



1000 University Ave., W. Suite 222
Saint Paul, MN 55104
651-330-8062 (Main)
www.mendozalawoffice.com

Anthony S. Mendoza, Esq.
Direct Dial: 651-340-8884
tony@mendozalawoffice.com

KEEPING IT LOCAL: STARTING UP A MNVEST PORTAL

In June of 2016, the Minnesota Department of Commerce (DOC) issued regulations which marked the official launch of the MNvest program. The state MNvest program creates a special exemption from state securities registration requirements that allow small businesses to raise capital from financing sources within Minnesota through online “crowdfunding” portals. The MNvest program was enabled by the Minnesota Legislature with the passage of the MNvest law that amended the Minnesota Securities Act in 2015.

It is important to distinguish MNvest from popular “crowdfunding” software such as “Kickstarter” and “Go Fund Me.” Kickstarter and Go Fund Me do not provide a portal through which securities can be purchased. In other words, you are not purchasing an equity stake in a company when you contribute to a Kickstarter or Go Fund Me campaign. Thus, unlike MNvest, such crowdfunding websites operate across state borders, and are not subject to federal or state securities regulations.

Moreover, it is important to distinguish MNvest, a state crowdfunding portal, from separate federally authorized crowdfunding web sites. The U.S. Securities Exchange Commission has issued regulations allowing for *interstate* crowdfunding offerings. However, these are separately authorized crowdfunding sites from MNvest, which allows and regulates strictly *intrastate* offerings.

A firm seeking to raise capital using MNvest can raise no more than \$1 million during any one month period unless the issuer provides audited or reviewed financial statements, in which case the annual limit on the amount that can be raised is \$2 million. There are several DOC regulatory provisions that issuers must comply with which are beyond the scope of the article. The focus of this article is on those firms that seek to operate a Web portal through which securities may be offered utilizing the MNvest registration exemption.

One of the unique aspects of the Minvest program is that a Minvest portal can be owned and operated by anyone. The operation of such portals is not restricted to registered broker-dealers. Registered broker-dealers do not need to register with the State of Minnesota to operate a MNvest portal. Anyone other than a registered broker-dealer must submit an application to the DOC on the form attached to this article. A portal registration is good for 12 months from the date of approval, but can be renewed for successive 12 month periods. A MNvest portal cannot use the words “MNvest” in any part of its name or use the words in any way to connote endorsement of the issuer or securities offering by MNvest. MNvest itself is a non-profit corporation whose mission is to educate and promote usage of the MNvest system.

MNvest portal operators that are not registered broker-dealers are prohibited from: (i) offering investment advice; (ii) earning “transaction based” compensation for securities sold through the portal; or (iii) holding, managing, or possessing purchaser funds or securities (unless the portal operator is also the issuer).

Portal operators also perform important and state mandated roles for those firms offering securities utilizing the MNvest exemption. MNVest issuers must require their portal operator to:

- Provide the issuer's balance sheet and income statement (the statute and rules explain how current those financial statements must be);
- Provide required disclosures from the issuer to prospective purchasers (similar to those that would be provided in a typical private offering prospectus);
- Obtain from all prospective purchasers a certification from the purchaser acknowledging the risk inherent in the proposed investment

A portal operator also has certain record keeping requirements and privacy protection obligations under the MNvest law. A portal operator must preserve and maintain the following records for 5 years from the date of termination of the securities offering:

- The name of each issuer;
- The full name, address, social security number, date of birth, and copy of state-issued identification for all owners with greater than 10% voting equity in the issuer;
- Copies of all offering materials displayed;
- Names and "other personal information" of each purchaser who registers on the portal;
- Contracts between the issuer and the portal;
- Any documentation used to verify that an issuer, prospective purchaser, or purchaser is a Minnesota resident.

Such records must be maintained in accordance with specific and strict electronic storage specifications detailed in the MNvest statute. A portal operator must produce any records it is required to maintain to the DOC upon request. In addition, a portal operator is prohibited, except under limited circumstances, from disclosing personal information about prospective or actual purchasers without that person's consent.

Portal operators are also subject to cybersecurity requirements under MNvest regulations issued by the DOC. Specifically, a portal operator (and MNvest issuers) must publish, on the portal operator's (or MNvest issuer's) web site, a written cybersecurity policy for:

- Preventing cybersecurity attacks that result in disclosure, or potential disclosure, of a purchaser's confidential or personally identifying information (PII);
- Preventing data breaches that result in disclosure, or potential disclosure, of a purchaser's confidential or personally identifying information (PII);
- Responding to any cybersecurity attack or data breach that occurs;
- Demonstrating the issuer's implementation of the written cybersecurity policy;
- Procedures for complying with Minnesota's mandatory data breach notification statute.

The regulatory requirements for portal operators are substantial. And that might explain why there is not yet a single portal operator registered with the DOC. Nonetheless, MNvest presents a potentially valuable mechanism for start-up businesses to raise capital. In particular, the MNvest program holds promise for artistic entrepreneurs, such as film makers, bands, production

companies, studios, and galleries. Artistic entrepreneurs are accustomed to raising capital in small increments and for discrete projects. MNvest provides a way to promote such offerings, but not unless the necessary IT infrastructure is built to enable such offerings.

This article is meant to provide a general overview of what is required to operate as a MNvest portal operator. This article does not exhaustively discuss all state regulations pertaining to MNvest. This article should not serve as a substitute for consultation with independent legal counsel with respect to how to comply with MNvest.