an intro to

General Solicitation

Best practices for marketing private securities compliantly under the 506(c) exemption.

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VENTURE.CO

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Introduction

Best Practices for General Solicitation

Thanks to regulations promulgated under the JOBS Act of 2012, it is now possible to reach out to new investors to solicit interest for private placements under the SEC Rule 506(c) exemption. “General Solicitation” applies to communication with any investor with whom you as issuer, or your investment bankers, do not have a previous relationship.

Largely due to regulatory restrictions, issuers have employed the same traditional outreach strategies for decades. Now that changing regulations allow for more diverse marketing strategies under exemption 506(c), many issuers feel unequipped to take advantage of them.

Your task, in marketing securities to new investors, is to use technology to initiate a relationship with potential investors, NOT to replace that relationship with technology.

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Effective Marketing

Build the relationship and avoid unsolicited investment offers

The purpose of General Solicitation is to expand the potential investor pool to include individuals with whom you don't currently have a relationship. When you reach out to your list of new potential investors, think of creative ways to accomplish these goals before you ask them to invest, instead of filling their email spam folder with unsolicited investment opportunities.

- **Encourage potential investors** to hear what you have to say by sending an introductory (non-soliciting) email.

- **Elicit a "yes"** by providing leads with value that they may opt into, whether that be reading content, connecting on LinkedIn, viewing your website, or scheduling a call.

- **Establish brand trust** by presenting your leads with value that is pertinent to them.

- **Engage personally** to foster relationships with investors. Ask them questions. Find out what types of investments are right for their investment goals. Not every investor will be right for each offering, but future offerings may be suitable.

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Broker-dealer Recommended

You don't have to go it alone.

Your ability to comply with the law is among the most important considerations when assessing whether or not to use "General Solicitation" with a private offering. The SEC recommends that you work with licensed financial professionals.

A FINRA-licensed broker-dealer can expand your pool of suitable investors, and also provide specialized assistance in keeping your offering compliant. Further, a broker-dealer can assist you with required components of compliance, including investor accreditation, suitability determination, offering documents and document backup and retention requirements. Alternatively, you should consult with your specialized securities attorney.

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Accreditation Verification

Necessary for all investors in a 506 (c) offering

Under the 506(c) exemption, you must verify the accreditation status of each of your investors. You can do so in one of four ways*:

1. Third-party verified documentation of an investor's net income for the most recent two years, along with written documentation from the investor stating he or she expects to continue to earn high enough net income to qualify as accredited in the future.

2. Third party verified documentation of investor's net worth, including liabilities, dated within the past three months.

3. Written confirmation of investor accreditation from a registered broker-dealer, RIA (registered investment advisor), licensed attorney or CPA, dated within the past 3 months.

4. Pre-existing accreditation of investors that, as an issuer, you have worked with and verified recently.

* https://www.sec.gov/info/smallbus/secg/general-solicitation-small-entity-compliance-guide.htm

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Ask the Real Estate Experts

How have you seen the use of technology change how sponsors & issuers manage investor relationships?

IMS

Answered by Ron Rossi, VP of Business Development at Investor Management Services. IMS is a strategic technology partner of VENTURE.co.

Sponsors in commercial real estate build a tremendous amount of trust with their investor base, largely due to their track record of delivering returns to investors. Gaining their trust takes time, and transparency is a key ingredient. Real estate investors are heavily reliant on their sponsor to provide updates and information on their investment. And until recently, those details and summaries were routinely, if not exclusively, disseminated to investors on a quarterly basis in the form of an investor statement. The timing and delivery method, while sufficient for some investors, has been greatly improved upon through technology.

How has technology shaped investor management? The first thing to consider here is that as Millennials continue to make investments, the demand for real-time information is going from a “nice to have” to a “must have”. Investor expectations have changed, and sponsors need to leverage technology as a tool to improve communication, more securely deliver documents, and more efficiently manage their back office. The second thing to consider is that investors become more engaged with sponsors when their investments are readily available. An engaged investor is more likely to be a repeat investor (more deals & more equity) and to promote that sponsor to other prospective investors. These two trends are nothing but positive for sponsors.

The common denominator between managing investors, both effectively and efficiently, and raising capital through general solicitation is technology. Without technology, investors would not be engaged with sponsors and they would not have opportunities to grow their investment portfolio in a diverse manner. General solicitation would not be possible without both technology and the investor’s willingness to make a real estate investment through an online platform. This enables sponsors to more broadly market themselves and their deals, creating a more efficient capital raise.

We are all living in a world where technology is replacing or enhancing just about everything that we do, and the same shift is taking place in the real estate world. Sponsors that proactively transform the way they do business through technology will win.

You may know that your offering is suitable for the investors you plan to include.

However, anyone with a few thousand dollars can put an offering online, and your offering must stand out to be noticed.

The SEC advises investors to steer clear of a number of **“RED FLAGS”** that make offerings look like potential scams, and which are often associated with actual scams.

Avoiding these red flags is imperative to presenting compliant marketing materials and building trust with your investor base.

Red Flags

*As outlined by the SEC to help investors avoid fraudulent investment opportunities**

Claims of high returns with little risk

Unregistered investment professionals

Aggressive sales tactics

Problems with sales documents

No net worth or income requirements

Unsolicited investment offers

READ MORE

* https://www.sec.gov/oiea/investor-alerts-bulletins/ia_unregistered.html

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Balance Risk & Reward

Be realistic about return projections

Here are some tips on presenting offerings to investors compliantly:

First and foremost, risk and reward should be weighed. Investors need to be told, each and every time, the full extent to which their investment may become exposed to loss. Be upfront about risks and be realistic about return projections.

Second, avoid aggressive sales tactics. Any sense of urgency or inflation of the opportunity will, and should, turn investors away.

Third, give new relationships time to develop. This is a long game; each successful new investment relationship builds credibility for the future.

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Compliance Checklist

*Crucial steps for compliantly marketing securities**

- File Form D with the SEC within 15 days of the first sale of the private placement.
- Document all marketing materials through a compliance review process before publishing, utilizing a securities attorney or Principal.
- The SEC manages a voluntary electronic portal for submissions of marketing materials for 506(c) offerings. However, if you employ a broker-dealer, it will have mandatory submission duties under FINRA rule 5123.
- Verify and retain documentation of the accreditation of all investors involved in the offering.
- Include disclosures noting that projected returns and forward-looking statements may prove inaccurate. Remove any language that gives investment advice, implies a guarantee, or seeks to instill a sense of urgency.
- If using the issuer exemption, there are additional rules and regulations to follow. More information on the issuer exemption is found here.

** This checklist is a service to VENTURE.co readers, but it is by no means exhaustive. One should always consult with a securities attorney, broker-dealer or compliance officer before engaging in securities-related marketing.*

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Key Takeaways

Each year, more private securities come into the digital age, from real estate to funds to growth stage businesses. Those that get the most return on investment pull digital marketing strategies from other industries, while staying true to the tenets of relationship building and compliance that drive investment banking.

- Leverage technology with intention
- Target suitable investors
- Offer competitive–yet not overstated–returns
- Come from issuers that give value to, and establish trust with, their investors
- Avoid SEC red flags
- Meet all compliance standards
- Work with licensed financial professionals

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