



Exempt Intrastate Offers: Advertising and Soliciting on Websites and Social Media

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While Section 5 of the Securities Act of 1933 generally prohibits the interstate sale of unregistered securities, Section 3 of the Act provides exceptions for certain classes of securities “where there is no practical need for registration or where the benefits of registration are too remote.” (Preliminary notes to Rule 147). The exceptions include securities “offered and sold only to persons resident within a single State or Territory,” where the issuer is also a resident of that State or Territory. (§ 3(a)(11)). In the Securities Act rules, Rule 147 further clarifies the 3(a)(11) exemption, elaborating on the determination of the issuer and offerees’ states of residence (Rule 147(c) and (d) respectively). However, while issuers qualifying for the Rule 147 exemption can avoid registration with the SEC, they must still comply with “any state laws relating to the offer and sale of the securities.” (Preliminary notes to Rule 147).

In light of the broad accessibility of Internet content, intrastate issuers who wished to use online advertising and solicitation faced a challenge. Advertisements meant to reach only residents of the issuer’s state could be viewed by Internet users outside of that state. But with the ability of Internet users to provide their residence information before viewing content and the ability of advertisers to geotarget viewers based on their Internet protocol (IP) addresses, issuers gained the power to limit their solicitations. The question then became whether these limitations would meet the requirements of Rule 147.

In April 2014, the SEC clarified in Question 141.03 that issuers hoping to utilize the Rule 147 exemption could use the Internet for general advertising and solicitation if they implemented measures to limit the offers to people within the issuer’s state. In the context of an offering conducted within state crowdfunding requirements, those measures have to include:

1. limiting access to information about a specific investment opportunity to persons who confirm they are residents of the relevant state “(for example, by providing a

representation . . . such as a zip code or residence address)” and

2. providing a disclaimer and restrictive legend clarifying “that the offer is limited to residents of the relevant state under applicable law.” ([Question 141.04](#)).

Earlier this month, the SEC suggested what might be a simpler method of limiting the offer to those within the relevant state. The issuer can “implement technological measures” that limit any offers to persons with an IP address originating within the issuer’s state or territory and prevent offers to any others. ([Question 141.05](#)). However, the offer must still contain a disclaimer and restrictive legend as stated above. ([Question 141.05](#)). This clarification could allow issuers to skip the opt-in step where the viewer must verify they are residents of the relevant state before viewing the solicitation or advertisement. The simplification could greatly increase the number of views and potentially improve the effectiveness of the communication.

Advertising opportunities on “third-party Internet portal[s]” ([Question 141.04](#)), which may include social media sites or other popular webpages, may offer advertisers the ability to limit ads to viewers with IP addresses within a given state. This ability to deliver different content based on the geolocation of the viewer is called geotargeting or geomarketing. Geotargeting has the benefit of saving the advertiser money by only advertising to the target audience. Now, in light of the SEC’s recent C&DI, geotargeting may also have the benefit of allowing advertisers to comply with the requirements of Rule 147 without requiring viewers to opt-in. Similarly, issuers may be able to utilize geotargeting on their own websites, limiting offering content to viewers of their state.

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