

Can I engage in general advertising or solicitation of my securities?

Under SEC interpretations of Rule 147, the issuer of a security may engage in general advertising, or solicitation, if it is made only to residents of Minnesota.

In order to ensure that businesses comply with that requirement, Minnesota's crowdfunding rules require that before engaging in any general advertising or solicitation, an issuer (or a third-party platform advertising on behalf of an issuer) obtain an "affirmative declaration" from an interested investor that the investor is an Minnesota resident. Such "affirmative declaration" can be accomplished by requiring an interested person provide his or her ZIP code or check a box on a webpage stating "I am an Minnesota resident" before viewing any advertising materials.

Advertising under the rules is limited to no more than the following information:

- The name and contact information for the issuer.
- A brief description of the general type of business of the issuer.
- Whether the securities being offered are stock, notes, debentures, or a combination.
- The total offering amount.
- A brief description of how the issuer will use the funds.
- The duration of the crowdfunding offering and the funding deadline.
- The issuer's logo.

A link to the issuer's website or third-party platform in which the securities will be offered or sold and required disclosures made available.

The definition of "offer" under the federal and Minnesota securities law is broad. Offers can include statements meant to "condition the public mind" or "arouse public interest in" a securities offering. In other words, promoting investment in your business, even if you are not expressly "offering" your securities. Be careful about what public statements you make during the period you are offering and selling securities in reliance on this exemption.

Can I use the internet to advertise, offer, and sell my securities?

Securities can be advertised on an issuer's website or through a third-party platform's website. The website is known as a portal and must be registered with, and approved by, the Department of Commerce and the sole function of the site is to facilitate offerings of a CPO raise.

The circumstances under which an issuer or third party may advertise through the Internet are specific. Because federal securities law governs registration and sales of securities, issuers must make sure to sell their securities in accordance with the requirements of the crowdfunding rules and Section 3(a) (11) of the Securities Act. We urge you to read the rules carefully before advertising, offering, or selling securities over the Internet.

Businesses that want to offer securities through their website must remember that the offer and sale can only be made to Minnesota residents and that a prospective investor must make an "affirmative declaration" before viewing any advertising or offering materials. This means that businesses cannot advertise or offer securities on webpages that can be viewed by everyone around the world. Businesses must use a separate webpage on their website that requires interested people to affirmatively declare that they are a Minnesota resident before being able to view the page with the material that advertises or offers the security. A business can include a link to the Minnesota-only webpage on its general website for interested Minnesotans to follow to "learn more about supporting this business" or "to learn more about investing in this business."

Because of the definition of "offer" is broad, businesses are encouraged to include only factual information about themselves on the generally accessible sections of their website. Under state and federal law, "forward looking statements," such as talking about future development, product lines, or long-range plans, could be considered an offer to sell securities under Section (3)(a)(11) and should be made only to Minnesotans if you are seeking to use the crowdfunding exemption.

Businesses can also post their advertising and offering materials on a website that is hosted by a third-party platform provider. Such third-party platforms may be used to post disclosures and advertisements, but they may not act as investment advisors or broker-dealers (unless they are specifically licensed to do so). This means that they cannot endorse specific businesses or securities offerings on their platform. The third-party platform provider must also ensure that prospective investors have provided some sort of affirmative declaration that they are a Minnesota resident before viewing any advertising or offering materials. Third-party platforms may charge issuers a nominal fee for hosting a platform.

While an individual business can sell its securities on a “Minnesota only” portion of its website, a third-party platform cannot sell securities unless it is a licensed broker-dealer.

If a website collects financial or personal information about prospective investors, it must take steps to ensure that information is kept secure and private.

Can I use social media to advertise my securities?

Any general advertising or solicitation is subject to the restrictions described under the question ‘Can I engage in general advertising or solicitation of my securities?’.

You may specifically direct Minnesota residents to a page with more information, but if you’re tweeting/Facebooking to the world, keep in mind that what you can say is very limited.

Something like “Minnesota residents – you can now invest in [company name]. Click here to learn more” would work. When people click on that link, they should reach a gateway (for example a pop up or welcome page) that requires they affirm they are a Minnesota resident (e.g. “Click here if you are a Minnesota resident”). Then they can view the advertising materials.