the on-line intermediary and of any successor on-line intermediary all organizational documents relating to the on-line intermediary, including, but not limited to, partnership agreements, articles of incorporation or charter, minute books, and stock certificate books (or other similar type documents).

C. The records required to be made and preserved pursuant to paragraph A. of this rule must be produced, reproduced, and maintained in the original, non-alterable format in which they were created.

#### **704-1:51-3.26. Crowdfunding – On-line Intermediary Financial and Other Information**

A. An on-line intermediary shall make an annual filing with the Division listing each offering completed pursuant to section 11-51-308.5 accompanied by how much compensation the on-line intermediary received for each offering completed and listing all other offerings pursuant to section 11-51-308.5 accompanied by how much compensation the on-line intermediary received for all other offerings for the reporting period. This filing shall be made on Form CF-4.

#### **704-1:51-3.27. Crowdfunding – On-line Intermediary Written Supervisory Procedures**

A. An on-line intermediary shall establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of the Colorado Securities Act given the limited role of the on-line intermediary under the Colorado Crowdfunding Act.

#### **704-1:51-3.28. Crowdfunding – Additional On-line Intermediary Requirements**

A. Before permitting any person to view offerings being conducted through the on-line intermediary, the on-line intermediary shall gather the following information from such person:

1. Such person's name;
2. Such person's address;
3. Such person's telephone number;
4. Such person's email address;
5. Such person's date of birth; and
6. Information to establish Colorado residency.

B. Before permitting any person to view the offerings being conducted through the on-line intermediary, the on-line intermediary shall have each such person acknowledge that:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH, APPROVED BY, OR RECOMMENDED BY ANY FEDERAL OR STATE AGENCY. IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SECURITIES AND EXCHANGE COMMISSION RULE 147, 17 CFR 230.147(e), AS PROMULGATED PURSUANT TO THE FEDERAL "SECURITIES ACT OF 1933," AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

C. An on-line intermediary in a transaction involving the offer or sale of securities in reliance on the Colorado Crowdfunding Act must deny access to its platform if the on-line intermediary:

1. Has a reasonable basis for believing that an issuer is not in compliance with section 11-51-308.5;
2. Has a reasonable basis for believing that the issuer has not established means to keep accurate records as required by the Colorado Crowdfunding Act and these rules; or



3. Has a reasonable basis for believing that the issuer or offering presents the potential for fraud or otherwise raises concerns regarding investor protection.

D. An on-line intermediary that has denied an issuer access to its platform based upon any of the grounds specified in Rule 51-3.28(C) shall promptly report such denial to the Division.

E. Failure of the on-line intermediary to comply with any of the provisions of section 11-51-308.5, these rules, or any order, will constitute a violation of those provisions, rules, or orders, and subject the on-line intermediary to the enforcement authority of the Commissioner under section 11-51-602.

#### **704-1:51-3.29. Crowdfunding – On-line Intermediary Prohibited Activities**

A. An on-line intermediary shall not:

1. Offer investment advice or recommendations absent licensure and residency as stated in section 11-31-308.5(3)(b)(I) or (II);
2. Receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer; or
3. Hold, manage, possess, or otherwise handle purchaser funds or securities.

B. An on-line intermediary that does nothing more than collect information regarding the purchase of securities pursuant to the Colorado Crowdfunding Act and provides a link to transmit funds to the escrow agent is not conducting any activity prohibited by Rule 51-3.29(A).

#### **704-1:51-3.30. Crowdfunding – Disqualification from Relying on Crowdfunding Exemption**

A. No exemption under section 11-51-308.5 shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member or manager of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such solicitor; or any director, executive officer or other officer participating in the offering of any such solicitor or general partner or managing member of such solicitor:

1. Has a conviction that became final within ten years before such sale, of any felony or misdemeanor:
  - a. In connection with the purchase or sale of any security;

- b. Involving the making of any false filing with the Securities and Exchange Commission or a state securities regulatory agency;
  - c. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities; or
  - d. Involving fraud or deceit in which the loss to the victim or victims exceeds \$10,000;
2. Is subject to any final order, judgment or decree of any court of competent jurisdiction, entered within five years before such sale, that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:
  - a. In connection with the purchase or sale of any security;
  - b. Involving the making of any false filing with the Securities and Exchange Commission or a state securities regulatory agency; or
  - c. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;
3. Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); a federal banking agency; the Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission; the Federal Trade Commission, the Consumer Financial Protection Bureau, or the National Credit Union Administration that:
  - a. At the time of such sale, bars the person from:
    - (1) Association with an entity regulated by such commission, authority, agency, bureau or officer;
    - (2) Engaging in the business of securities, insurance or banking; or
    - (3) Engaging in savings association or credit union activities; or
  - b. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct, including making untrue statements of material facts or omitting to state material facts, entered within five years before such sale;
4. Is subject to a final order of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o-4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e) or (f)) that, at the time of such sale:

- a. Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;
  - b. Places limitations on the activities, functions or operations of such person; or
  - c. Bars such person from being associated with any entity or from participating in the offering of any penny stock;
5. Is subject to any final order of the Securities and Exchange Commission entered within five years before such sale that orders the person to cease and desist from committing or causing a violation or future violation of:
- a. Any scienter based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b-5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or
  - b. Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);
6. Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission constituting conduct inconsistent with just and equitable principles of trade;
7. Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Securities and Exchange Commission that, within five years before such sale, was the subject of a final refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued;
8. Is subject to a final United States Postal Service false representation order entered within five years before such sale, or is, at the time of such sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations;
9. Has filed a registration statement which is subject to a final stop order entered under section 11-51-306, or any other state's securities law, within five years before such sale; or
10. Is currently subject to any final state administrative enforcement order or judgment, including Colorado, entered by the Commissioner, or any other state's securities administrator, within five years prior to such sale.

B. For purposes of paragraph A. of this rule, “final order” shall mean a written directive or declaratory statement issued by a federal or state agency described in subparagraph A.3. under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

C. The Commissioner may, following a written request, and in the exercise of discretion, waive, either before or after an offering has commenced, subparagraphs 5. through 10. of paragraph A. of this rule and subsections (d)(1)(v) through (viii) of Rule 506 (17 CFR 230.506(d)(1)(v)-(viii)) if upon a showing of good cause and without prejudice to any other action by the Commissioner, the Commissioner determines that, in balancing all relevant factors, granting the waiver is consistent with the objective of the Colorado Securities Act to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets.