

Regulation Crowdfunding

These Compliance and Disclosure Interpretations (“C&DIs”) comprise interpretations of Regulation Crowdfunding by staff of the Division of Corporation Finance.

They are not rules, regulations, or statements of the Commission. Further, the Commission has neither approved nor disapproved these interpretations.

These positions do not necessarily contain a discussion of all material considerations necessary to reach the conclusions stated, and they are not binding due to their highly informal nature. Accordingly, these responses are intended as general guidance and should not be relied on as definitive. There can be no assurance that the information presented in these interpretations is current, as the positions expressed may change without notice.

The bracketed date following each C&DI is the latest date of publication or revision.

Rule 100: Crowdfunding exemption and requirements

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 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 (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, 2016]

Question 100.02:

Question: Are non-natural persons that invest in Regulation Crowdfunding offerings subject to investment limits?

Answer: Yes. The investment limits in Rule 100(a)(2) of Regulation Crowdfunding apply to all investors. Instead of calculating investment limits based on annual income and net worth, a non-natural person calculates the limits based on its revenue and net assets (as of its most recent fiscal year end). [May 13, 2016]

Rule 201: Disclosure Requirements

Question 201.01:

Question: May a recently formed issuer choose to provide a balance sheet as of its inception date?

Answer: Yes, if the offering is conducted during the period from inception until 120 days after reaching the annual balance sheet date for the first time, the issuer must include a balance sheet as of a date in that period, which may be inception date. When the balance sheet is dated as of inception the statements of comprehensive income, cash flows and changes in stockholders' equity will not be applicable. For an offering conducted more than 120 days after the issuer's first annual balance sheet date, the date of the most recent annual balance sheet determines the period for which statements of comprehensive income, cash flows and changes in stockholders' equity must be provided. For example, depending on its date of inception, an issuer with a December 31 fiscal year end that starts a Regulation Crowdfunding offering in June 2016 would provide financial statements as follows:

Date of Inception	Balance Sheet	Other Financial Statements
May 2016	As of inception	Not applicable
May 2015	As of December 31, 2015	For the period from inception to December 31, 2015
May 2014	As of December 31, 2015 and 2014	For the year ended December 31, 2015 and the period from inception to December 31, 2014

[May 13, 2016]

Question 201.02:

Question: Rule 201(r) requires the issuer to disclose any related party transaction that exceeds 5% of the amount raised by the issuer in reliance on section 4(a)(6) during the preceding 12-month period, including the amount the issuer seeks to raise in the current offering. An issuer sets a target offering amount (i.e., the minimum amount of investment commitments needed for the offering to close) in a Regulation Crowdfunding offering, but will accept offering proceeds in excess of the target offering amount up to a specified maximum amount. Which dollar amount should the issuer use to determine the threshold at which disclosure of related party transactions is required under Rule 201(r)?

Answer: The issuer should determine the threshold for disclosure of related party transactions based on the target offering amount plus any amount already raised in reliance on 4(a)(6) in the preceding 12-month period. For example, if an issuer that raised \$60,000 in reliance on section 4(a)(6) in the previous 12-month period sets a \$100,000 target offering amount but will accept offering proceeds of up to \$940,000, the issuer would need to disclose related party transactions of more than \$8,000 (5% of \$160,000, which is the sum of the \$100,000 target offering amount plus the \$60,000 previously raised). [April 5, 2017]

Rule 202: Ongoing Reporting Requirements

Question 202.01

Question: How does an issuer calculate the number of holders of record for purposes of determining eligibility to terminate its duty to file ongoing reports pursuant to Rule 202(b)(2) of Regulation Crowdfunding?

Answer: The issuer would count all holders of record of securities of the same class of securities issued in the Regulation Crowdfunding offering for which the reporting obligation exists, regardless of whether the holders of record purchased their securities in the Regulation Crowdfunding offering. [April 5, 2017]

Rule 204: Advertising

Question 204.01

Question: May an issuer advertise the “terms of the offering” under Regulation Crowdfunding?

Answer: Yes, but any such advertising that is made other than through communication channels provided by the intermediary on the intermediary’s platform will be limited to notices that include no more than the information described in Rule 204(b) of Regulation Crowdfunding. “Terms of the offering” is defined to include “the amount of securities offered, the nature of the securities, the price of the securities and the closing date of the offering period.” See Instruction to Rule 204. [May 13, 2016]

Question 204.02

Question: May an issuer advertise the “terms of the offering” through a video that complies with Rule 204(b) of Regulation Crowdfunding?

Answer: Yes. [May 13, 2016]

Question 204.03

Question: If an issuer’s advertisement does not include any of the “terms of the offering,” is the issuer limited to notices that include no more than the information described in Rule 204(b) of Regulation Crowdfunding?

Answer: No. The limitation on advertisement applies only when the advertisement includes any of the “terms of the offering.” [May 13, 2016]

Question 204.04

Question: Could a third party publication, such as a media article, constitute a notice that would subject an issuer to the limitations of Rule 204?

Answer: Yes. If the media article advertises the terms of the offering and the issuer has been directly or indirectly involved in the preparation of the publication, the article would be a notice subject to Rule 204. Because Rule 204 limits the information that may be in such a notice, it would likely be difficult for the issuer to comply with the rule’s requirements. If the media article did not advertise the terms of the offering, it would not be a notice subject to Rule 204, although it could still constitute an “offer” under the securities laws. [May 13, 2016]

Question 204.05

Question: As noted in the [Staff Statement on Opportunity Zones: Federal and State Securities Laws Considerations](#), interests in a qualified opportunity fund are likely to constitute securities within the meaning of the federal securities laws, and therefore offers and sales of such interests must be registered or conducted in compliance with an exemption from registration. For a variety of reasons summarized in the Staff Statement, the most likely options for a qualified opportunity fund to raise capital may be Rule 506(b) or Rule 506(c) of Regulation D, which are available to all issuer types and impose no limits on the amount of money that can be raised from each investor or in total. Rule 506 offerings are generally limited to “accredited investors,” except that up to 35 sophisticated, non-accredited investors may participate in a Rule 506(b) offering. As a result, local residents who do not qualify as accredited investors may have very limited opportunities to invest in opportunity zone projects in their communities through a Rule 506 offering. Are there alternative capital-raising options for opportunity zone issuers that seek to allow non-accredited investor participation in these projects?

Answer: Other exemptions from registration, including Regulation A, Regulation Crowdfunding and the intrastate offering exemptions in Rules 147 and 147A, permit non-accredited investors to purchase securities, subject to certain individual investment limits and other conditions. However, these exemptions from registration may not be available if an issuer meets the definition of investment company under the Investment Company Act of 1940 or is excluded from the definition of investment company under Section 3(b) or 3(c) of the Act. Nevertheless, the staff is of the view that these exemptions can be an effective tool for the financing of an opportunity zone project, either alone or in conjunction with another exemption from registration, depending on the structure of the offering.

For example, a pooled investment vehicle (a “fund”) could rely on Rule 506(c) to offer and sell securities of the fund to accredited investors and use the proceeds to finance a portion of a project, while a Regulation Crowdfunding offering to non-accredited investors is made at the same time to fund the remainder of the project. An issuer should seek legal advice in structuring the offerings to comply with the federal securities laws, including the requirements of each exemption being relied upon, and ensure that any concurrent offerings would not be subject to integration in light of the particular facts and circumstances. In regard to this last point, an offering under Rule 506(c), for which general solicitation is permitted would not be integrated with a Regulation Crowdfunding offering as long as any general solicitation and advertisement for the Rule 506(c) offering does not include the terms of the Regulation Crowdfunding offering, or if such advertisement also complied with the requirements of a Regulation Crowdfunding offering (necessary legends, as well as any additional restrictions on the general solicitation required by Regulation Crowdfunding). [July 15, 2019]

Rule 205: Promoter Compensation

Question 205.01

Question: When an issuer is compensating a third party to promote the issuer’s offering outside of the intermediary’s communication channels, do those third-party communications need to comply with the notice requirements of Rule 204(b) of Regulation Crowdfunding?

Answer: Yes. See Rule 205(b). [May 13, 2016]