

By: Parker

H.B. No. 3425

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a intrastate investment market for purposes of trading securities issued under the intrastate crowdfunding exemption from federal securities laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SHORT TITLE. This Act may be cited as the "Texas Investment Market Exchange Act".

SECTION 2. Section 5, The Securities Act (Article 581-23-5, Vernon's Texas Civil Statutes), is amended by adding subsection (W) to read as follows:

(W) Creation of Stock Exchange for Securities financed using the intrastate crowdfunding exemption or other exemption from federal securities regulation.

(1) Definitions.

(a) "Texas Investment Market" means a person that is a broker-dealer, is exempt from federal registration under Section 15(A)(1) of the Securities Exchange Act of 1934, 15 USC §780, and provides a market or exchange at which transactions in securities that are sold or offered for sale pursuant to the intrastate crowdfunding or other federal exemption from securities regulation take place. As used in this subsection, "market" or "exchange" includes an online market or exchange or any other market or exchange operated through an internet portal.

(2) Coordination with federal securities laws. A Texas

1 investment market that trades securities that have been issued in
2 reliance on the intrastate crowdfunding or other exemption from
3 federal securities regulation must also meet all applicable
4 requirements of the Securities and Exchange Commission relating to
5 its establishment and operation.

6 (3) Texas Investment Market; Requirements

7 (a) Prohibited Activities.

8 (1) No person may transact business in this
9 State as a Texas Investment Market unless that person has
10 registered with the Securities Commission as a Texas Investment
11 Market.

12 (2) Disqualifications. A person is not
13 eligible to own, operate or otherwise manage a Texas Investment
14 Market if that person has been subject to one of the following
15 disqualifying events:

16 (A) has been convicted, within the 5
17 years preceding the offering, of any felony or misdemeanor (i) in
18 connection with the purchase or sale of any security; (ii)
19 involving the making of any false filing with the SEC or state
20 securities agency; or (iii) arising out of the conduct of the
21 business of an underwriter, broker, dealer, municipal securities
22 dealer, investment advisor or paid solicitor of securities;

23 (B) is subject to any order, judgment
24 or decree of any court of competent jurisdiction entered with the
25 5-year period preceding the offering, that at the time of such
26 filing, restrains or enjoins such person from engaging or
27 continuing to engage in any conduct or practice (i) in connection

1 with the purchase or sale of a security; (ii) involving the making
2 of any false filing with the SEC or a state securities agency; or
3 (iii) arising out of the conduct of the business of an underwriter,
4 broker, dealer, municipal securities dealer, investment advisor or
5 paid solicitor of purchasers of securities; and

6 (C) is subject to any agreed order,
7 final order, settlement agreement or other enforceable directive by
8 the SEC or a state securities agency entered with the 5-year period
9 preceding the offering, that at the time of such filing, restrains
10 or enjoins such person from engaging or continuing to engage in any
11 conduct or practice (i) in connection with the purchase or sale of a
12 security; (ii) involving the making of any false filing with the SEC
13 or a state securities agency; and (iii) arising out of the conduct
14 of the business of an underwriter, broker, dealer, municipal
15 securities dealer, investment advisor or paid solicitor of
16 purchasers of securities; and (iv) arising out of scienter-based
17 anti-fraud provisions in federal and state anti-fraud laws.

18 (3) A Texas Investment Market is prohibited
19 from engaging in the following activities:

20 (A) selling or otherwise distributing
21 to any third party personal identifying information of an
22 individual without his or her written consent;

23 (B) charging a fee for a securities
24 transaction conducted through the Texas Investment Market that
25 exceeds 5% of the value of the transaction, as determined by the
26 value passed from one user to another in exchange for that security;

27 (C) dealing in securities options, or

1 in securities from more than one class in an offering, without
2 obtaining written acknowledgement from each person involved in the
3 transaction relating to the nature of the securities transaction.

4 (4) It is unlawful for any person, in
5 connection with the organization and operation of a Texas
6 Investment Market, to directly or indirectly do any of the
7 following:

8 (A) employ a device, scheme, or
9 artifice to defraud;

10 (B) make an untrue statement of a
11 material fact or omit to state a material fact; or

12 (C) engage in an act, practice, or
13 course of business that operates or would operate as a fraud or
14 deceit on another person.

15 (b) Registration.

16 (1) No less than sixty (60) days prior to
17 the offering of any securities for trade or sale, the Texas
18 Investment Market must pay an appropriate filing fee, file a
19 consent to service of process and file an application on a form and
20 in a manner approved by the Securities Commissioner. At a minimum,
21 the written application must contain the following information:

22 (A) the names, mailing addresses, and
23 telephone numbers of all individuals who serve as executive
24 officers of the Texas Investment Market or who are direct or
25 indirect owners of at least a 20% ownership interest in the Texas
26 Investment Market;

27 (B) the uniform resource locator

1 (URL), if applicable, used primarily by the Texas Investment Market
2 to effect transactions online;

3 (C) the rules that have been
4 established by the Texas Investment Market to provide for the
5 equitable allocation of reasonable dues, fees, and other charges
6 among its issuers, investors, and other persons using its
7 facilities; and

8 (D) any other information requested
9 by the Securities Commissioner to make a determination regarding
10 the registration application.

11 (2) In considering an application for
12 registration, the Securities Commissioner shall consider all of the
13 following factors:

14 (A) whether the Texas Investment
15 Market has the capacity to facilitate the transactions contemplated
16 in this subsection, the rules and orders of the Securities
17 Commissioner and the rules established by the Texas Investment
18 Market;

19 (B) whether any of the individuals
20 listed in the application have been disqualified pursuant to
21 subsection (b)(3)(a)(2) or for other good cause;

22 (C) whether the rules that have been
23 established by the Texas Investment Market to provide for the
24 equitable allocation of reasonable dues, fees, and other charges
25 among its issuers, investors, and other persons using its
26 facilities are in fact equitable;

27 (D) whether the rules established by

1 the Texas Investment Market provide for appropriate discipline for
2 users that violate its own rules, the rules and regulations of the
3 Board or this Article;

4 (E) whether the rules established by
5 the Texas Investment Market impose any burden of competition or
6 obstruction to a liquid intrastate securities market that is not
7 necessary or appropriate to further the purposes of this Article;
8 and

9 (F) whether the structure established
10 by the Texas Investment Market has been designed to (i) protect
11 against fraud and manipulative behavior, and (ii) to ensure that
12 its operations do not foster unfair discrimination among issuers,
13 investors and other persons that interact with the market.

14 (3) If the information contained in an
15 application that is filed under subsection (b)(1) is or becomes
16 inaccurate or incomplete in any material respect, the registrant
17 shall promptly file a correcting amendment to the application.

18 (c) Operation.

19 (1) The Texas Investment Market shall
20 establish and maintain commercially reasonable measures to limit
21 access to information concerning any transaction involving the
22 offer or sale of securities issued pursuant to the intrastate
23 crowdfunding exemption from securities regulation to Texas
24 residents;

25 (2) The Texas Investment Market shall
26 establish and maintain a secure method of communication through the
27 internet website that will permit issuers and investors to

1 communicate with one another;

2 (3) The Texas Investment Market shall
3 establish rules that provide for the equitable allocation of dues,
4 fees, and other charges among its issuers, investors, and other
5 persons using its facilities, that provide for appropriate
6 discipline of any person who violates its rules or the rules and
7 regulations of the Board, that protect against fraud and
8 manipulative behavior, and that ensure that its operations do not
9 unfairly discriminate among issuers, investors and other persons
10 interacting on the market;

11 (4) The Texas Investment Market shall
12 establish rules, practices and procedures that address the measures
13 that will be taken to verify Texas residency of the issuers and
14 investors engaging in the offer, sale and purchase of securities in
15 reliance on the intrastate crowdfunding exemption, to ensure that
16 individuals are not disqualified from trading securities pursuant
17 to federal and state securities laws or for other good cause, and
18 that issuers and investors are not insolvent;

19 (5) A written and electronic record of each
20 transaction conducted among users must be provided to each
21 purchaser and must be maintained by the Texas Investment Market for
22 a period of no less than seven (7) years after the date of the
23 transaction. In addition, the Texas Investment Market must make and
24 maintain the accounts, correspondence, memoranda, papers, books,
25 and other records required by rule or order of the Securities
26 Commissioner. These additional records shall be maintained in a
27 form of data storage established by the Securities Commissioner;

1 (6) By no later than the end of January of
2 each year, the Texas Investment Market must file a report with the
3 Securities Commissioner and post the report at the same time on its
4 internet site that includes a record of each transaction that was
5 initiated and each transaction that was concluded during the
6 previous calendar year; and

7 (7) Bonding/Financial Assurance. The Texas
8 Investment Market must obtain and maintain appropriate bonding
9 and/or insurance to protect the issuers and investors trading
10 securities on its market, as specified by the Securities
11 Commissioner by rule.

12 (4) Right of Access to Records; Inspection. Any person
13 operating a Texas Investment Market shall keep and maintain records
14 relating to all sales and trades of securities made pursuant to and
15 in reliance on the intrastate crowdfunding or other exemption from
16 federal securities regulation and shall provide ready access to
17 these records to the Securities Commissioner upon request. The
18 Securities Commissioner has the authority to access, inspect, audit
19 and review any Texas Investment Market registered under this
20 subsection as well as all of its records during reasonable business
21 hours.

22 (5) Nothing in this exemption shall be construed to
23 alleviate any person from the anti-fraud provisions in the Act or
24 Board rules; nor shall such exemption be construed to provide
25 relief from any other provisions of this Article other than as
26 specifically stated

27 SECTION 4. The Securities Act (Article [581-13-1](#), Vernon's

1 Texas Civil Statutes) is amended to read as follows:

2 (A) The Commissioner, without notice, may inspect a
3 registered dealer, ~~or~~ registered investment advisor, issuer,
4 crowdfunding portal and Texas Investment Market subject to
5 regulation pursuant to Article 581-23-5(V) and (W) of the Act, as
6 necessary to ensure compliance with this Act and Board rules.

7 (B) The Commissioner, during regular business hours, may:

8 (1) enter the business premises of a registered
9 dealer, ~~or~~ registered investment advisor, any issuer and
10 crowdfunding portal subject to regulation pursuant to Article
11 581-23-5(V) of this Act and any Texas Investment Market subject to
12 regulation pursuant to Article 581-23-5(W) of this Act;

13 (2) examine and copy books and records pertinent to
14 the inspection.

15 (C) During the inspection, the dealer, investment advisor,
16 issuer, crowdfunding portal and Texas Investment Market shall:

17 (1) provide to the Commissioner or the Commissioner's
18 authorized representative immediate and complete access to the
19 person's office, place of business, files, safe, and any other
20 location in which books and records pertinent to the inspection are
21 located; and

22 (2) allow the Commissioner or the Commissioner's
23 authorized representative to make photostatic or electronic copies
24 of books or records subject to the inspection.

25 (D) A dealer, ~~or~~ investment advisor, issuer, crowdfunding
26 portal and Texas Investment Market may not charge a fee for copying
27 information under this section.

1 (E) Information obtained under this section and any
2 intra-agency or interagency notes, memoranda, reports, or other
3 communications consisting of advice, analyses, opinions, or
4 recommendations that are made in connection with the inspection are
5 confidential and may not be disclosed to the public or released by
6 the Commissioner except to the same extent provided for the release
7 or disclosure of confidential documents or other information made
8 or obtained in connection with an investigation under Section 28 of
9 this Act.

10 SECTION 5. The Securities Act (Article 581-33, Vernon's
11 Texas Civil Statutes) is amended by adding a new Section 581-33-4 to
12 read as follows:

13 Sec. 33-4. Civil Liability with respect to Sale of a
14 Security issued under the Intrastate Crowdfunding Exemption by a
15 Texas Investment Market.

16 (A) Liability of Issuers

17 (1) A person who offers or sells a security issued
18 under the intrastate crowdfunding exemption through a registered
19 Texas Investment Market in violation of the provisions set forth in
20 Section 581-23-5(W) is liable to the person buying the security,
21 who may sue either at law or in equity for rescission or for damages
22 if the buyer no longer owns the security.

23 (2) A person who offers or sells a security issued
24 under the intrastate crowdfunding exemption through a registered
25 Texas Investment Market by means of an untrue statement of a
26 material fact or an omission to state a material fact necessary in
27 order to make the statements made, in light of the circumstances

1 under which they are made, is liable to the person buying the
2 security, who may sue either at law or in equity for rescission, or
3 for damages if the buyer no longer owns the security.

4 (B) Survivability of Actions. Every cause of action under
5 this Act survives the death of any person who might have been a
6 plaintiff or defendant.

7 (C) Unenforceability of Illegal Contracts. No person who
8 has made or engaged in the performance of any contract in violation
9 of this Act or any rule, regulation or order adopted hereunder, or
10 who has acquired any purported right under any such contract with
11 knowledge of the facts by reason of which its making or performance
12 was in violation, may base any suit on the contract.

13 (D) Saving of Existing Remedies. The rights and remedies
14 provided by this Act are in addition to any other rights (including
15 exemplary or punitive damages) or remedies that may exist at law or
16 in equity.

17 SECTION 6. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the votes necessary for immediate effect, this
21 Act takes effect September 1, 2015.