MARYLAND ENACTS INTRASTATE CROWDFUNDING RULES
Companies and investors are growing increasingly impatient with the delay by the Securities and Exchange Commission to issue final rules implementing Title III of the Jumpstart Our Business Startups Act of 2012. As a result, many are turning to the states in an effort to establish a crowdfunding marketplace. To this end, a number of state legislatures have now proposed their own equity crowdfunding laws, and several have proceeded with enacting such laws. However, these new rules are limited to intrastate offerings – meaning that the investors must all be residents of the state of incorporation and principal place of business of the issuing company.

On October 1, 2014, Maryland legalized crowdfunding following the Maryland Securities Commissioner’s release of the final rules for the Maryland Intrastate Business Exemption (the “MISBE”), which provide an exemption from the Maryland Securities Act’s registration provisions for certain intrastate offerings. While Maryland is one of the few states to permit such a form of crowdfunding, it has also taken one of the most conservative approaches.

Under the MISBE, a company may only qualify for an exemption if it is organized under the laws of Maryland, qualified to do business in Maryland and has its principal place of business in Maryland. At least 80% of the net proceeds of the offering must be used to operate the business or to render services in Maryland. All offers and sales must be made in Maryland to Maryland residents. The aggregate offering price may not exceed $100,000 in any twelve-month period and the total consideration paid by any purchaser may not exceed $100, unless the purchaser is an accredited investor. The form of security is currently limited to promissory notes only. If a company desires to use its website to promote the offering, it must take measures to ensure that such information is only visible to those with Maryland IP addresses. Companies are also required to deliver to each prospective purchaser a disclosure document that requires, among other things, a list of risk factors specific to the company and information about the intended use of proceeds. Companies seeking to take advantage of the MISBE should exercise caution and consult their legal professionals for advice.

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