



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Can the Massachusetts Crowdfunding Exemption Help Breweries?

BY DONNA TRUEX AND LIBBIE HOWLEY • JULY 27, 2015

With the recent adoption of the Massachusetts Crowdfunding Exemption, 950 CMR 14.402(B)(13)(o), growing Massachusetts breweries – like any smaller or early stage company – may be wondering how the Exemption can help them. While the use of the Exemption with the unique considerations of breweries has yet to be fully determined, the Exemption may become a great tool to raise capital in Massachusetts, if great caution and care are exercised to address the additional licensing requirements.

Breweries, as with most start-ups or early-stage companies, face the difficulties of securities restrictions and registration requirements in accessing investors and raising capital. With the new Exemption, most Massachusetts companies – from corporations to limited liability companies, with limited exceptions – may conduct intra-state crowdfunding debt and equity offerings with fewer restrictions and registration requirements. Relying on the Exemption, up to \$2,000,000 may be raised in a 12-month period, provided there are audited financials. Without audited financials, the amount is capped at \$1,000,000 in a 12-month period. Depending on annual income and net worth, individual Massachusetts residents with annual income or net worth over \$100,000 are allowed to contribute 10% of their annual income or net worth up to \$100,000, and individual Massachusetts residents with their annual income and net worth less than \$100,000, are allowed to contribute the greater of \$2,000 or 5% of their annual income or net worth.

To comply with the requirements of the Exemption, a company must: (a) make specific documentation and risk disclosures available to prospective investors, such as information on essential personnel and the business plan; (b) set a minimum and maximum offering amount, with the minimum offering amount at least 30% of the maximum offering amount and sufficient to carry out the business plan; (c) hold any funds received through the offering in escrow until the minimum offering amount is reached (and if not reached within a 12-month period, return the funds to each investor); and (d) file notice and a sales report with the Secretary of the Commonwealth at the start and end of the offering, respectively.

The roadblock to the use of the Exemption for breweries – in contrast to start-ups or smaller companies in other industries – is alcoholic beverage licensing requirements. In addition to taking steps to verify each investor meets the Exemption’s annual income or net worth requirements, the required ABCC disclosures add a layer of complication. Notably, the ABCC requires personal information of each investor holding an interest in a brewery’s license be disclosed, which also includes consenting to a CORI check. While the ABCC decided, prior to the adoption of the Exemption, in its November 20, 2013 decision of *In re: Homestead Hard Cider, LLC d/b/a Homestead Hard Cider*, that the identities of investors providing “de minimis” amounts (in this case “de minimis” amounts ranged from \$5 to \$500) need not be disclosed, the application of the Exemption in the alcoholic beverage licensing context has not yet fully played out. Adding ABCC disclosure requirements to the Exemption requirements, may make use of the Exemption too complicated or difficult, especially for those already resource-strapped breweries. However, the fact that the Exemption requires all crowdfunding to be within Massachusetts – offerings by Massachusetts companies to Massachusetts residents only – and the fact that the Exemption requires companies using the Exemption take steps to verify the required income and net worth thresholds of each investor anyway, could make the use of the Exemption by breweries more practical.

On a final note, any company – not just breweries – relying on the Exemption must also be in compliance with the federal counterpart under Section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147.