

The Importance of Angel Groups, Per the SEC

Angel groups are important for all sorts of different reasons. But the SEC has recently elaborated on a particular aspect of their importance that is worth calling out.

In particular, can angel groups help you with your Rule 506(b) offering without blowing the non-generally solicited nature of your offering?

The SEC says yes, they can.

Here is the backdrop:

- To conduct a non-generally solicited Rule 506(b) offering, you can't generally solicit your offering. You have to work contact-to-contact, through your "pre-existing, substantive relationships."
- But what happens if a friend introduces you to a friend who is a sophisticated angel? You don't have a "pre-existing, substantive relationship" with this new person. So, if you pitch that person, have you blown your 506(b) offering by generally soliciting it? The answer should be no. The SEC's recent guidance is quoted below. Of course, the SEC hedges a bit--it is ultimately a question of fact--but the below guidance is helpful. An encouraging acknowledgment of the importance of angel groups in the startup company, fundraising ecosystem.

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]