



U.S. SECURITIES AND  
EXCHANGE COMMISSION

## 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 204: Advertising

#### 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]