

# A Perspective on SEC Form C

While crowd funding is designed to be an easier and more streamlined pathway to the capital markets, there are still legal and regulatory requirements that any issuer contemplating a Regulation CF (“Reg.”) raise must consider. The main documentary requirement is the Form C (<https://www.sec.gov/files/formc.pdf>). Form C must be completed and filed before a Regulation CF raise can go live. Thus, it is a critical step along your pathway to raising capital through crowd funding. Below, we attempt to provide some basic explanations about the Form C’s requirements and ideas for how the requested information should be presented. While completing the Form C is (and should be) a labor-intensive process given its critical role in a Reg. CF campaign, you should view this exercise as an opportunity to reach investors directly with your story. Done properly, a well-written and straightforward Form C may convince investors to take a chance on you.

## I. S.E.C. Filing Requirements – Form C

A Form C is the document that discloses details about the terms of the crowd-funding offering, the company’s business, and any other important related information. It is a resource to help potential investors to evaluate whether or not to invest in your company. Consequently, it is a critical component of your preparation for raising capital.

Form C is designed to ensure that companies disclose information that investors will deem important to their investment decision. It requires disclosure of key information about your company and offering, like background on the co-founders, the company’s business model, the price of shares, the amount of capital the company seeks to raise, and other basic financial information.

Importantly, the Form C also requires disclosures about risks to your company and, in turn, investors. You must detail the risks associated with your industry and your company, as well as how you plan to use the money you raise.

Once a Form C is filed, there are additional obligations of which you need to be aware. Each requires a filing with the SEC and are illustrated in the bullet points below by the Form required and the action to be taken.

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- (1) Please note that this is provided for information purposes only and does not intend to provide, and does not constitute, legal advice. As with all legal documents, you should consult with your own legal and accounting professionals with respect to the Form C.

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## I. S.E.C. Filing Requirements – Form C *(Continued)*

Once a Form C is filed, there are additional obligations of which you need to be aware. Each requires a filing with the SEC and are illustrated in the bullet points below by the Form required and the action to be taken.

- **Form C/A** – Amendments to the original Form C must be made on this form. Amendments are required for changes, additions, or updates that are material. In those instances where materials amendments are made, the issuer must reconfirm outstanding investment commitments within five business days or the investors' commitments are considered cancelled.
- **Form C-U** – This form allows an issuer to provide the required updates on its progress toward meeting the target offering amount within five business days after reaching 50% and 100% of its targeted offering amount.
- **Form C-AR** – The form for issuers who sold securities in a Reg. CF offering to provide an annual report no later than 120 days after the end of its fiscal year. This annual reporting requirement (please refer to the rule for the specific contents of the report) continues until: (i) the issuer has to file reports under the Exchange Act, Sections 13(a) or 15(d); (ii) the issuer has filed at least one annual report and has fewer than 300 shareholders of record; (iii) the issuer has filed at least three annual reports and has total assets that do not exceed \$10 million; (iv) the issuer or another party purchases or repurchases all of the securities outstanding from the Reg. CF offering; or (v) the issuer liquidates or dissolves.
- **Form C-TR** – Form facilitating an issuers notices to the S.E.C. that it is terminating its annual reporting obligations under the requirements of Reg. CF.

Each of these forms involves complying with an SEC obligation. You should therefore approach your preparation of any such form in the same manner that you did the original Form C.

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## II. An Opportunity to Tell Your Story

While all components of the Form C are equally important and must be completed with care, certain sections provide an opportunity for you to tell your company's story in a way that might grab investors' attention. While accuracy and truthfulness are paramount, the manner in which you present the required information can be a powerful addition to your other materials and help convince investors to take a chance on you. To that end, we highlight a few sections of the Form C that, in our view, lend themselves to such a use.

**Business Overview.** This section provides an opportunity to explain, albeit in summary fashion, what you do, how you do it, and how you intend to achieve your goals. Remember, investors want to understand what your company does and what your plans are before deciding they want to come along.

**Team.** This section provides a chance to tell the story of the founders and senior executives. People create companies for many reasons and your rationale behind having an idea and turning it into reality through the founding of the company can provide clear insight into whom an investor is entrusting their money.

In addition, this section provides an opportunity to call out members of the executive team who may hold particularly unique qualifications and/or have extraordinary experiences that will inure to the company's and ultimately the investors' benefit.

**Risk Factors.** Disclosing risks to potential investors is one area with which many companies struggle. The struggle is not with understanding the obligation to disclose risks, but rather with how to do so. Doing so properly can however, provide a powerful opportunity to sway an investor.

Risk disclosure is required generally by the rules governing securities offerings. You must disclose risks (i.e., you must disclose the good and the bad) to investors so that they can assess all material information when deciding whether or not to invest. Additionally, the types of risks to be disclosed are not just those of your particular company (e.g., your manufacturing process). Risk disclosures must address issues such as: key-person risk, supply chain issues, labor issues, agricultural (and in turn climate) issues, financial issues specific to your company (e.g., a going concern warning from your accountant) as well as your industry and the economy overall. There are many other risks to consider and address if they apply. Consequently, your risk disclosures are likely to be one of the lengthier portions of the Form C.

When completing this section of Form C, the information you provide and how you present it can be a powerful tool in giving investors insight into your ability to assess risks honestly and address them appropriately. Consequently, view this section as another opportunity to highlight to investors your skills, knowledge, and business acumen.

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## II. An Opportunity to Tell Your Story

Disclosing risks honestly and in plain language, and then summarizing how you intend to address those risks, can let an investor know you are “on top of things.”

**Financials.** Another key section of your Form C mandates disclosure of your financial information. Among other critical items, the following sections are particularly noteworthy:

- **Ownership, Capital Structure and Rights** – You must disclose all individuals that have more than 20% voting power in your company. In addition, disclosure of if, and how, those voting shares differ from shares in the current offering must be explained.
- **Financial Statements, Financial Condition, Material Indebtedness** – Form C requires inclusion of two years financial statements when filing. This section of Form C provides an opportunity to explain the context around what potential investors see in the financial statements.

**Recent Offering of Securities.** Details about any other securities offerings conducted in the preceding three years (e.g., a previous crowdfunding raise) need to be disclosed and discussed in this section. We suggest also explaining how the previously raised funds were deployed and whether you were able to achieve your goals with those funds. This may provide insight into your ability to properly manage investors’ capital.

**Valuation.** Management must determine the company’s overall worth to properly price the shares to be offered. There are many factors that go into a valuation, including current financial performance, intellectual property ownership, contracts with third parties, comparable companies in the same industry, and numerous others. While there are a multitude of different ways to calculate your company’s valuation, you should be prepared to explain to investors how you reached the valuation upon which the current offering is based. Careful thought and a realistic assessment of your company’s present state should guide your valuation calculations.

**Use of Proceeds.** This section of the Form C requires a detailed explanation how you will deploy the capital you raise. To the extent possible, you should account for the use of funds as specifically as possible. One tool that may prove useful is a detailed budget plan that reflects specific dollar amounts for each of the intended uses of proceeds. While acknowledging that circumstances change and the specific amounts may change with them, specificity allows investors to understand the costs of your endeavors and assess for themselves whether they agree with you plan. Consider also discussing key milestones and key performance indicators so that investors have a clear picture of how they can assess your progress.

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## III. Conclusion

The Form C is the basis of all Regulation CF campaigns. It must be filed prior to the raise going live and requires attention to detail and a lot of intensive labor to prepare. It may also require you to hire professionals, such as an attorney and/or a CPA to help. It is also, however, an opportunity to put your best foot forward with potential investors by telling your story your way, demonstrating a command of the issues (e.g., Risks) facing your business, and showing potential investors that you are prepared and equipped to guide your company to success.

Our suggestions here are neither authoritative nor exhaustive. Others may not share, or may strongly disagree, with our views and ideas. We hope, however, that you think critically and carefully when completing the Form C. Always bear in mind that potential investors will read it, so it stands to reasons that, when they do, the Form C reflects your effort and leaves them with a positive first impression.