



NC GROWING TOGETHER

Connecting Local Foods
to Mainstream Markets

NCSU | NCA&T | NCDA&CS

CROWDFUNDING FOR FOOD & FARM BUSINESSES

A Webinar for Small Business Counselors & Cooperative Extension Agents

**HOSTED BY THE NC GROWING TOGETHER PROJECT
AT THE CENTER FOR ENVIRONMENTAL FARMING SYSTEMS
AND THE NORTH CAROLINA RURAL CENTER**

Presented by:

Leo John, Business and Investor Outreach Legal Specialist,
Securities Division, N.C. Secretary of State

www.ncgrowingtogether.org | www.localfoodeconomies.org



United States
Department of
Agriculture

National Institute
of Food and
Agriculture

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Our Agenda Today

NCGT Introduction to Webinar &
Overview of the GoTo Meeting Platform

Presentation from
Leo John, Business and Investor Outreach Legal Specialist,
Securities Division, N.C. Secretary of State

Question & Answer Session

Welcome!

NC GROWING TOGETHER AT THE CENTER FOR ENVIRONMENTAL FARMING SYSTEMS



Farmer capacity

- Food safety, market channels, production techniques, buyer connections



Supply chain expansion

- Wholesale and institutional partner connections, infrastructure assessment and business feasibility



Producer & processor capacity

- Resource development for meat, dairy, seafood, produce, and value-added products



Supportive business environments

- Local government integration; small business development and support for food-based entrepreneurs

North Carolina Growing Together is a five-year USDA-funded project aiming to strengthen and expand local and regional food supply chains and to model this work for other geographies in the U.S.



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ABOUT THE PLATFORM

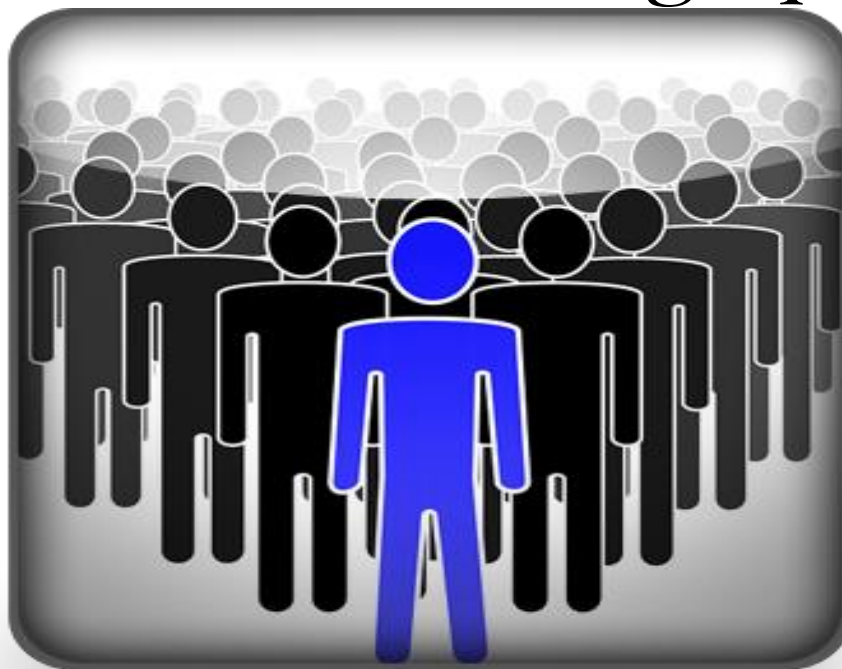
- GoTo Webinar Platform
 - You will be automatically muted – this helps cut down on background noise and data overload!
 - You can interact with presenters by raising your hand or submitting questions through the Chat Box.
 - If you have trouble during the webinar, send a private message to Emily by right-clicking on her name in the sidebar and selecting “Send Private Message.”
- Your chat box questions will be answered during the Q&A session at the end.

- After the webinar ends, you will receive a link to the YouTube video so that you can re-watch or share as you like!
- You'll also receive a PDF version of the presentation which allows access to all the links and resources, and contact information for the presenters.

HAVE A GOOD IDEA?

Let us know if there are other topics or presentations you'd like to see!

Understanding Crowdfunding: N.C.'s newest local financing option



Leo John

Business and Investor Outreach Legal Specialist,
Securities Division, N.C. Secretary of State

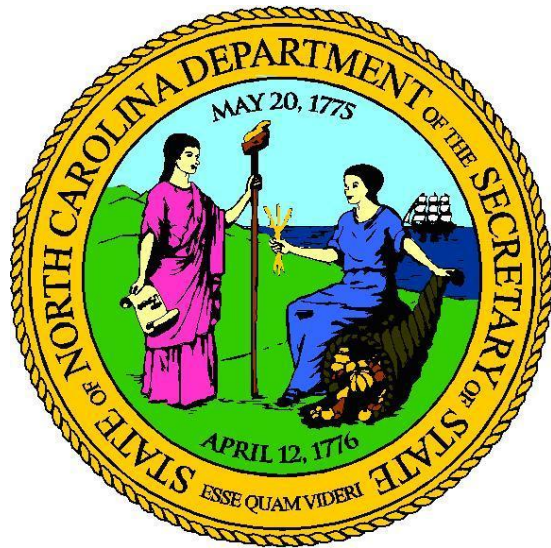
ljohn@sosnc.gov; 919-814-5561

Disclaimer



- This presentation is for educational purposes only and the information provided should not be construed as legal advice. If any entities are mentioned by name, it is for educational purposes only – do not mistake it as an endorsement.
- Consult with a N.C. licensed attorney competent in business and securities matters before making any decisions.
- The views expressed are those of the presenter.
- Presenter believes all information is truthful and accurate; however, mistakes can occur and laws and regulations may change.
- N.C. Secretary of State does not endorse this venue or co-presenters, sponsors, or any of the policies, activities, products, or services offered.

NC Department of the Secretary of State



Hon. Elaine F. Marshall
Secretary of State

Outline

- What is crowdfunding and an example
- Basic general rule and common exemptions
- NC PACES Act Crowdfunding
- Regulation Crowdfunding
- Tips for investors and entrepreneurs

What is Crowdfunding?

- Crowd funding is an **online money-raising strategy** that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, film makers and other creative people finance their projects.
- The concept recently has been promoted as a way of assisting small businesses and start-ups looking for **investment capital** to help get their business ventures off the ground.

Amy starts a cupcake shop...



...leading to lines outside

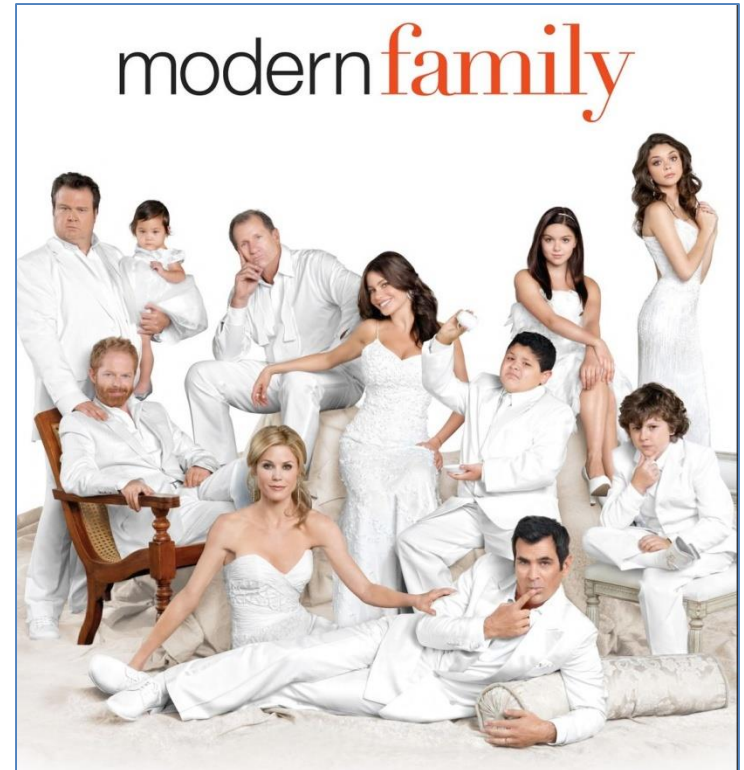
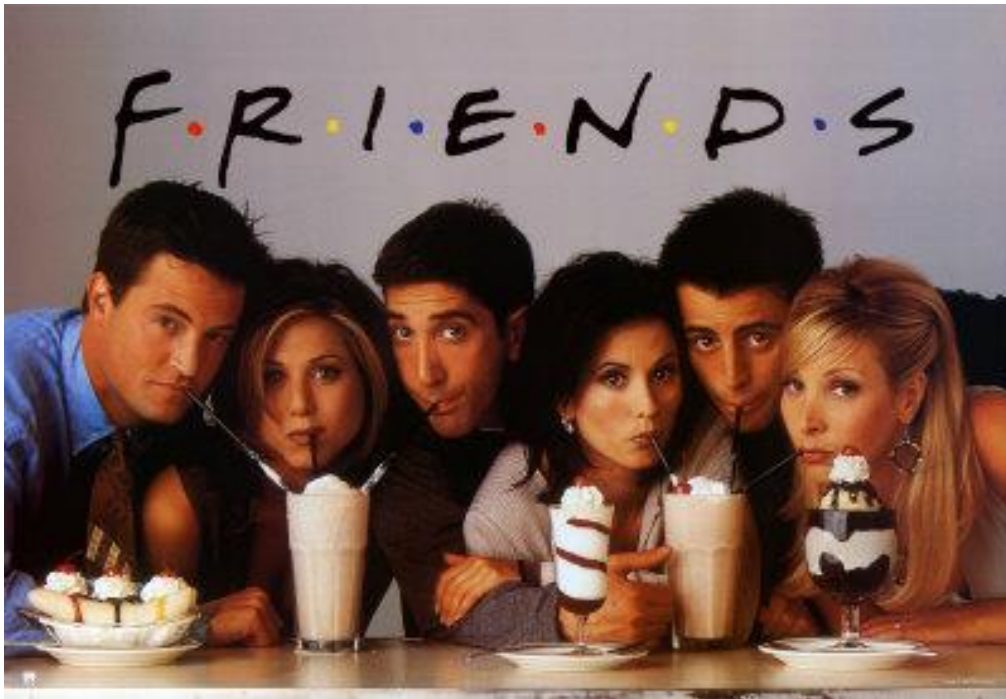
Sources of capital

- Friends and family
- Angel investors:
 - Shark Tank
- Venture capital firms
- Banks, SBA, credit unions



Cupcake Amy turns to friends and family...

for **capital** to grow....then entering Securities Regulation area and Amy needs to be careful!



Basic general rule

- N.C.G.S. 78A-24 : “unlawful for any person to offer or sell any security...unless (i) it is registered under this Chapter; (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17....;or (iii) it is a security covered under federal law.”

Exemptions...exemptions

- G.S. 78A-16 : list of exempt securities
- G.S. 78A-17 : list of exempt transactions
- 17 (9) – offer to not more than 25 persons
- 17 (17) – limited offering i.e. not more than 35 non accredited investors and a \$5 M cap on amount raised.



Amy may use ...Federal Reg D exemption

Rule 506 (b) – ban on general solicitation, unlimited accredited investors and 35 nonaccredited investors

Rule 506 (c) – eliminates ban on general solicitation as long as all participating investors are accredited.



Amy may now turn to Investment Crowdfunding

- Federal rules went effective May 16, 2016
- N.C. PACES Act enacted in July 2016
- Nearly 35 states have allowed intrastate crowdfunding

Crowdfunding

- ***Donation*** based model: Kickstarter, Indiegogo
- ***Investment*** based model: AngelList, WeFunder, StartEngine etc.

Examples of donation v. investment crowdfunding websites

- <https://www.kickstarter.com/>
- <https://www.gofundme.com/>
– V.
- <https://www.nextseed.com/>
- <https://wefunder.com/>
- <https://localstake.com/>

“Invest N.C. exemption”

- Part of N.C. PACES Act of July 2016
- Up to \$2M if reviewed or audited financials
- Up to \$1M if no reviewed or audited financials
- Investors must be N.C. residents
- Up to \$5,000 from non-accredited investors
- File disclosures with N.C. Securities Division
- Ongoing quarterly reporting obligation
- Registered Web sites may be used

NC PACES Act

- 2 channels for crowdfunding
- **NCPO** and the **LPO**
- North Carolina PACES Offering – maximum \$2M, must use Internet
- Local Public Offering – maximum \$250K, Internet not required but may be used, limited to equity, debt and revenue share agreements

Planning for an offering

- Financials
- Escrow account/agent
- Funding portal or web site
- Disclosure document
- Advertising/marketing
- Fill out the forms
- Submit to N.C. Securities Division
- *For a complete list of requirements, go to www.sosnc.gov/sec/crowdfunding.aspx*

Financials

- Required for any raises above \$1M
- Reviewed or audited financials required
- Prepared in accordance with GAAP
 - Balance sheets
 - Statement of consolidated income
 - Statement of changes in stockholders equity
 - Notes to financial statements

Escrow account/agent

- Funds deposited in escrow until minimum met.
- Minimum is 20% (NCPO) or 25%(LPO).
- Investor can retrieve funds anytime before minimum is reached.
- Escrow agent – bank or depository institution, registered dealer, or lawyer

Funding portal/website

- Business can use own web site to conduct offering OR
- Can use a registered funding portal
- Must post disclosure document on web site
- Must create a communication channel or message board where crowd can discuss

Disclosure document

- Lists all material risks investors need to know to make informed investment decisions
- Seek legal counsel to ensure completeness
- Required legends that highlight the risks of investing in the securities

Advertising/marketing

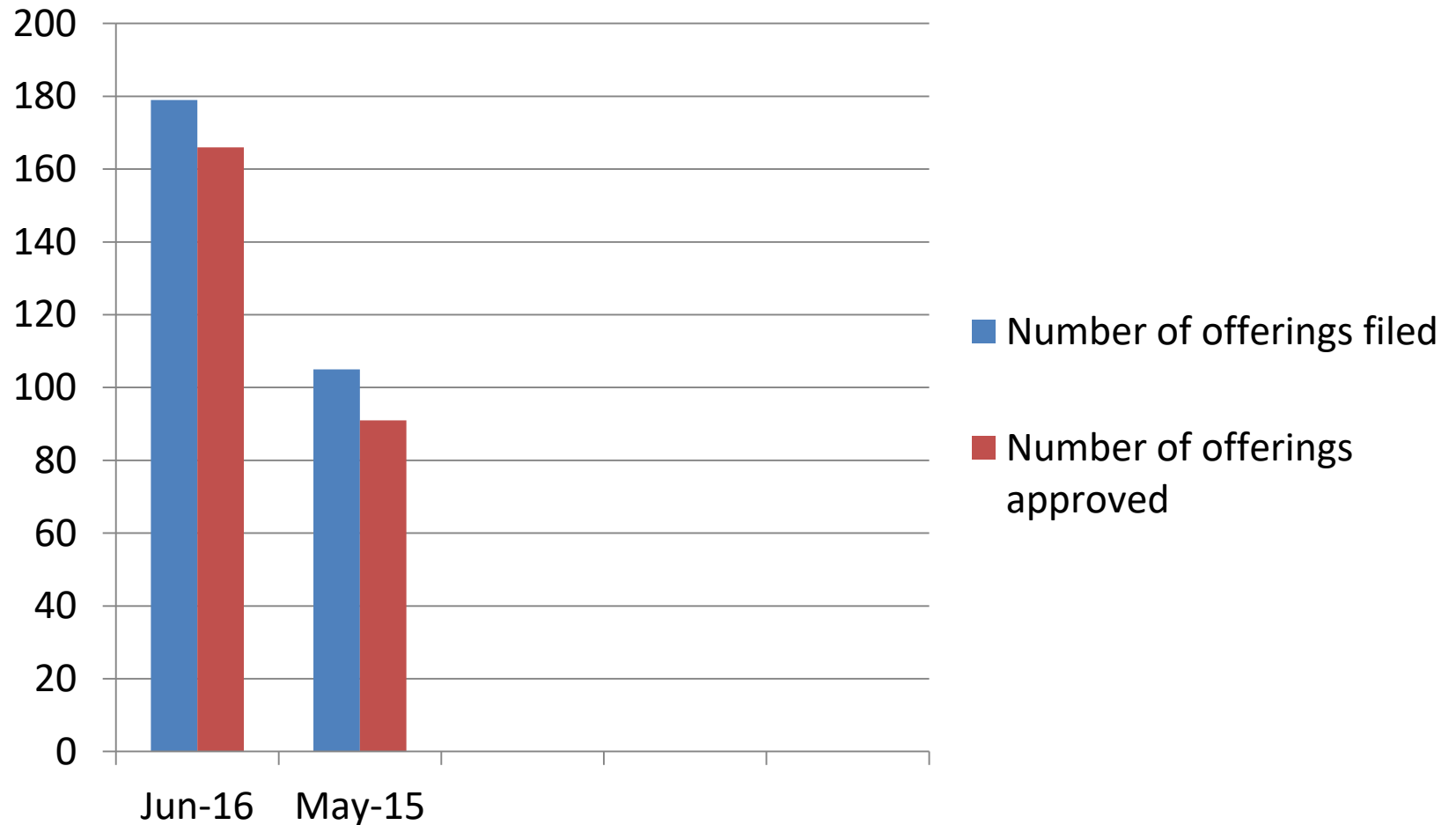
- LPO – submit all advertising to Securities Division prior to use. Can host events, use web site, publish ads, email etc.
- NCPO – notices, i..e. tombstone ads, permitted (even on Facebook etc.) but nothing beyond that

Forms

- Form NCE
- Form NCELPO
- Form NCFP
- ***For a complete list of requirements, go to www.sosnc.gov/sec/crowdfunding.aspx***

Intrastate Crowdfunding

- Source: NASAA



Regulation Crowdfunding – How it fits within federal law

Regulation Crowdfunding created under new Section 4(a)(6) of the Securities Act of 1933.

Conditionally exempts securities pursuant to Section 4(a)(6) from registration requirements of Section 12(g) of the Securities Exchange Act of 1934.

Federal crowdfunding rules*

Issuer parameters:

- Raise up to \$1M
- Accounting: <100K – **certified** financials by executive
- 100K-500K: **reviewed** by accountant
- 500K-\$1M: **audited** by accountant, but for 1st time issuers allowed if only **reviewed** by accountant
- Form C, Q&A optional format for disclosures
- Internet funding portal/Broker-dealer required

• ** effective May 16, 2016*

Crowdfunding - Investor limits

- Can target unaccredited investors
- \$2,000 or 5% of lesser of annual income or net worth for income or net worth <\$100K
- 10% of lesser of income or net worth (capped at \$100,000) if income and net worth \geq 100K

2016 federal Title III crowdfunding

- 21 Crowdfunding portals
- 186 companies in 36 states began offerings
- 105 of them closed by year-end
- 50% hit their minimum and raised \$13M
- 50% did not, returned \$950K to investors
- Altogether \$14M committed to 105 campaigns
- Source: Crowdfund Capital Advisors



Beware: Investing in early-stage companies is inherently risky

U.S. Small Business Administration: over 50% of small businesses fail in the first five years*

Crowdfunding Tips for Small Businesses & Entrepreneurs

Don't discount disclosure.

- The crowdfunding exemption is only an exemption from securities law registration requirements. It does not change the securities law disclosure requirements.
- The requirements of federal and state securities laws regarding disclosures, including disclosures of all material facts and risks to investors, remains in place.
- If you do not comply with disclosure requirements, you and your business can be liable for securities fraud and subject to private lawsuits as well as administrative enforcement actions.

Crowdfunding Tips for Small Businesses & Entrepreneurs

Don't discount disclosure.

- Existing federal and state registration laws are specifically designed to protect small businesses soliciting investments by ensuring that the key terms and risks of their offerings are disclosed.
- This is a huge benefit for entrepreneurs and other unsophisticated businesses that may be unaware of the legal pitfalls that await them when such disclosures are not made.

Crowdfunding Tips for Small Businesses & Entrepreneurs

Avoid Distractions.

- Having hundreds of “owners” may distract the company’s management from devoting the time and energy that is necessary to run a successful business.
- Venture capital companies or private equity funds may be less inclined to invest in a company that already has a crowd of small investors.

Crowdfunding Tips for Small Businesses & Entrepreneurs

Consider alternatives

- Consider your funding alternatives. Crowdfunding may be less expensive than doing a public offering of securities, but it will be more expensive than other alternatives.
- Consider protecting your intellectual property by obtaining patents, trademarks, copyrights etc. before crowdfunding.
- Search N.C. trademarks here:
- <https://www.secretary.state.nc.us/trademrk/search.aspx>

Crowdfunding Tips for Small Businesses & Entrepreneurs

No secondary market for these shares

- Consider that there is currently no active secondary market for crowdfunding shares, meaning you may not be able to sell these shares anytime soon.

Myths dispelled

- No, crowdfunding is not easy money. It comes with many responsibilities and lots of owners.
- No, these are not risk-free investments. Many startups will fail.
- No, you cannot simply crank up a website to crowdfund. It has to comply with federal and state laws.
- No, these investments are not pre-screened. You will have to do own due diligence.

Laws have penalties

If you fail to satisfy all requirements, you will be considered having made an:

1. Unregistered offering as an
2. Unregistered agent

Which Means...

You have committed

two felonies.

And ...

And...



You have exposed
yourself

AND

your business to all
the penalties
provided by the
securities laws.

Including....



Possible fine,



jail time



and/or suit from angry investors.

Because....

- Securities laws are primarily for the protection of investors.
- Those who seek capital are required to provide **complete** and **accurate** information about the investment so investors can make **informed** decisions.
- A violation can occur **without** intent.

Things You Must Disclose

You must disclose all important information about the investment opportunity, including:

- Names/histories of the business's mgmt
- What the money will be used for
- All possible risks posed by competitors
- Details of the company's business/marketing plans and financial health and history

Things You Must Disclose

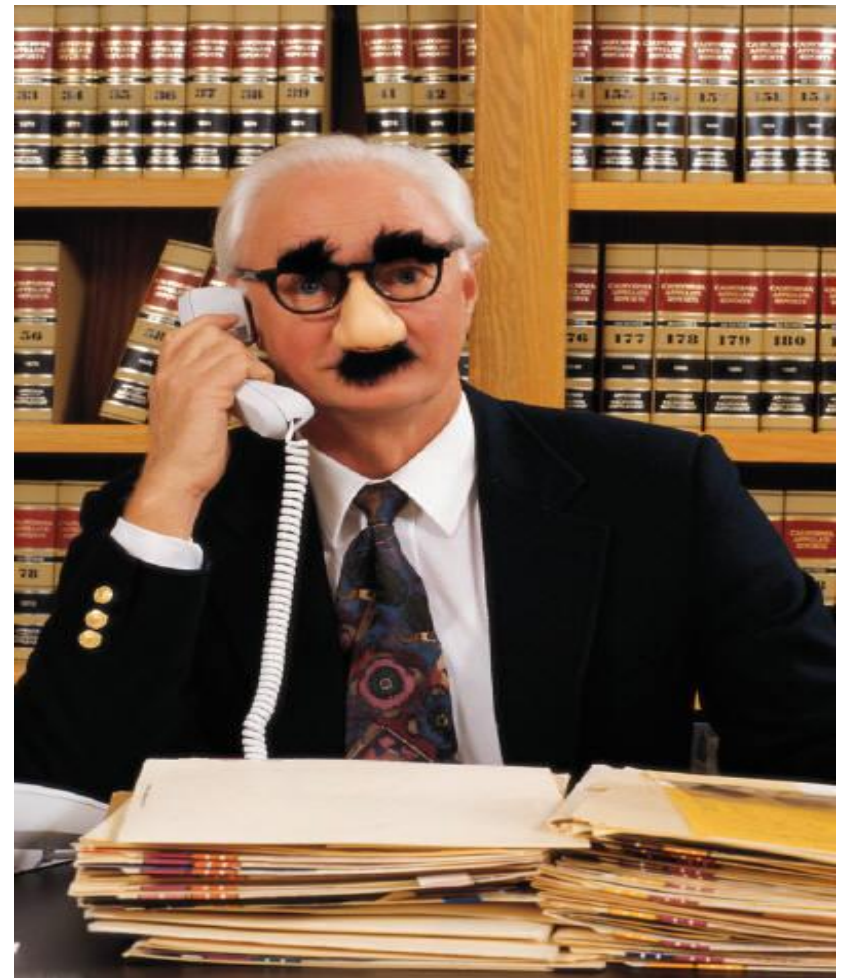
This is only a partial list.

For more details, download a copy of the Small Company Offering Registration (SCOR) Form U7, available from the North American Securities Administrators Association (NASAA) at

<http://www.nasaa.org/industry-resources/corporation-finance/>

So What Are You Really Saying?

...Find yourself an experienced securities attorney who is licensed to practice in NC.



Can I Do This On My Own?

Forms used to apply for registration or exemption can be found on the Securities Division's website at:

FAQ on securities industry:

<http://www.secretary.state.nc.us/sec/secfaqforindustry.aspx>

FAQ for investors:

<http://www.secretary.state.nc.us/sec/secfaqforinvestors.aspx>

Investor Education materials:

<http://www.secretary.state.nc.us/sec/invedu.aspx>

Tips for Small Businesses & Entrepreneurs

- Contact us to learn the different options for raising capital.

Questions about Securities Offerings:

(919) 814-5400 or (800) 688-4507

NC Department of the Secretary of State

Securities Division

PO Box 29622

Raleigh, NC 27626-0622

www.sosnc.gov/sec

UPCOMING WEBINARS

September 7

October 10

September 7, 2017 | 10-11 a.m.

FOOD BUSINESSES IN A FARM-TO-TABLE WORLD PROVIDING ASSESSMENT AND ASSISTANCE IN A CHANGING INDUSTRY

PRESENTED BY THE NORTH CAROLINA GROWING TOGETHER PROJECT AT THE CENTER FOR ENVIRONMENTAL FARMING SYSTEMS & THE NORTH CAROLINA RURAL CENTER

What you'll learn: This presentation will give small business counselors, mentors, extension agents and funders some background and insights into industry-specific issues faced by entrepreneurs who are planning, growing, or struggling with food businesses in North Carolina. The session will examine the changing restaurant industry and expanded entrepreneurial opportunities in related food businesses, including food trucks, caterers, and food makers, and will discuss the integration of sourcing, procurement, production planning, culinary trends, and the demand for local produce, meats, dairy, and seafood into business planning and operational analysis for new and expanding food businesses.



Who you'll meet: From age fifteen, in neighborhood restaurants, swanky country clubs and a scruffy grill behind a Philadelphia bar, Dani Black has cooked, served, and managed in foodservice for over thirty years. When she moved to Hillsborough in 1995 she dug deep into food, first as a market gardener and baker, then as owner of Hillsborough Market (a neighborhood grocery and produce market) and the James Pharmacy Restaurant. When the JPR closed, she was the founding Chef at the Refectory at Duke's Divinity School. The Refectory was one of the first university eateries in the nation to commit to providing ethically produced and locally sourced food and to paying living wages. She has also detoured into eating disorder treatment, helping to create therapeutic culinary programs and facilities, including working gardens, for residential and hospital-based treatment. Along the way she became a resource for people planning, growing or fixing small food businesses, which grew into a consulting practice devoted to reality-based planning and resource assessment. She supports culinary professionals and entrepreneurs who want to make a living doing what they love. She has served on boards, advisory councils and working groups devoted to issues of food, justice and community.

SPACE IS LIMITED!

Register today at www.ncgrowingtogether.org/events.



October 10, 2017 | 10-11 a.m.

ABC'S OF TRADEMARKING FOR NC FOOD & FARM BUSINESSES

PRESENTED BY THE NORTH CAROLINA GROWING TOGETHER PROJECT AT THE CENTER FOR ENVIRONMENTAL FARMING SYSTEMS & THE NORTH CAROLINA RURAL CENTER

What you'll learn: Is your company name important to you? Did you spend time and money developing a logo or a slogan? Small business owners who answer "Yes" should consider registering for a trademark as a way to protect the business brand.

North Carolina's trademarks registry is administered by the N.C. Secretary of State's Office, while federal trademarks are overseen by the U.S. Patent and Trademark Office.

This seminar focuses on various aspects of trademarks – from choosing between a federal or a state trademark or both to filing for one. Attendees can expect to get an overview of the costs, benefits and pitfalls of trademarks.

Several NC food and farm businesses have already learned the hard way that neglecting to register trademarks for their brand can have serious business consequences, including lawsuits and the expensive and difficult process of changing an existing brand. This seminar will help businesses and those who assist them – including Cooperative Extension agents and small business developers – understand how and why trademarks are an important business consideration.

Who you'll meet: **Leo John** is Investor and Business Outreach Legal Specialist at the N.C. Department of the Secretary of State, Securities Division. An attorney and a former business journalist, Leo closely tracks the state's business climate and in particular entrepreneurial activity to ensure businesses are forewarned and forearmed about the legal landscape in which they operate.



SPACE IS LIMITED!

Register today at www.ncgrowingtogether.org/events.



Check out previous webinars in this series [on YouTube!](#)
https://www.youtube.com/playlist?list=PL35wTOUY04KN_FEvzFv0trW0Zryilzjvo

www.ncgrowingtogether.org/events