

**State of Rhode Island and Providence Plantations**  
**DEPARTMENT OF BUSINESS REGULATION**  
*Division of Securities*  
**1511 Pontiac Avenue, Bldg. 69-2**  
**Cranston, Rhode Island 02920**

**Public Notice of Proposed Rule-Making**

Pursuant to the provisions of R.I. Gen. Laws § 7-11-101 *et seq.* and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to adopt Rhode Island Crowdfunding Exemption.

The purpose of this adoption is to permit intra-state crowdfunding offerings. The exemption is tied to the federal intra-state offering exemption provided under Section 3(a) (11) of the Securities Act of 1933 and S.E.C. Rule 147. Issuers will be responsible to make sure their transactions meet the requirements of those federal exemptions. Offerings that fail to meet the requirements of those exemptions will lose the federal exemptions, and as a consequence would also lose the benefit of the Rhode Island Crowdfunding Exemption.

The proposed regulation is available for public inspection at [www.dbr.ri.gov](http://www.dbr.ri.gov), in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email [matthew.gendron@dbr.ri.gov](mailto:matthew.gendron@dbr.ri.gov) or by calling Matthew Gendron at (401) 462-9540.

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by August 27, 2015 to Matthew Gendron, Department of Business Regulation, 1151 Pontiac Avenue, Cranston, Rhode Island 02920, or [matthew.gendron@dbr.ri.gov](mailto:matthew.gendron@dbr.ri.gov). A public hearing to consider the proposed adoption shall be held at 2 P.M. on August 27, 2015 at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email [dbr.directorofficeinquiry@dbr.ri.gov](mailto:dbr.directorofficeinquiry@dbr.ri.gov) at least three (3) business days prior to the hearing.

Macky McCleary  
Director, Department of Business Regulation

Date posted: July 24, 2015

**State of Rhode Island and Providence Plantations**  
**DEPARTMENT OF BUSINESS REGULATION**  
*Securities Division*  
**1511 Pontiac Avenue, Bldg. 69-1**  
**Cranston, RI 02920**

**RHODE ISLAND CROWDFUNDING EXEMPTION**

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**Section 1**     *Authority*

This regulation is promulgated in accordance with Rhode Island Uniform Securities Act (“RIUSA”), R.I. Gen. Laws § 7-11-101 *et seq.*

**Section 2**     *Definitions*

- A.     “Annual income and net worth” of a natural person shall be calculated as those values are calculated for purposes of determining accredited investor status in accordance with Rule 501 of SEC Regulation D, 17 CFR 230.501. The person’s annual income and net worth may be calculated jointly with the annual income and net worth of the person’s spouse.
  
- B.     “Controlling person” shall mean an officer, director, partner, trustee, person owning 10 percent or more of outstanding shares of the issuer or a person occupying similar status with respect to the issuer.

**Section 3**     *Rhode Island Crowdfunding Exemption*

A securities transaction is exempt from §§ 7-11-301 and 7-11-404 if it satisfies all of the following requirements:

- A.     The offering of securities is conducted solely in this state to residents of this state.

- B. The issuer of the security is a corporation or other entity having its principal place of business in this State and registered with the Secretary of State as an entity formed under the laws of this State or authorized to transact business within this State.
- C. The securities offered and sold pursuant to this exemption are equity or debt securities of the issuer.
- D. The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. §77c(a)(11), and SEC rule 147. As such, securities must be offered to and sold only to persons who are residents of the state of Rhode Island at the time of purchase. Prior to any offer or sale pursuant to this exemption, the seller shall obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe that such investor is a resident of the state of Rhode Island
- E. The sum of all cash and other consideration to be received for all securities sold in reliance upon this exemption shall not exceed the below limitations, excluding offers and sales to controlling persons:
  - 1. One million dollars (\$1,000,000), if the issuer has not undergone and made available to each prospective investor and the Department the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles; or
  - 2. Two million dollars (\$2,000,000), if the issuer has undergone and made available to each prospective investor and the Department the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.
- F. The aggregate amount of securities sold to any one investor by the issuer, including any amount sold during the 12-month period preceding the date of the transaction, shall not exceed the greater of:
  - 1. \$2,000 or 5 percent of annual income or net worth of the investor, whichever is greater, if both the annual income and net worth are less than \$100,000; and
  - 2. 10 percent of annual income or net worth of the investor, whichever is greater (not to exceed an amount sold of \$100,000) if either the annual income or net worth of the investor is equal to or more than \$100,000.
- G. The issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security.
- H. A commission or remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is licensed as a broker-dealer or sales representative under RIUSA § 7-11-201.

- I. All the funds shall be used in accordance with representations made to investors.
- J. The issuer shall not be, either before or as a result of the offering:
  - 1. An investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d);
  - 2. A hedge fund, commodity pool, or similar investment vehicle;
  - 3. A development stage company without a specific business plan or purpose, or which 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 to sufficiently identifiable properties or objectives (i.e., blind pool” or “blank check” offerings); or
  - 4. A business involving petroleum exploration or production, mining, or other extractive industries.
- K. The issuer shall establish a minimum offering amount, which shall be set at a level sufficient to implement the plan of business disclosed in the offering materials. Such minimum offering amount shall be no less than 30% of the maximum offering amount set by the issuer and disclosed in the offering materials. Up until the minimum offering amount is reached, all funds received from investors shall be deposited into an escrow account at a bank or depository institution authorized to do business in Rhode Island. If the minimum offering amount is not met within one year of the earlier of the commencement of the offering or the first posting of the offering on the internet, the issuer shall return all funds to investors.

**Section 4**     *Exclusions from claiming exemption*

- A. The intrastate crowdfunding exemption shall not be available 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 of the issuer; any beneficial owner of twenty percent 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 making an exemption filing under this Regulation; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the offering of securities; or any director, executive officer or other officer participating in the offering of any such solicitor, general partner, or managing member of such solicitor:
  - 1. Has been convicted, within ten years before making an exemption filing under this Regulation, or five years, in the case of issuers, their predecessors, and affiliated issuers, of any felony or misdemeanor:

- i. In connection with the purchase or sale of any security;
  - ii. Involving the making of any false filing with the Securities and Exchange Commission or a state securities commission (or an agency or officer of a state performing like functions); or
  - iii. 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;
2. Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before making an exemption filing under this Regulation, that, at the time of filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:
  - i. In connection with the purchase or sale of any security;
  - ii. Involving the making of any false filing with the Securities and Exchange Commission or a state securities commission (or an agency or officer of a state performing like functions); or
  - iii. 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); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:
  - i. At the time of making an exemption filing under this Regulation, bars the person from:
    - a. Association with an entity regulated by such commission, authority, agency, or officer;
    - b. Engaging in the business of securities, insurance or banking; or
    - c. Engaging in savings association or credit union activities; or
  - ii. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before making an exemption filing under this Regulation;

4. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to Rhode Island Uniform Securities Act (“RIUSA”), R.I. Gen. Laws § 7-11-101 *et seq.*, or any other state's securities law, within five years prior to making an exemption filing for an offering under this Regulation;
5. Is currently subject to any state administrative enforcement order or judgment entered by the Department or any other state's securities administrator within five years prior to making an exemption filing for an offering under this Regulation or is subject to any state's administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to making an exemption filing under this Regulation;
6. Is subject to an 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 making an exemption filing this Regulation:
  - i. Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;
  - ii. Places limitations on the activities, functions or operations of such person; or
  - iii. Bars such person from being associated with any entity or from participating in the offering of any penny stock;
7. Is subject to any order of the Securities and Exchange Commission entered within five years before making an exemption filing under this Regulation that, at the time of filing, orders the person to cease and desist from committing or causing a violation or future violation of:
  - i. 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 C.F.R. 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
  - ii. Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

8. 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 to act constituting conduct inconsistent with just and equitable principles of trade;
  9. Has filed (as a registrant or issuer), 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 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; or
  10. Is subject to a United States Postal Service false representation order entered within five years before the making of an exemption filing under this Regulation or is, at the time of such filing, 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.
- B. For purposes of this section, "final order" shall mean a written directive or declaratory statement issued by a federal or state agency 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. Section 4(A) shall not apply:
1. Upon a showing of good cause and without prejudice to any other action by the Department, if the Department determines that it is not necessary under the circumstances that an exemption be denied;
  2. If, before the relevant filing, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Department) that disqualification under Section 4(A) should not arise as a consequence of such order, judgment, or decree; or
  3. If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under subsection Section 4(A). An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.
- D. For purposes of Section 4(A), events relating to any affiliated issuer that occurred

before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

1. In control of the issuer; or
2. Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such event.

**Section 5**      *Notice of Exemption*

A. Not less than ten days prior to the use of any general solicitation or within fifteen days after the first sale of the security pursuant to this exemption (provided no general solicitation has been used prior to such sale), whichever occurs first, the issuer shall provide a notice to the Department in writing or electronically on such forms as specified by the Department, including the following:

1. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption.
2. The notice shall contain the names and addresses of the following persons:
  - i. The issuer;
  - ii. Officers, directors and any controlling person of the issuer;
  - iii. All persons who will be involved in the offer or sale of securities on behalf of the issuer; and
  - iv. The bank or other depository institution in which investor funds will be deposited.
3. The notice shall include a copy of all materials used in connection with the solicitation, offer, or sale of the issuer's securities, including the disclosures required in Section 6 herein.
4. The notice shall contain a consent to service of process on forms provided by the Department.

B. Every notice of exemption provided for in Section 5 shall be accompanied by a nonrefundable filing fee of \$100 made payable to the General Treasurer of Rhode Island.

**Section 6**      *Required Disclosures*

A. The issuer shall disclose to each prospective purchaser all of the following:

1. A description of the issuer and its business, and the address, telephone number, and website address of its principal office;
  2. A description of the intended use of the offering proceeds;
  3. A description of any current or pending litigation, legal proceedings, or pending regulatory action involving the issuer or its management;
  4. The identity of all persons owning ten percent (10%) or more of the ownership interests of any class of securities of the issuer;
  5. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing functions in the name of and on behalf of the issuer;
  6. The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offer and sale of securities, including any Internet web site operator but excluding persons acting solely as accountants or attorneys and employees whose primary responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;
  7. The names and addresses of each Internet web site that will be used by the issuer to offer or sell securities; and
  8. Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or of high risk.
- B. Among other risk disclosures, the issuer must provide the following disclosures to all prospective purchasers and investors:
1. There is no ready market for the sale of the securities acquired in this offering; 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.
  2. 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.
  3. 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.
  4. No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosures provided.

- C. Since this Regulation requires that the offering be in compliance with SEC Rule 147, the issuer must also provide written disclosures concerning the limitations on resale of the securities contained in SEC Rule 147(e) and(f) (17 CFR §230.147). Additionally, an issuer must place a required legend disclosing such limitations on resale on the securities certificate or other document evidencing the securities issued in the offering.

**Section 7**      **Miscellaneous Provisions**

- A. The exemption provided herein shall be effective for up to 12 months, subject to annual renewal.
- B. Nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions in RIUSA § 7-11-501, nor shall such exemption be construed to provide relief from any other provisions of RIUSA other than as expressly stated.
- C. Upon the first to occur of: (i) the completion of the offering, (ii) the termination of the offering, or (iii) 12 months from the commencement of the offering, the issuer shall file with the Department a sales report indicating the number and value of securities sold in the offering, and the number of purchasers in the offering.
- D. The Director may by rule or order, as to any security or transaction of any type of security or transaction, withdraw, further condition or expand this exemption.
- E. The Director may by order deny or revoke the exemption specified in this section with respect to a specific security if it finds the sale of such security would work or tend to work a fraud upon the purchasers thereof.
- F. In any proceeding under RIUSA, the burden of proving an exemption from a definition is upon the person claiming it.

**Section 8**      **Severability**

If any provision of this regulation or the application thereof to any person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

**Section 9**      **Effective Date**

This regulation is effective as indicated below.

EFFECTIVE DATE:                      [insert]



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
**OFFICE OF REGULATORY REFORM**  
 OFFICE OF MANAGEMENT & BUDGET  
 DEPARTMENT OF ADMINISTRATION

One Capitol Hill  
 Providence, RI 02908-5890  
 Office: (401) 574-8430  
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## Executive Order 15-07: Submission Form

AGENCY AND REGULATION INFORMATION			
1. Title of Regulation	Rhode Island Crowdfunding Exemption		
2. Agency Name	Department of Business Regulation	3. Date Submitted (mm/dd/yy)	06/25/15
4. Agency Contact Name	Elizabeth Kelleher Dwyer, Esq.	5. Telephone (include Area Code)	(401) 462-9615
6. Email	elizabeth.dwyer@dbr.ri.gov		
7. Rulemaking Action	<input type="checkbox"/> Amendment <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Repeal <input type="checkbox"/> Emergency Rulemaking		
8. State Statutory Authority	R.I. Gen. Laws § 7-11-101 et seq.		
9. Federal or other Statutory Authority (please describe)	Section 3(a) (11) of the Securities Act of 1933 and S.E.C. Rule 147.		
10. Is there a legal deadline for this action?	<input checked="" type="checkbox"/> None <input type="checkbox"/> Statutory deadline: _____ <input type="checkbox"/> Court-ordered deadline: _____ Describe:		
11. Current ERLID #	_____ OR <input checked="" type="checkbox"/> No current ERLID # assigned		

AGENCY CERTIFICATIONS			
<b>12. Regulatory Flexibility Analysis/Small Business Regulatory Fairness in Administrative Procedures</b> By signature in item 13, the agency Rules Coordinator or authorized designee deems that this regulation: <input checked="" type="checkbox"/> <b>DOES have impact on small business</b> <input type="checkbox"/> <b>DOES NOT have impact on small business,</b> and that if such small business impact exists, the agency has completed the additional documentation for further Regulatory Flexibility Analysis, in order to consider, without limitation, all methods of reducing the impact of this regulation on small business.			
<b>Executive Order 15-07</b> By signature in item 13, the agency Rules Coordinator or authorized designee certifies that the agency has complied with the requirements of E.O 15-07 and any applicable policy directives.			
13. Signature of Rules Coordinator or Authorized Designee	Elizabeth Kelleher Dwyer, Esq.	14. Date (mm/dd/yy)	06/25/15
	I understand that my typed name shall have the same force and effect as my written signature.		
15. Position	Associate Director		

## EXECUTIVE SUMMARY OF REGULATION

### **16. Briefly summarize the purpose of this regulation.**

The regulation permits intra-state crowdfunding offerings, the ("Crowdfunding Exemption.") The Crowdfunding Exemption is tied to the federal intra-state offering exemption provided under Section 3(a) (11)of the Securities Act of 1933 and S.E.C. Rule 147. Issuers will be responsible to make sure their transactions meet the requirements of those federal exemptions. Offerings that fail to meet the requirements of those exemptions will lose the federal exemptions, and as a consequence would also lose the benefit of the Rhode Island Crowdfunding Exemption.

### **17. Briefly summarize the societal costs and benefits of this regulation on Rhode Island.**

The Crowdfunding Exemption is designed to foster job creation by helping small and early-stage Rhode Island companies find investors and gain greater access to capital with fewer restrictions. The exemption is also intended to provide necessary investor protections by requiring key disclosures, and by making the exemption unavailable to bad actors that have violated the securities laws or committed financial fraud.