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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the
Department of Consumer and Business Services, Division of Finance and Corporate Securities 441
Agency and Division Administrative Rules Chapter Number
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To become effective Upon filing. Rulemaking Notice was published in the November 2014 Oregon Bulletin.

RULE CAPTION

Establishes a securities registration exemption for Oregon intrastate offerings by Oregon small businesses.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

441-035-0070, 441-035-0080, 441-035-0090, 441-035-0100, 441-035-0110, 441-035-0120, 441-035-0130, 441-035-0140, 441-035-0150, 441-035-0160, 441-035-0170, 441-035-0180, 441-035-0190, 441-035-0200, 441-035-0210, 441-035-0220, 441-035-0230

AMEND:

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 59.035

Other Authority:

17 CFR § 230.147 (SEC Rule 147)

Statutes Implemented:

ORS 59.035

RULE SUMMARY

Title III of the Jumpstart Our Business Startups Act (JOBS Act), enacted in 2012, created a federal exemption for equity crowdfunding. Federal rules under the JOBS exemption have not yet been finalized. Under the federal intrastate exemption, Oregon may enact its own exemption from securities registration for purely domestic offerings unrelated to federal law. ORS 59.035(15) provides that the Director of the Department of Consumer and Business Services may create transactional exemptions for securities through rule. This rulemaking establishes an exemption for small amounts raised by Oregon small businesses through a "community public offering" or what is generally referred to as "crowdfunding". The rules place certain substantive restrictions on Oregon businesses relying on the exemption, such as individual investor and total offering caps. The rulemaking activity also requires disclosures be given to prospective investors and places restrictions on general advertising of the securities to the public.

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441-035-0070 Policy and Purpose of the Oregon Intrastate Offering Exemption (OIO).

Crowdfunding, or raising money through small investments from a large number of investors can provide smaller enterprises access to capital for new or expanded business ventures. OAR 441-035-0070 through OAR 441-035-0230, provide an exemption from the securities registration requirements under ORS 59.055 in limited circumstances in order to facilitate investment by Oregon residents in Oregon businesses while protecting investors.

441-035-0080 Definitions. For purposes of OAR 441-035-0070 through OAR 441-035-0230, the following definitions apply unless the context requires otherwise:

- (1) “Business Technical Service Provider” means a Small Business Development Center as defined in OAR 123-022-0070, an Economic Development District as defined in 13 CFR 304.1, or a not-for-profit incubator, accelerator, or business resource provider approved by the Director.
- (2) “Director” means the Director of the Department of Consumer and Business Services.
- (3) “Issuer” has the same meaning as that term is defined in ORS 59.015(9). For the purposes of these rules, “issuer” includes persons with direct control over the Oregon business or over the offer or sale of securities exempted under these rules.
- (4) “Offer” includes every attempt to dispose of an OIO security for value. The publication of any information and statements, and publicity efforts – including any advertising materials – in advance of or in connection with an OIO that contributes to the conditioning of the public mind or arousing public interest in the issuer or is intended to arouse public interest investing in the issuer or purchasing its securities - even though it does not contain an express “offer” - is an “offer” of OIO securities for purposes of this definition.
- (5) “Offering Documents” means the representations and disclosures required under OAR 441-035-0120.
- (6) “Oregon business” means a business formed under the laws of Oregon and registered with the Secretary of State of Oregon as a domestic business, with its principal office in Oregon, doing business in the state and having 50 or fewer employees.
- (7) “Third Party Platform Provider” means an internet based platform provided by a business technical service provider or other entity authorized by the Director to post, on behalf of issuers, information related to OIOs to interested persons who certify Oregon residency.

441-035-0090 Requirements for Exemption From Securities Registration. The offer or sale of an OIO by an issuer shall be exempt from the securities registration requirements under ORS 59.055 if the offer or sale is conducted in accordance with the following:

- (1) The issuer must be an existing Oregon business in good standing. The OIO exemption cannot be applied if the issuer, or a person affiliated with the issuer, would be disqualified under OAR 441-035-0210.
- (2) The offer and sale must be conducted in accordance with Section 3(a)(11) of the Securities Act of 1933, as amended. For purposes of this requirement, it is sufficient that the offer and sale complies with Rule 147 under Section 3(a)(11).
- (3)(a) OIO securities may only be offered or sold to natural persons who are residents of the state of Oregon.
 - (b) Prior to making any offer under this exemption, an interested person must make an affirmative declaration to the issuer or third party platform that they are an Oregon resident;
 - (c) Prior to any sale under the OIO exemption, the issuer must have a reasonable documentary basis to believe the prospective purchaser is a resident of Oregon and obtained the signed

acknowledgement required under OAR 441-035-0120(4). A reasonable documentary basis includes, but is not limited to:

- (i) A current Oregon Driver License or a current personal identification card issued by the State of Oregon; or
 - (ii) A document that indicates the prospective purchaser owns or occupies property in the state as his or her principal residence, such as a current voter registration, or official business mail from a state or federal agency.
- (4) The duration of an OIO will not exceed twelve (12) months, unless the issuer applies to extend the offering for a period not to exceed twelve (12) additional months. An issuer may apply to extend the offering by submitting an amended filing with the Director in conformance with these rules.
- (5) All proceeds from the sale of OIO securities must be used in accordance with representations made to investors, including the disclosures required under OAR 441-035-0120.
- (6) The aggregate purchase price of all OIO securities cannot exceed two hundred fifty thousand dollars (\$250,000).
- (7) An issuer may not accept more than two thousand five hundred dollars (\$2,500) from any individual in reliance on the OIO exemption.
- (8) Issuers offering or selling OIO securities must have met in person and reviewed their business plan with a business technical service provider prior to advertising, offering or selling securities.
- (9) OIO securities sold pursuant to this exemption are limited to notes, stocks, and debentures.

441-035-0100 Resale Limitations. (1) An OIO security may not be resold during the nine (9) month period immediately after purchase, except:

- (a) To the issuer; or
 - (b) Pursuant to an order of registration under ORS 59.065.
- (2) After the immediate nine (9) month period has ended, an OIO security may also be sold pursuant to an available exemption to securities registration requirements under ORS 59.025 or 59.035 or accompanying rules.

441-035-0110 Required Filings. (1) Not less than seven (7) days prior to the advertisement, offer or sale of any OIO security, the issuer shall file a notice with the Director, in writing, that it plans to conduct an OIO and pay a \$200 filing fee.

(2) The notice shall contain the following:

- (a) The name(s) and address of the issuer and of all officers, directors, principals, managing partners and shareholders of the Oregon business possessing a 20% interest or more, or persons holding a substantially similar position.
- (b) A copy of any proposed advertising materials, including a URL if a website will be used in connection with the offering, and name of the third party platform provider, if applicable;
- (c) A brief description of the business and the specific project or product that is the reason for the offering;
- (d) The minimum and maximum amounts issuer is seeking to raise through the offering or total offering amount;
- (e) A copy of the offering documents;
- (f) A form approved by the Director verifying that the issuer has met in person with a business technical service provider and reviewed the relevant business plan.

(3) The \$200 filing fee, which will be used to defray the costs incurred in administering and enforcing these rules, must be made payable to the Department of Consumer and Business Services.

(4) The filing must be signed by the issuer or a duly authorized representative of the issuer certifying that the issuer has verified the material accuracy and completeness of the information.

(5) These filing requirements may be met by submitting a form adopted by the Director or through individual submission of all the information required by the rule.

441-035-0120 Required Disclosures (1) Except as allowed under OAR 441-035-0130, prior to any offer or sale of an OIO security, each prospective investor must be given, in a single written document, the disclosures identified in subsection (2). For the purposes of this exemption, “in writing” includes printed, electronic, and internet media. An interested party must be given the option to receive the disclosures and subsequent reports in one or more formats, including printed copies at no charge.

(2) The disclosures required by these rules must include:

(a) The name(s) and physical address(es) of the issuer and of all officers, principals, managing partners and shareholders of the issuer holding a 20% interest or more, or persons holding a substantially similar position;

(b) A description of the experience and qualifications of the issuer officers, principals, managing partners and persons holding substantially similar positions;

(c) A description of the business, including how long it has been in operation and the specific reason for the offering;

(d) A discussion in plain language of the significant factors material to the offering, including those that make the offering speculative or risky;

(e) The total offering amount and how the issuer expects to use the proceeds of the offering, including compensation and expenses related to the offering.

(f) If an issuer needs to raise a minimum amount to achieve the stated funding goal, they must disclose that minimum offering amount and how the issuer intends to use funds raised through the offering if the minimum goal is not met, or if they intend to return the funds if the goal is not met;

(g) The terms and conditions of the securities being offered, the total amount of securities that are outstanding prior to the OIO, and the total amount of securities being offered or sold in reliance on the OIO exemption:

(i) If the issuer is offering stock, the terms and conditions must include either the percentage of ownership represented by a single share, or the total value of the Oregon business implied by the offering price.

(ii) If the issuer is offering notes or debentures, the terms and conditions must include the interest rate and specific terms of repayment.

(h) A description of any litigation or legal proceedings within the past five (5) years, if any, involving the issuer or any persons associated with the issuer.

(3) The issuer must inform all investors that the securities exempted by these rules are not registered with the state, that they are subject to a limitation on re-sale and investors may not be able to sell their securities promptly or may only be able to sell them at a substantial discount from the offering price. Disclosures must also contain the following language on the cover page of the offering document:

“THESE SECURITIES ARE BEING SOLD IN RELIANCE ON AN EXEMPTION TO THE FEDERAL SECURITIES REGISTRATION REQUIREMENTS UNDER SECTION 3(a)(11) OF THE SECURITIES ACT OF 1933 AND UNDER ORS 59.035 OF THE OREGON SECURITIES LAW. THESE SECURITIES CAN ONLY BE SOLD TO RESIDENTS OF OREGON AND ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

IN MAKING AN INVESTMENT DECISION, INVESTORS SHOULD RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS REVEALED IN THESE OFFERING DOCUMENTS, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE AUTHORITY OR REGULATORY COMMISSION NOR HAVE THEY CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. BUSINESS TECHNICAL SERVICE PROVIDERS HAVE NOT REVIEWED THE OFFERING DOCUMENTS AND CANNOT DETERMINE THE MERITS OF THIS OFFERING.”

(4) At the time of sale the issuer must require all purchasers to sign the following acknowledgement. For the purposes of this provision, “signed” includes a scanned, faxed or virtual signature:

"I have been provided and have reviewed the complete offering document, including the disclosures. I acknowledge that I am investing in a high-risk, business venture with no guarantee of success, that I may lose all of my investment, and that I can afford the loss of my investment. I understand this offering has not been reviewed by the State, and no authority has expressed an opinion on the merits or accuracy of this offering. By entering into this transaction with the issuer, I am affirmatively representing myself as an Oregon resident."

441-035-0130 Advertising and Solicitation. Issuers and third party platform providers may engage in general advertising or solicitation of OIO securities provided that:

- (1) The issuer files a copy of the advertising materials with the Director at least seven (7) days prior to use. The Director may prohibit the use of any advertisement that they consider false or misleading or otherwise not in compliance with these rules.
- (2) The advertisement is directed only to Oregon residents. Prior to viewing advertising materials, each person must affirmatively certify that they are an Oregon resident. A person who does not or can not affirmatively certify that they are an Oregon resident may not view the advertising materials.
- (3) The advertisement contains no more than the following information:
 - (a) The name and contact information of the issuer;
 - (b) A brief description of the general type of business of the issuer;
 - (c) Whether securities being offered are stocks, notes or debentures or a combination;
 - (d) The total offering amount;
 - (e) A description of how the issuer will use the funds;

- (f) The duration of the OIO and deadline for raising funds through the offering; and
 - (g) The issuer's logo;
 - (h) A link to the issuer's website or the third party platform in which the securities are offered or sold.
- (4) Any amendments to the advertising materials are filed with the Director.
- (5) The advertisement, including any advertisement through a website, clearly states that the advertisement does not constitute an offer to sell a security and includes contact or other relevant information notifying an interested person how they can obtain the required disclosure information, in writing, free of charge.
- (6) Advertising to the general public without regard to residency, or advertising information outside the scope of this rule is prohibited.

441-035-0140 Use of Internet General Requirements. (1) Websites that advertise or offer an OIO security must obtain an affirmative declaration from an interested person under 441-035-0090(3)(b) that the interested person is an Oregon resident prior to allowing access to any of the information allowed under OAR 441-035-0130 or to the offering documents under OAR 441-035-0120;

(2) Websites that advertise, offer or sell an OIO security must take reasonable steps to ensure that an investor's financial and personal information is properly secured and kept private and must conform to ORS 646A.622.

441-035-0150 Use of the Internet by Issuers. (1)(a) An Oregon business using its existing website must segregate information related to the advertising, offer or sale of OIO securities on a webpage distinct from webpages accessible to the general public.

(b) An issuer may use a webpage to sell securities if the issuer obtains reasonable documentary evidence under 441-035-0090(3)(c) that the prospective purchaser is an Oregon resident prior to the sale.

441-035-0160 Use of the Internet by Third Party Platform Providers. (1) A third party platform provider may post advertising materials allowed under OAR 441-035-0130 and offering documents under OAR 441-035-0120 for OIO securities, under the following conditions:

(a) The platform is used to host for not less than five (5) OIO issuers;

(b) The platform does not solicit, sell, or effect transactions in securities unless it is a registered broker-dealer under ORS 59.015(a). However, a third party platform may:

(i) allow an investor to transmit investor funds to an unaffiliated third party that is licensed or authorized to transmit money;

(ii) allow an investor to transmit funds to the issuer; or

(iii) direct an unaffiliated third party to transmit investor funds to the issuer pursuant to an written agreement;

(iv) collect certification and documentary evidence regarding an interested party's residency required by OAR 441-035-0090 provided the third party platform provider complies with the records requirement in OAR 441-035-0220.

(b) On portions of the platform accessible to the general public, a third party platform only makes viewable the general business and contact information of the issuer;

(c) The platform does not offer investment advice, endorse, or solicit for any issuer on the platform;

- (d) The platform does not engage in secondary trading of an issuer's securities; and
- (e) A platform only charges a nominal flat fee for the upkeep of the website and may not obtain any interest in the issuer in return for posting information on the platform.

441-035-0170 Prohibited Offerings. The OIO exemption is unavailable for the following types of offerings:

- (1) Offerings involving development stage companies without a specific business plan or purpose, or in which the issuer has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds for sufficiently identifiable properties or objectives (e.g., "blank check" offerings);
- (2) Offerings that involve the sale of securities other than notes, stocks, or debentures.
- (3) Offerings involving petroleum exploration or production, mining, or any other extractive industries; or
- (4) Offerings involving an investment company as defined and classified under Section 4 of the Investment Company Act of 1940.

441-035-0180 Prohibition on Commissions, Fees and Other Remuneration. No person may receive a commission, fee, or other remuneration for offering, soliciting or selling any OIO security.

441-035-0190 Integration.

(1) All separate sales of securities will be included as part of the OIO if, after considering the following elements, there are compelling reasons to treat the sale as part of the same offering. The elements to be considered are:

- (a) Whether the sales are part of a single plan of financing;
- (b) Whether the sales involved issuance of the same type of security;
- (c) Whether the sales are made at or about the same time;
- (d) Whether the same type of consideration is received; and
- (e) Whether the sales are made for the same general purpose.

(2) Employee benefit plans. Offers and sales of any securities registered under OAR 441-065-0270 are not included for purposes of this rule.

(3) Sales of securities made more than six months prior to the offer or sale of securities in reliance on this exemption, or more than six months after the termination offer or sale of securities in reliance on this exemption will not be counted or included as sales made as part of the same offering under this rule if there are no sales of securities of the same or similar type by the issuer during either six month period other than sales of securities under an employee benefit plan registered under OAR 441-065-0270.

441-035-0200 Reporting. (1) An issuer of an OIO security shall provide a report to all individuals having an outstanding security interest obtained through this exemption at least twice a year. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a Website if the information is made available within 45 days of the end of each fiscal half-year and remains available for at least 60 days. An issuer must provide a written copy of the report to any shareholder as requested. The report required by this section

shall be provided free of charge regardless of format. A copy of the report shall be filed with the Director at the same time it is provided to the issuer's investors. The report must contain the following:

- (a) Compensation received by each Director and executive officer, or person occupying a substantially similar role, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.
 - (b) An explanation and discussion of the business operations and financial condition of the issuer such as a recent financial statement and profit and loss statement.
 - (c) The Director may require any issuer to file periodic reports to keep the information contained in the notice reasonably current and to disclose the progress of the offering.
- (2)(a) The issuer must file a sales report with the Director no later than thirty (30) calendar days after the expiration of the offering in a form prescribed by the Director.
- (b) A sales report must state the total amount raised through the offering, how many investors purchased securities through the offering, and whether, if funds were held in escrow the funds were released to the issuer.

441-035-0210 Bad Actors. (1) The OIO exemption is not available if, within five years prior to the offering, any of the following apply:

- (a) An issuer or person affiliated with the issuer has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Securities Act of 1933 or has been the subject of any refusal order or stop order thereunder.
 - (b) An issuer or person affiliated with the issuer is subject to any pending proceeding under SEC rule 258 promulgated under the Securities Act of 1933, or any similar section adopted under section 3(b) of the Securities Act of 1933, or to an order entered thereunder.
 - (c) An issuer or person affiliated with the issuer has been convicted of any felony or misdemeanor involving the offer, purchase, or sale of any security, or involving the making of any false filing related to the offer or sale of any security, or any felony or misdemeanor involving dishonesty.
 - (d) An issuer or a person affiliated with the issuer is, or has been, subject to a state administrative order or judgment containing findings that the issuer or person affiliated with the issuer engaged in fraud or deceit, including but not limited to, making untrue statements of material facts and omitting to state material facts, in connection with the purchase or sale of securities.
 - (e) An issuer or person affiliated with the issuer has ever been subject to any order, judgment, or decree of any court of competent jurisdiction or regulatory authority (including non-U.S. regulatory authorities) preliminarily, temporarily, or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing related to the offer or sale of any security.
 - (f) An issuer or a person affiliated with the issuer is the subject of a cease and desist order entered after notice and opportunity for hearing by the Director, a securities agency or administrator of another state or Canadian province or territory, the United States Securities and Exchange Commission or the United States Commodity Futures Trading Commission that contains allegations of securities fraud or misrepresentations in connection with investment offerings.
- (2) The disqualification under this rule may not apply if:

- (a) The Director determines that it is not necessary under the circumstances that an exemption be unavailable; and
- (b) The issuer establishes that they did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this rule.

441-035-0220 Records. The issuer shall maintain the following records for inspection by the Director for four (4) years from the date the OIO is concluded.

- (1) Records relating to purchasers and materials and data relied upon to determine the qualifications of the purchasers;
- (2) Records relating to securities sales following the close of the offering that are considered as part of the offering; and
- (3) All disclosure, advertising, and purchaser acknowledgement materials used in connection with offerings.

441-035-0230 Burden of Proof. Under ORS 59.275, persons relying upon the OIO rules have the burden in any civil, criminal or administrative action brought under or in connection with Oregon Securities Law of proving that they satisfied all of the conditions of this exemption.