Texas Crowdfunding Portal Registration and Activities

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| **Texas Administrative Code** | [Next Rule>>](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=169743&p_tloc=&p_ploc=1&pg=2&p_tac=&ti=7&pt=7&ch=115&rl=19) |

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| **[TITLE 7](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=2&ti=7)** | BANKING AND SECURITIES |
| **[PART 7](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=3&ti=7&pt=7)** | STATE SECURITIES BOARD |
| **[CHAPTER 115](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=7&pt=7&ch=115)** | SECURITIES DEALERS AND AGENTS |
| **RULE §115.19** | **Texas Crowdfunding Portal Registration and Activities** |

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| (a) Intrastate portal. A Texas crowdfunding portal:    (1) must be an entity incorporated or organized under the laws of Texas, authorized to do business in Texas, and engaged exclusively in intrastate offers and sales of securities in Texas;    (2) must limit its activities to operating an Internet website utilized to offer and sell securities exempt from registration pursuant to §139.25 of this title (relating to Intrastate Crowdfunding Exemption); and    (3) does not operate or facilitate a secondary market in securities.  (b) Internet website. The Internet website operated by the Texas crowdfunding portal must meet the following requirements:    (1) the website must contain a disclaimer that reflects that access to securities offerings on the website is limited to Texas residents and offers and sales of the securities appearing on the website are limited to persons that are Texas residents;    (2) an affirmative representation by a visitor to the Internet website that the visitor is a resident of Texas is required before the visitor can view securities-related offering materials on the website;    (3) evidence of residency within Texas is required before a sale is made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the prospective purchaser is a Texas resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:      (A) a valid Texas driver license or official personal identification card issued by the State of Texas;      (B) a current Texas voter registration; or      (C) general property tax records showing the individual owns and occupies property in this state as his or her principal residence;    (4) prior to offering an investment opportunity to residents of Texas and throughout the term of the offering, the portal shall give the Securities Commissioner access to the Internet website; and    (5) prior to permitting an investment in any securities listed on the Internet website, the portal shall obtain an affirmative acknowledgment from the investor of the following:      (A) There is no ready market for the sale of the securities acquired from 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;      (B) 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;      (C) 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; and      (D) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on this Internet website.  (c) Prohibited activities. A Texas crowdfunding portal shall not:    (1) offer investment advice or recommendations;    (2) compensate employees, agents, or other persons not registered with the Securities Commissioner for soliciting offers or sales of securities displayed or referenced on its platform or portal;    (3) hold, manage, possess or otherwise handle investor funds or securities;    (4) be affiliated with or under common control with an issuer whose securities appear on the Internet website;    (5) hold a financial interest in any issuer offering securities on the portal's Internet website; or    (6) receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer.  (d) Background and regulatory checks. Prior to offering securities to residents of Texas, the Texas crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal's Internet website and of each of the issuer's control persons. "Control persons" for purposes of this subsection means the issuer's officers; directors; or other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20% of the outstanding equity of the issuer. The portal must deny an issuer access to its Internet website if the portal has a reasonable basis for believing that:    (1) the issuer or any of its control persons is subject to a disqualification under §139.25 of this title (relating to Intrastate Crowdfunding Exemption);    (2) the issuer has engaged in, is engaging in, or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person; or    (3) it cannot adequately or effectively assess the risk of fraud by the issuer or its potential offering.  (e) Recordkeeping.    (1) A Texas crowdfunding portal is not required to maintain the records listed in §115.5 of this title (relating to Minimum Records) or to maintain a supervisory system under §115.10 of this title (relating to Supervisory Requirements).    (2) A portal shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made through the Internet website and to transactions where the portal receives compensation:      (A) records of compensation received for acting as a portal, including the name of the payor, the date of payment, name of the issuer, and name of the investor;      (B) copies of information provided by the portal to issuers offering securities through the portal, prospective purchasers, and investors;      (C) any agreements and/or contracts between the portal and an issuer, prospective purchaser, or investor;      (D) any information used to establish that an issuer, prospective purchaser, or investor is a Texas resident;      (E) any information used to establish that a prospective purchaser or investor is an accredited investor as defined in §107.2 of this title (relating to Definitions);      (F) any correspondence or other communications with issuers, prospective purchasers, and/or investors;      (G) any information made available through the portal's Internet website relating to an offering;      (H) ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts; and      (I) any other records relating to the offers and/or sales of securities made through the Internet website.    (3) A portal shall maintain and preserve a copy of the Form 133.15 (relating to Texas Crowdfunding Portal Registration), Form 133.16 (relating to Texas Crowdfunding Portal Withdrawal of Registration), and the Form U-4 (Uniform Application for Securities Industry Registration or Transfer) used to register the portal and its designated officer, and any amendments thereto, for a period of five (5) years from the termination of the portal's registration.    (4) The records required to be maintained and preserved under this subsection may be archived if they are over two years old.    (5) A portal shall, upon written request of the Securities Commissioner, furnish to the Commissioner any records required to be maintained and preserved under this subsection.    (6) The portal shall provide to the Commissioner access, inspection, and review of any Internet website operated by a portal and records maintained by the portal; and    (7) The records required to be kept and preserved under this subsection must be maintained in a manner, including by any electronic storage media, that will permit the immediate location of any particular document so long as such records are available for immediate and complete access by representatives of the Commissioner. Any electronic storage system must preserve the records exclusively in a non-rewriteable, non-erasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and can download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this subsection with records not required to be kept, representatives of the Commissioner may review all commingled records.  (f) Filings.    (1) Application. In lieu of the application requirements in §115.2 of this title (relating to Application Requirements), a complete application for a Texas crowdfunding portal consists of the following and must be filed with the Securities Commissioner:      (A) Form 133.15, including all applicable schedules and supplemental information;      (B) Form U-4, for the designated officer and a Form U-4 for each agent to be registered (officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners);      (C) a copy of the articles of incorporation or other documents which indicate the form of organization, certified by the Texas Secretary of State or by an officer or partner of the applicant;      (D) any other information deemed necessary by the Commissioner to determine the financial responsibility, business repute, or qualifications of the portal; and      (E) the appropriate registration fee(s).    (2) Post-reporting requirements. A portal is subject to the dealer and agent requirements in §115.9 of this title (relating to Post-Registration Reporting Requirements).    (3) Renewal. Registration as a portal expires at the close of the calendar year, but subsequent registration for the succeeding year shall be issued upon written application and upon payment of the appropriate renewal fee(s), without filing of further statements or furnishing any further information unless specifically requested by the Commissioner. |
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| **Source Note:** The provisions of this §115.19 adopted to be effective November 17, 2014, 39 TexReg 8961 |

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