

Regulation Crowdfunding C&DIs

Question 100.01

Question: What information can an issuer disseminate prior to filing the Form C with the Commission and providing it to the relevant intermediary?

Answer: ~~Information~~ Subject to certain conditions, an issuer may communicate orally or in writing at any time prior to filing a Form C in order to determine whether there is any interest in a contemplated securities offering. These communications are deemed to be offers of a security for purposes of the antifraud provisions of the Federal securities laws. Pursuant to Rule 206, the issuer must clearly state that (i) no money or other consideration is being solicited, and if sent, will not be accepted; (ii) no offer to buy securities can be accepted and no part of the purchase price can be received until the offering statement is filed and only through an intermediary's platform; and (iii) a prospective purchaser's indication of interest involves no obligation or commitment of any kind. Rule 201(z) requires that the issuer include any Rule 206 solicitation materials with the Form C that is filed with the Commission.

For an issuer considering an offering of securities exempt from registration under the Act, but that has not determined a specific exemption from registration on which it intends to rely, Rule 241 permits an issuer to make communications orally or in writing, similar to that permitted under Rule 206, to determine whether there is any interest in a contemplated offering of securities, provided legends similar to those detailed above are included.

In addition, information not constituting an offer of securities may be disseminated by an issuer prior to the commencement of a Regulation Crowdfunding offering. For example, factual business information that does not condition the public mind or arouse public interest in a securities offering is not an offer and may be disseminated widely. The Commission has interpreted the term "offer" broadly and has explained that "the publication of information and publicity efforts, made in advance of a proposed financing which have the effect of conditioning the public mind or arousing public interest in the issuer or in its securities constitutes an offer..."

~~Securities Offering Reform, Release No. 33-8591~~ Securities Act Release No. 8591 (July 19, 2005). See also Securities Act Rule 169 and Securities Act Rule C&DI 256.25. ~~Regulation Crowdfunding, however, does not provide an exemption for the dissemination of information that constitutes an offer of securities by an issuer prior to the issuer filing a Form C with the Commission and providing it to the relevant intermediary. [May 13~~ [March 12, 2016 ~~2025]~~