Regulation CF Financial Statement Requirements

I. Introduction

Under Regulation CF(1), the SEC requires a document, known as a Form C, to be filed by any issuer contemplating a crowdfunding raise. As part of that filing process, a company must prepare financial statements in accordance with the rules and requirements of the SEC. Though Reg. CF is designed, among other reasons, to provide streamlined access to capital markets for issuers, the rules still require formal financial statements. Consequently, there is a high likelihood that you will need the services of a public accounting firm. The financial statements prepared and submitted with the Form C will be publicly available on the SEC's website and seen by potential investors. Thus, your presentation of financial information should be a high priority when filing a Form C.

In this note, we provide some high-level guidance and information about the financial statement requirements. For additional questions or guidance, please consult with your accounting services provider.

(1) 17 CFR Part 227, *as amended*

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II. Requirements for Financial Statements

As we mentioned, the regulations governing crowdfunding require disclosure of certain financial information. The specific financial reporting requirements depend on two factors: incorporation date and raise size. The first factor “is what it is”; the second factor can be variable depending on your circumstances and needs. When you decide to undertake a crowdfunding campaign, you should have already considered your funding needs and thus the size of the raise. While the costs associated with preparing financial statements can be significant, those costs should not, in our opinion, change the size or structure of your capital raise.

As we stated earlier, the type of financial disclosures required depends on two primary factors: date of incorporation and size of the offering. However, there are additional factors that dictate the type of financial disclosures. For example, whether you have previously used Reg. CF to raise funds may change the requirements of what must be disclosed and how. Another factor to consider is that for raises under $250,000, the financials need only be certified by an officer of the company but should still be GAAP-compliant. If, however, that company has financials that have been reviewed or audited by an outside accounting firm, then you must provide those financials. These are complex and detailed requirements. You must review the rules and associated guidance carefully to ensure that you provide the correct information. We refer you to the Form C, beginning at page 14, for the full list of requirements and factors. See, https://www.sec.gov/files/formc.pdf

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III. Considerations and Conclusion

As you can see, ensuring the preparation of the necessary financial statements lays a critical role in filing the Form C and conducting a Regulation CF campaign. As the amount of your goal increases, the complexity and requirements of the necessary financial statements increases. As a practical matter, and not surprisingly, this can increase your preparation costs and amount of time needed for preparation. One might therefore conclude that less is more. In other words, a company might decide to forego the $2.5 million that they know they need to execute their business plan in favor of lower fees and costs. In our view, however, this is short-sighted.

While is always a big concern for companies big and small, it is a particularly acute issue for startups and younger companies. Spending (e.g.) $20,000 or more for a CPA to prepare financial statements may prove burdensome. However, before deciding on a strategy that may be viewed as “penny wise and pound foolish”, consider the potential consequences from saving some money on expenses by not providing yourself with the resources you need to fund your future plans. You could be foregoing your one opportunity to really make your business grow.

Every company is different and thus every raise is different, and there are no guarantees of having a successful raise. Each company has to decide for itself what makes the most sense for them. Given, however, that financial disclosures are a critically important piece of information for investor, you should spare no effort (if not expense) to prepare them. Investors will appreciate the clarity into your company that well-done financial statements provide. It can therefore be viewed as another opportunity to impress a potential investor.