

Marketing Your Regulation CF Offering What Issuers Must Know

In promoting their crowdfunding campaign, businesses who raise capital under Title III (JOBS Act) must adhere to the SEC guidelines. We've invited Sara Hanks from CrowdCheck to provide a guest post on what issuers need to know.

Communications and Publicity from Issuers prior to and during the Regulation CF Offering

The concept behind [crowdfunding marketing](#) is that crowd, friends, and supporters of a small-scale business or start-up company, even if they are not financially wealthy or have a long-standing investment history, are now able to invest in the company's securities. This is a brand new idea in an established field of law which is extremely prudent in its approach to risk.

Congress was looking to ensure that all investors could have the same information in order to make this leap. Congress came up with a solution through the JOBS Act. Investors could only access the information through one single location which was the site of the crowdfunding portal or broker-dealer that hosted the offering.

This means most communications about the offering are only available through the platform. On the platform, the company can make use of any form of communication and give all the information it likes. The platforms must have an option to communicate with potential investors. You have control over much of the message.

With that in mind, we'd like to discuss what you are allowed to and cannot say in regards to communications before and during the event. Unfortunately, there are a lot of limitations. Securities law is a highly restricted area that is distinct from running a Kickstarter campaign. Be aware that the rapidly changing regulatory climate. This guide was developed by analyzing existing laws and interpretations made from the SEC on May 13th, and many conversations with SEC staff. The position of the Staff could alter as the market changes.

We understand that restrictions can be a bit confusing in certain situations and don't reflect modern communication. The reason for this is the method by which Congress created the statute. The JOBS Act crowdfunding provisions have strict guidelines regarding publicity. To allow small-sized companies and startups more freedom, the SEC "interpreted" these provisions as broad as possible.

What you can say before you begin your offer

Prior to the time at which you file the Form C with the SEC You aren't able to offer any "offers" of securities either privately or publicly. Be aware that the SEC defines the word "offer" extremely broadly. Don't meet with potential investors or make public announcements on forums that provide "first glances" or "sneak glimpses." No public announcements about the crowdfunding round, and certainly no discussions at conferences or a demonstration day on your plans to launch a [crowdfunding](#) campaign.

Before you can publicly file the Form C, you are limited to communication that do not mention the offering in any way, and that don't "condition the market" to the offer. Conditioning the market is any action that creates excitement within your company. This may be sudden increases in levels or advertising, but regular product and/or service information and advertisements are fine. This does not apply to "coming in the near future" or other hints.

The normal promotion of your product or service is permissible. The SEC recognizes that you are an operation to run. The SEC could be concerned if you create five times the amount of advertising just before your offering. This could raise questions about whether this was done to boost interest in the business. It is recommended to speak to your adviser in the event that you are planning to change your marketing strategy prior to the time of the launch of your CF offering or if your company launches at the same moment as the offering is being launched.

Genuine conversations with friends or relatives about what you're planning to do, and getting their advice and suggestions on your offering and how to organize it is fine, even if those people are investing later. You cannot, however, solicit investors.