

**Securities Division
NC Department of the Secretary of State**

Issuer FAQs for the NC PACES Act (Crowdfunding)

These FAQs provide guidance on the securities registration exemption allowed under the North Carolina PACES Act. These FAQs are not legal advice. You should consult with an attorney who specializes in securities matters if you need legal advice regarding a securities offering.

NOTE: You may find it helpful to read the General FAQs before you read these FAQs. The General FAQs talk about the NC PACES Act and some basics of crowdfunding.

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Issuer FAQs

About who can use NC PACES

1. What is an “issuer”?

A business that chooses to use the NC PACES Act to raise money is called an issuer.

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2. Can any business use NC PACES?

No, but many can. Your business can use NC PACES if:

- your business is located in North Carolina, and
- your business is registered and active with our [Department's Corporations Division](#).

For example, business entities that can use NC PACES include:

- LLCs,
- Corporations,
- Limited Partnerships, and
- Other business entities that are:
 - Legally formed in North Carolina, and
 - Have a certificate of authority to do business in North Carolina.

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3. Are there forms of businesses that can't use the NC PACES exemption?

Yes. An individual can't use the NC PACES exemption. A business entity has to be formed in North Carolina and/or registered with our Department's Corporations Division to be able to use NC PACES.

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4. Are there business activities my business can't do if I want to use the NC PACES exemption?

Yes. Under NC PACES, there are some business activities that are not allowed if the business wants to claim the NC PACES exemption. Here are some examples:

- A company whose sole purpose is buying and selling other financial interests, like an investment company or one issuing viatical settlement contracts;
- A company that has not defined or described how it will use the money, like a blind pool, commodity pool, or a blank check company;
- A company whose business is lending money, like a peer-to-peer or similar online marketplace lender; or
- A real estate investment trust (REIT).

These are just some of the activities that are prohibited. See Rules 18 NCAC 06A .2004 and 18 NCAC 06A .2117 for additional restrictions.

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About NC PACES securities offerings

5. Are there different kinds of NC PACES securities offerings?

Yes, there are two different kinds of NC PACES securities offerings:

- An NC PACES Offering (NCPO)
- A Local Public Offering (LPO)

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6. What's the difference between the two kinds of NC PACES securities offerings?

Money. You can't raise more than \$250,000 with an LPO. For an NCPO you raise up to \$1 million and, if you have been in operation for one year or more and you provide audited or reviewed financial statements, you can raise up to \$2 million.

Advertising. For an LPO, you can advertise as long as we approve the content. For an NCPO you can't advertise.

Website. For an LPO, you do not have to use a website to post information about your offering, but you can if you want. For an NCPO, you have to have a platform. A platform is a website where information is provided and has a communication channel. A communication channel is a place for people to communicate about your offering (it's like a message board or forum). You also have to post on your platform your official documents and information showing your offering's progress toward the goal.

Securities. For an LPO, you can only offer simple types of securities like bonds (that is where investors lend you money), and equity (that is where investors can share in your profits). For an NCPO you can offer more complicated types of security.

There are several other differences, but these are the big ones.

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7. What are some of the benefits of using the NC PACES crowdfunding exemption?

You can raise \$2 million. NC PACES crowdfunding allows businesses to raise up to \$2 million by offering securities.

No registration. While most securities have to be registered, an NC PACES crowdfunding security is exempt from registration. That means that the issuer does not have to register the security with the regulator. That does not mean the issuer does not have to do anything. The issuer still has to file some paperwork with the regulator in order to be exempt. This is called an "exemption filing," but it is not the same as "registration". The issuer also has to maintain its exemption by continuing to follow the rules.

It's all home grown. An NC PACES crowdfunding securities offering happens entirely in North Carolina: You're in North Carolina, your investors are in North Carolina and your primary regulator is in North Carolina.

Easy access to investors. An NC PACES securities offering gives you the chance to raise money from your friends, family, neighbors or through the Internet.

Less costly. NC PACES securities offerings may be less expensive than other methods of raising money.

There may be other methods of raising money that would allow you to do these things too. You may want to consult a securities lawyer to find out about other options.

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8. What are some of the risks of using the NC PACES crowdfunding exemption?

No guarantee. There's no guarantee that you will raise the money you need, and you could have some expenses. At a minimum, you will have a \$150 fee to file your claim of exemption.

Obligations to investors. You will have ongoing obligations to your investors. You may change your relationship with your friends and family if you enter into an issuer-investor relationship with them.

Limited time. You only have one year to raise the money under NC PACES.

Limits other options. You may not be able to raise money in other ways once you start an NC PACES securities offering.

Follow the rules. While NC PACES securities offerings are less regulated than some other kinds of securities, you still:

- need to comply with the NC PACES Act ([click here](#)) and
- need to comply with the NC PACES rules ([click here](#))

So pay attention and read the rules.

There may also be risks that are specific to your business.

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About the NC PACES process

9. I'm thinking about doing an NC PACES securities offering for my business. What are the kinds of things I need to think about?

There are many questions you may want to consider when deciding if an NC PACES securities offering is the best way to raise money for your business. For example, you may need to think about questions like:

1. How much money do I want to raise?
2. What's the smallest amount of money I need to make a difference in my business?
3. What will I do with the money I raise?
4. What types of securities should I offer?
5. What sort of investors would be best for my business?
6. How will investors find out about my securities offering? Can I advertise my securities offering?
7. How fast will I be able to raise the money?
8. Will I be able to comply with the law and rules?

The answers to the questions above will help you decide the details of your securities offering. For example, the terms below are details you will have to describe in your forms and your disclosure document that you prepare for your securities offering. They correspond with the questions above.

1. Target offering amount
2. Minimum offering amount
3. Use of proceeds
4. Equity debt revenue share or something more complex
5. Accredited or non-accredited investors
6. NCPO or LPO
7. Target Date
8. Attorney assistance or I can handle it myself

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10. Am I required to hire an attorney to do an NC PACES securities offering?

No. The NC PACES Act does not require you to hire an attorney to assist with an NC PACES securities offering. However, securities laws are complicated. We understand that there are costs to hiring an attorney, but you should be aware that it's probably more expensive to hire an attorney to fix things after they have gone wrong. Here are some examples of questions you may want to ask a securities attorney that is familiar with NC PACES:

- Is raising money with a securities offering right for my business?
- Is an NC PACES securities offering the right type of security for my business at this time?
- Is having investors right for me and my business?
- What liabilities will my business have with an NC PACES securities offering?
- What will I have to do after I start my NC PACES securities offering?
- What will I have to do when I have finished my NC PACES securities offering?
- How should I prepare my NC PACES disclosure document so that I can protect myself, my business, and my investors?

You may need to consult other advisors about issues not directly related to the ones listed above. We will do what we can to make the process as smooth as we can for you. However, we can only act in an administrative capacity. We cannot offer you legal advice or opinions on your particular filing.

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11. How do I start my NC PACES securities offering?

1. Read all of the FAQs. It will help you make the decision about what type of NC PACES securities offering is best for you and what service providers can help you.
2. Decide if you want to do an NCPO or an LPO.
3. Read the NC PACES Act and the Rules.
 - o If you are doing an NCPO you should read the [Section .2000 Rules](#).
 - o If you are doing an LPO, you should read the [Section .2000 Rules](#) and the [Section .2100 Rules](#) because you must still comply with the rules in .2000, but there are special rules in .2100 that give you more flexibility.
 - o Pay close attention to what you will need to include in your forms.

4. Start gathering the information you need so you can fill out the Forms NCE or NCE-LPO and Disclosure Document.
5. Select your service provider(s).
6. Create your disclosure document.
7. Complete your forms.
8. Set up your mandatory meeting with us if you are considering an LPO. Call us if you have any questions at (919) 814-5400 or toll free at (800) 688-4507.
9. File your forms and pay the fee.
10. Wait until you receive a Notice of Compliance before offering your security.

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12. What do I have to file?

You have to submit all of these things to us at the same time:

- Either an:
 - NC Notice of Intrastate Claim of Exemption (Form NCE), or
 - NC Claim of Intrastate Claim of Exemption and Addendum - Local Public Offering (Form NCE-LPO),
- A disclosure document that complies with the rules,
- An escrow agreement that complies with the rules,
- Any other contracts with service provider(s) relating to the securities offering, and
- The nonrefundable filing fee of \$150.

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13. How do I contact you?

Telephone: 919-814-5400 or toll free at (800) 688-4507.

E-mail: secdiv@sosnc.gov

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14. Where can I find the NC PACES forms?

On our website at: <http://sosnc.gov/Sec/>

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15. Who has to sign my Form NCE or NCE-LPO?

It depends on what form of business you are.

Type of Entity	Who must sign
Corporation or nonprofit Corporation	A person authorized to sign pursuant to G.S. 55-1-20 or G.S. 55A-1-20 for a domestic or foreign corporation or nonprofit corporation
Limited Liability Company (LLC)	All the issuer's managers for a limited liability company
Any other form entity	All persons managing the affairs of, or performing similar functions for an issuer that is not a corporation or a limited liability company

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16. How do I submit my documents?

Online	http://sosnc.gov/Sec/ NOTE: If you are filing Form NCE or NCE-LPO electronically, you must use a credit card or ACH to pay the nonrefundable filing fee.
E-mail	secdiv@sosnc.gov NOTE: You can't use email to file a Form NCE or NCE-LPO because you have to include the nonrefundable filing fee.
US Postal Service	NC Department of the Secretary of State ATTN: Securities Division (CF) PO Box 29622 Raleigh, NC 27626-0622
Hand Delivery or Delivery Service	NC Department of the Secretary of State ATTN: Securities Division (CF) 2 South Salisbury Street Raleigh, NC 27601

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17. How long will the review process take?

It will depend on several different factors. One thing that will make a difference in how long it takes is whether we have questions. We will contact you if we have questions. We will also let you know if there is something missing from your filing. You will likely hear from us within two weeks. Please remember that you cannot offer securities until you have received a Notice of Compliance from us.

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18. Do I need any special accounts for my investors' money?

Yes. Your investors have to put their investments into an escrow account and the money will stay there until you have reached your minimum offering amount. Your minimum offering amount is the amount you decide you want to reach before you can use the money. For an NCPO it has to be at least 20% of your goal and for an LPO it has to be at least 25% of your goal.

After you reach your minimum offering amount, you can decide how you want to receive your investors' money and where you want to put it, but you have to describe the process up front. You can continue to put the funds in the escrow account, you can create a new account, or you can have the investors give the money directly to you. Just make sure you keep good records of funds received.

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19. What is an escrow account?

An escrow account is an account that is held by a neutral third party. The neutral third party doesn't release the money until certain conditions are met, like meeting your minimum offering amount. Every issuer has to have an escrow account and has to show us the escrow agreement.

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Offering Securities

20. When can I start offering my securities to investors?

You can start offering securities to investors when you receive a Notice of Compliance from us.

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21. What is an “offer”?

“Offer” means any attempt to sell a security. An offer may be oral or written. An offer includes attempts to condition the public mind or arouse public interest generally in the issuer’s securities by publication of any information and statements, and publicity efforts, including any advertising materials. NOTE: Examples of ways in which an offer may be made are conversations, advertising, social media posts, presentations, emails, brochures, circulars, press releases, or similar communications.

“Offer” is an important legal term and means much more in the securities world than it does in other business operations. We recommend that you direct questions about the meaning of “offer” to an attorney with expertise in securities laws.

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22. Is there anything I have to do when making an offer?

Yes. You must provide the potential investor with the disclosure document at the time you make the offer. That means you must:

- hand over a hard copy of the disclosure document,
- email a copy of the disclosure document,
- email a link to a website where the disclosure document are posted, or
- provide a document with the website address where the disclosure document is posted.

If an advertisement is an offer it must provide a website address or link to the disclosure document. This is critical. This requirement comes from federal law. The consequences of not following this procedure can be very severe and can include requiring you to return the money to your investors with interest at the legal rate (8%). Consequently, you may want to collect evidence that you have provided the disclosure document.

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23. How can I reach investors for my NC PACES securities offering?

Use the Internet. Both NCPO and LPOs can have websites that promote the offering. There are very specific rules about what information you may include so check the rules.

News stories. If a reporter wants to write or talk about your offering, that is absolutely fine. You can even let a media outlet know about your business and your plans for the future, but be careful:

- NCPOs cannot prepare, pay for, authorize or approve the articles. That means you may provide information for an article that is published independently, but you cannot direct or dictate the content.
- LPOs can prepare, pay for, authorize or approve articles, but we have to review the content before the articles are published.

Advertising. All issuers can publish advertisements that contain the certain, basic information allowed by the crowdfunding rules. LPOs can publish more information if they get the content approved by us.

Events. LPOs can host events where they invite investors to hear about their securities offering. NCPOs can’t! If an LPO wants to host an event, it must notify us.

Customers. Of course you can raise money from your customers, if they are residents of North Carolina.

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24. Can I use Twitter, Facebook and other social media to advertise my NC PACES securities offering?

Yes, with the following conditions:

- If you are conducting an LPO: You have to get all content you’re going to include in social media posts pre-approved by submitting it to us.
- If you are conducting an NCPO: You can advertise using an “advertising notice” if:
 - the notice includes a link to the platform where the disclosure document is posted,
 - you include a disclaimer that sales shall be to “NC residents only”, and
 - you only include the terms of the securities offering and specific, limited factual information about the issuer.

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25. Can I get someone to help me sell my securities?

Yes. You just need to tell us who and include their contact information in your disclosure document.

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26. Is there anyone who cannot help me sell my securities?

Yes. There are people who are not allowed to participate in offering securities (even crowdfunding securities) because they have previously violated securities laws. We can help you check for violations if you email or call us.

Also, an LPO may not use a funding portal or a registered broker-dealer or salesman to offer securities.

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Investors

27. Who can invest in my NC PACES securities offering?

Residents of North Carolina can invest any amount of money if they are accredited investors or up to \$5,000 if they are not accredited investors.

An accredited investor is someone with at least \$1 million in investible assets or an income of at least \$200,000 per year. You can read the definition at <https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-accredited-investors>.

You must reasonably believe that the investors who invest more than \$5,000 are accredited investors. If an investor attests he/she is accredited, but you have reason to doubt it, you should ask for a certification of accredited investor status. There are companies that can provide these certifications.

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28. How many investors can I have?

That answer is not in the NC PACES Act. However, [federal law](#) says other requirements kick in if you have:

- more than 500 non-accredited investors, or
- more than 2,000 total investors.

It's complicated and you should really check out the federal requirements if you expect to have a lot of investors.

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29. Is there anything my investors have to do?

Yes. They have to provide evidence that they have a principal residence in North Carolina.

Examples of things you can use to show that your investors' principal residence is in North Carolina include:

- Documentation issued by a federal, state, or local government like a driver's license or ID card,
- A recently-dated utility bill,
- A pay-stub,
- Information in their state or federal tax returns, or
- A public or private database that you determine is reasonably reliable, including credit bureau databases, directory listings, and public records.

Any investors who are investing more than \$5,000 must certify to you that they are accredited investors.

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30. How often do I have to provide updates to my investors?

You have to provide quarterly reports:

- to investors directly, or
- to investors by posting them on the funding portal platform or your website if you don't use a portal. Even if you post it, an investor can still ask for a copy directly from you.

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31. How long do I have to provide updates to my investors?

You have to provide the quarterly reports until no securities issued in the offering are outstanding.

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32. What do I have to include in the quarterly reports?

You have to include:

- details of the compensation received by each director and executive officer of the company;
- an analysis by management of the business operations and financial condition of the company; and
- details on the progress of the offering toward the target offering amount if the offering is still ongoing.

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Other requirements

33. Is there anything else I have to submit to you after I have received my Notice of Compliance?

Yes. There are other things you have to file with us. Here's a list of the documents you may have to file:

What do we have to file?	When do we have to file?	Is there a form we have to use?	Are there any other requirements?
Changes to information on your Form NCE or Form NCE-LPO	Within 10 business days of the change	Yes, you have to file an amended Form NCE or an amended Form NCE-LPO	Yes, you have to: <ul style="list-style-type: none">• Highlight changes or amendments,• Give us a copy without highlights
Copies of your quarterly report	Within 45 days after the end of the quarter	No	Yes, you have to include the status of the securities offering (how much progress you've made toward your goal)
Notices related to the funds you're raising	Within 10 days after: <ul style="list-style-type: none">• Reaching the minimum offering amount• The release of funds from the escrow account• Termination of the escrow agreement.	No	Yes, there are some requirements for the contents of the notices
An offering conclusion report	After you conclude your NC PACES offering (which can be no later than 12 months after you get your notice from us)	No	Yes, the PACES Act and the rules say what you have to include in the report

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34. Are there federal rules I have to follow in addition to the state's requirements?

Yes. Every securities offering under PACES also has to comply with federal law and rules.

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