

Is a Demo Day General Solicitation?

Is a Demo Day a general solicitation of securities putting your company in Rule 506(c) as opposed to 506(b)?

The SEC has issued [new guidance on this question](#).

Per the SEC's new guidance, a Demo Day is not *necessarily* a general solicitation.

However, it depends on what you do at the Demo Day.

If you offer your securities, then it may be--unless "attendance at the demo day or venture fair is limited to persons with whom the issuer or the organizer of the event has a pre-existing, substantive relationship or have been contacted through an informal, personal network as described in Question 256.27." You can see Question 257.27 quoted in full below.

If you want to avoid this quandary--of determining whether attendance was limited as described above and in new SEC Guidance Question 256.27--what should do you?

Do not involve an offer of a security in your presentation. But how do you do this?

Keep your presentation limited to "[i]nformation not involving an offer of securities."

But how do you do this? Talk about only *factual business information* that does not "**condition the public mind or around public interest**" in your offering.

What is "factual business information"? Here is what the SEC said it was:

Answer: What constitutes factual business information depends on the facts and circumstances. Factual business information typically is limited to information about the issuer, its business, financial condition, products, services, or advertisement of such products or services, provided the information is not presented in such a manner as to constitute an offer of the issuer's securities. **Factual business information generally does not include predictions, projections, forecasts or opinions with respect to valuation of a security, nor for a continuously offered fund would it include information about past performance of the fund.** (Release No. 33-5180). [August 6, 2015]

I have quoted some of the SEC guidance in full below, because it is helpful in this context.

New Question 256.24

Question: What information can an issuer widely disseminate about itself without contravening Rule 502(c)?

Answer: Information not involving an offer of securities may be disseminated widely without violating Rule 502(c). 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. Information that involves an offer of securities through any form of general solicitation would contravene Rule 502(c). [August 6, 2015]

New Question 256.33

Question: Does a demo day or venture fair necessarily constitute a general solicitation for purposes of Rule 502(c)?

Answer: No. Whether a demo day or venture fair constitutes a general solicitation for purposes of Rule 502(c) is a facts and circumstances determination. Of course, if a presentation by the issuer does not involve an offer of a security, then the requirements of the Securities Act are not implicated. Where a presentation by the issuer involves an offer of a security, the presentation at a demo day or venture fair may not constitute a general solicitation if, for example, attendance at the demo day or venture fair is limited to persons with whom the issuer or the organizer of the event has a pre-existing, substantive relationship or have been contacted through an informal, personal network as described in Question 256.27. **If potential investors are invited to the presentation by the issuer or a person acting on its behalf by means of a general solicitation and the presentation involves the offer of a security**, Rule 506(c) may be available if the issuer takes reasonable steps to verify that any purchaser is an accredited investor and the purchasers in the offering are limited to accredited investors. [August 6, 2015]

New Question 256.27

Question: Are there circumstances under which an issuer, or a person acting on the issuer's behalf, can communicate information about an offering to persons with whom it does not have a pre-existing, substantive relationship without having that information deemed a general solicitation?

Answer: Yes. The staff is aware of long-standing practices where issuers and persons acting on their behalf are introduced to prospective investors who are **members of an informal, personal network of individuals with experience investing in private offerings. For example, we acknowledge that groups of experienced, sophisticated investors, such as "angel investors," share information about offerings through their network and members who have a relationship with a particular issuer may introduce that issuer to other members. Issuers that contact one or more experienced, sophisticated members of the group through this type of referral may be able to rely on those members' network to establish a reasonable belief that other offerees in the network have the necessary financial experience and**

sophistication. Whether there has been a general solicitation is a fact-specific determination. In general, the greater the number of persons without financial experience, sophistication or any prior personal or business relationship with the issuer that are contacted by an issuer or persons acting on its behalf through impersonal, non-selective means of communication, the more likely the communications are part of a general solicitation. [August 6, 2015]