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## FORM C OFFERING STATEMENTS FREQUENTLY ASKED QUESTIONS

### Q1. What is Form C?

Form C is the offering statement issuers are required to file with the SEC prior to selling securities in an exempt transaction pursuant to a [Regulation Crowdfunding](#) ("Reg CF") crowdfunding campaign. Reg CF's rules are found in Section 4(a)(6) of the Securities Act of 1933, as amended (the "Securities Act").

To qualify for this exemption, the transaction must meet specific requirements, including limits on the dollar amounts sold by an issuer and invested by an individual in a 12-month period.

Reg CF transactions must be conducted solely through the *platform*<sup>1</sup> of an *online intermediary*<sup>2</sup>, defined as a "crowdfunding portal" or simply, a "portal", that complies with specified requirements. Such an online-only requirement enables the public to access offering information and share publicly in a way that allows members of the crowd to air their views on whether to participate in the offering and fund the business or idea. It also helps ensure transparency, provides for ready availability of information in one place to all investors, and promotes greater uniformity in the distribution of information.

Crowdfunding transactions are preempted from state regulation under the National Securities Markets Improvement Act ("NSMIA"). States can require a notice filing for the state of the issuer's principal place of business or from where 50% or more of the aggregate amount of the offering is sold to its residents; however, states cannot collect filing fees on Reg CF transactions.

The SEC allows issuers conducting an offering under Reg CF some flexibility as to the form of disclosure as long as all required information is provided. See the so-called Form C Q&A format in [PDF](#) (provided by the SEC) or [Word](#) (transcribed by Silicon Prairie).

Alternatively, the sample table of contents below outlines components of a typical Form C offering statement prepared with the assistance of Silicon Prairie's MarketBuilder™ service that meets all Reg CF's requirements but is more reader-friendly. We believe that a prose form with charts and graphics rather than an enumerated response to questions provides a high quality document that brings credibility and accessibility to an offering.

Note that not all areas listed below may apply to a particular company and there may be others that do. In any case, one must make sure the offering statement accurately describes and discloses everything material to your company.

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<sup>1</sup> A "platform" is defined as "a program or application accessible via the internet or other similar electronic communication medium through which a registered broker or funding portal acts as an intermediary in a transaction involving the offer or sale of securities in reliance on Regulation CF of the Securities Act".

<sup>2</sup> In this context, "online" means over the internet or another similar electronic medium that is accessible to the public.



- SEC Filing Data - includes information such as issuer's name, legal status, address, website, portal, offering details, and financial highlights
- Cover
- Preface
  - Table of Contents
  - Additional Information
  - Disclaimers
  - Eligibility & Bad Actor Disclosure
  - Forward Looking Statements
- The Company
  - Overview
  - Recent Third Party News Reports
- The Offering & Plan of Distribution
  - The Securities
  - The Offering
  - The Intermediary
  - The Offering Period
  - Sources & Uses of Funds
  - Capitalization
  - Investor Qualifications
  - How to Subscribe
  - Material Changes
  - Closing & Escrow Process
  - Restrictions on Transfer
  - Governing Law
- Risk Factors
  - Risks Related to the Company's Business & Financial Condition
  - Risks Related to Our Securities
  - Risks Related to Governance & Ownership of the Company
- Business
  - Overview
  - Business Plan
  - History
  - Products & Services
  - Customers
  - Sales & Marketing
  - Vendors & Suppliers
  - Employees
  - Properties
  - Competition
  - Intellectual Property
  - Regulatory Matters
  - Litigation
- Management
  - Directors & Executive Officers
  - Key Advisors
  - Compensation Policies
  - Director Compensation
  - Potential Payments Upon Termination or Change of Control



- Equity Incentive Plan
- Employment Agreements
- Limitation of Liability & Indemnification
- Capitalization & Ownership
  - Capitalization
  - Indebtedness (description of the material terms of any indebtedness including amounts, interest rates, maturity dates, and any other material terms)
  - Ownership (description of ownership, including all beneficial owners of 20% or more)
  - Previous Exempt Offerings (description of exempt offerings conducted within the past three years, including the Reg CF crowdfunding round you just closed)
  - Previous SEC Filings
  - Restrictions on Transfer
- Financial Information
  - Material Changes & Other Information
  - Recent Tax Return Information
  - Results of Operations or Plan of Operations
  - Liquidity & Capital Resources
  - Capital Expenditures & Other Obligations
- Related Party Transactions
  - Related Person Transactions
  - Conflicts of Interest
- Signatures
- Financial Statements
  - See below.
- Exhibits
  - Organizational Documents
  - Subscription Agreement – form of
  - Campaign Page (if Test the Waters provision of Reg CF used)

## **Q2. What are the financial information rules for Form C?**

Reg CF requires a description of the finances of the issuer, including, to the extent material, historical results of operations and liquidity and capital resources.

For issuers with no prior operating history, the discussion should focus on operational and financial milestones, liquidity, and other challenges.

For issuers with an operating history, the discussion should focus on whether historical results and cash flows are representative of what investors should expect in the future. The discussion must cover each year for which statements are provided. Any known material changes or trends in the results of operations and financial condition of the issuer during any time period subsequent to the period for which financial statements are provided should also be discussed.

The liquidity and capital resources discussion should consider the proceeds of the offering and any other known or pending sources of capital. Discuss how the proceeds from the offering will affect liquidity and whether receiving these and any other funds is necessary to the viability of the business, and how quickly the issuer anticipates using its available cash.



Describe other sources of capital available to the business such as lines of credit or required contributions by shareholders.

Reg CF also requires that an offering on Form C must include the financial statements specified below.

Financial statements must be prepared in accordance with U.S. generally accepted accounting principles (US GAAP) and must include:

- 1) balance sheets;
- 2) statements of comprehensive income;
- 3) statements of cash flows;
- 4) statements of changes in stockholders' equity; and
- 5) notes to the financial statements.

An issuer may elect to delay complying with any new or revised financial accounting standard under GAAP until the date that a company that is not an issuer as defined under Section 2(a) of the Sarbanes-Oxley Act of 2002 is required to comply with such standard, if it also applies to companies that are not issuers. Issuers electing such extension of time to comply must disclose it at the time it files its offering statement and apply the election to all standards. Issuers electing not to use this accommodation must forgo it for all financial accounting standards and may not elect to rely on it in any future filings.

If the financial statements are not audited, they shall be labeled as "unaudited."

For an offering conducted in the first 120 days of a fiscal year, the statements provided may be for the two fiscal years prior to the issuer's most recently completed fiscal year; however, financials for the two most recently completed fiscal years must be supplied if they are otherwise available.

If more than 120 days have passed since the end of the issuer's most recently completed fiscal year, the financials provided must be for the issuer's two most recently completed years. If the 120th day falls on a Saturday, Sunday, or holiday, the next business day shall be considered the 120th day for purposes of determining the age of the financial statements.



Aggregate Offering Amount <sup>3</sup>	Financial Information Required	Financial Statements Required
\$124,000 or less:	<ul style="list-style-type: none"> <li>Total income, taxable income; and total tax<sup>4</sup> (or their equivalents) as reported on the issuer's most recently filed federal income tax return for the most recently completed year. Such information must be <i>certified</i><sup>5</sup> by the principal executive officer of the issuer to reflect accurately the information reported on the issuer's federal income tax returns.</li> <li>Financial statements of the issuer and its predecessors, if any.</li> </ul>	<p>Financial statements must be certified<sup>5</sup> by the principal executive officer of the issuer.</p> <p><i>However</i>, if statements are available that have been reviewed or audited by an independent public accountant<sup>6</sup>, the issuer must provide such along with a signed audit or review<sup>7</sup> report. Further, the issuer need not include the information reported on the federal income tax returns or the certification of the principal executive officer.</p>

<sup>3</sup> For purposes of determining the financial statements to be included in an offering on Form C, *aggregate offering amount* means the total amount offered and sold by: (1) the issuer; (2) all entities controlled by, or under common control with, the issuer; (3) all predecessors of the issuer in reliance on Section 4(a)(6) of the Securities Act within the preceding 12-month period; and (4) the current maximum offering amount subject to the Form C in question.

<sup>4</sup> Issuers offering securities before filing a tax return for the most recently completed fiscal year may provide the required information from the return for the prior year, if any, *provided that* they provide such information for the most recent fiscal year when the return is filed, if filed during the offering period. An issuer that requested an extension of the time to file would not be required to provide information from the tax return until the date when the return is filed, if filed during the offering period.

<sup>5</sup> A principal executive officer certifying financial statements as described above must provide the following certification\*\*:

I, [\_\_ the certifying individual], certify that:

- The financial statements of [\_\_ the issuer] included in this Form are true and complete in all material respects; and
- the tax return information of [\_\_ the issuer] included in this Form reflects accurately the information reported on the tax return for [\_\_ the issuer] filed for the fiscal year ended [\_\_ date of most recent fiscal year].

\_\_ Signature of certifying individual  
 \_\_ Printed name of certifying individual  
 \_\_ Title of certifying individual

\*\* Intentional misstatements or omissions of facts constitute federal criminal violations. See 18 U.S.C. 1001.

<sup>6</sup> To qualify as *independent* of the issuer for purposes hereof, the accountant must satisfy the independence standards of either Rule 201 of Regulation S-X or the AICPA. The accountant that audits or reviews an issuer's financial statements must be duly registered and in good standing as a certified public accountant under the laws of their place of residence or principal office, or in good standing and entitled to practice as a public accountant under the laws of their place of residence or principal office.

<sup>7</sup> An issuer will not comply with the reviewed financial statement requirement if it receives a review report that includes modifications, nor will it comply with the audited financial statement requirement if it receives a qualified opinion, an adverse opinion, or a disclaimer of opinion. The issuer must notify the public accountant of its intended use of their audit or review report in the offering.



Aggregate Offering Amount <sup>3</sup>	Financial Information Required	Financial Statements Required
<p>Over \$124,000, but not more than \$618,000 <b>Or</b> For a first crowdfunding offering more than \$618,000 and up to \$1,235,000</p>	<p>Financial statements of the issuer and its predecessors, if any.</p>	<ul style="list-style-type: none"> <li>• If the issuer <i>has previously sold</i> securities in reliance upon Reg CF and is offering between \$124,000 and \$618,000, <b>OR</b></li> <li>• If the issuer <i>has not previously sold</i> securities in reliance on Reg CF and it is offering more than \$618,000 but less than \$1,235,000, <b>then</b></li> <li>• The financial statements <b>must be reviewed</b> by an independent public accountant and must include a signed review report.</li> </ul> <p><i>However, If financial statements are available that have been audited by an independent public accountant, the issuer must provide such along with a signed audit report and need not include the reviewed financial statements.</i></p>
<p>Over \$618,000</p>	<p>Financial statements of the issuer and its predecessors, if any.</p>	<p>If the issuer has <i>previously sold securities</i><sup>8</sup> in reliance on Reg CF, then the financial statements <b>must be audited</b> by an independent public accountant and must include a signed audit report.</p> <p>If financial statements are available that have been audited by an independent public accountant, the issuer must provide those financials along with a signed audit report and need not include the reviewed financial statements.</p>

<sup>8</sup> To determine whether the issuer has previously sold securities in reliance on Regulation Crowdfunding for purposes hereof, "issuer" means the issuer, all entities controlled by or under common control with the issuer, and all predecessors of the issuer.



### Q3. Who can invest in a Reg CF offering?

There are limits on the amount that investors may invest in crowdfunding offerings. In general, the SEC's guidance is as follows:

- If you are an *accredited investor*<sup>9</sup>, then there are no limits on how much you can invest.
- If you are a non-accredited investor, then the amount you can invest depends on your net worth and income<sup>10</sup> as follows:
  - If either your income *or* net worth is less than \$124,000, then you can invest up to the greater of a) \$2,500 or b) 5% of the *greater* of your income or net worth during any 12-month period.
  - If both your income and net worth are greater than or equal to \$124,000, then you can invest up to 10% of annual income or net worth, whichever is greater, but not to exceed \$124,000 during any 12-month period.

### Q4. Is help with Form C available?

Silicon Prairie can help you prepare and file your Form C via our MarketBuilder™ service, making this potentially complicated process as simple as possible. As a user, here is what you can expect:

- 1) Subscribe to our MarketBuilder™ service. See our [sample engagement letter](#).
- 2) Once you have signed up, we ask that you send us your most recent business information in Word as described by the sample table of contents above. Don't worry if you don't have all the information – our job is to help you develop what you do have into a professional presentation that will inform investors. You will also need to provide us with your financial statements, which we will convert to Excel for ease of incorporation into Form C.
- 3) After we have had a chance to absorb the information that you do have, we will send you a first draft of your offering statement for your review and comment; this may take as long as a week or ten days. After you have given us your comments and we have incorporated them, we will send you another draft. Once the document is substantially

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<sup>9</sup> In addition to certain institutional investors as defined in [Rule 501 of Regulation D](#), in general, a natural person is considered to be an [accredited investor](#) if they:

- Had an earned income that exceeded \$200,000, or \$300,000 together with a spouse or spousal equivalent, defined generally as a cohabitant occupying a relationship equivalent to that of a spouse, in each of the prior two years, and reasonably expects the same for the current year;
- Has a net worth over \$1 million, either alone or together with a spouse or *spousal equivalent*, excluding the value of the person's primary residence and any loans secured by the residence, up to the value of the residence;
- Holds certain professional certifications, designations, or credentials in good standing, including [Series 7](#) (General Securities Representative), [Series 65](#) (Registered Investment Adviser) or [Series 82](#) (Private Securities Offerings Representative) securities licenses.

<sup>10</sup> You can calculate your annual income or net worth by jointly including your spouse's income or assets. It is not necessary that property be held jointly. However, if you do calculate your income or assets jointly with your spouse, each of your crowdfunding investments together cannot exceed the limit that would apply to an individual investor at that annual income or net worth level. For purposes of Reg CF, the value of your primary residence is not included in your net worth calculation.



complete, we recommend that you have it reviewed by your attorney and independent accountant. After these reviews, we can incorporate their comments into the draft.

- 4) Once the drafting process is complete, we convert it to PDF for your SEC attorney to Edgarize and file with the SEC and for you to post on your website.

**Q5. What other help is available?**

While not required by Reg CF, to help you manage your business and facilitate a secondary market in your securities, we can help with certain reports. These include:

- Your Form C-AR annual report;
- Current reports to disclose material items of interest to investors such as fundamental changes in the business, bankruptcy or receivership, material modification to rights of security holders, changes in accountants, sales of unregistered equity securities, changes in control, and the departure or appointment of key personnel such as directors and officers;
- Quarterly financial press releases; and
- Mini-valuations and §409 valuations to comply the Internal Revenue Code.

For additional information, contact Cedric Long at 612-889-3419 ([cedric.long@spcp.io](mailto:cedric.long@spcp.io)) or Wiley Sharp at 612-801-1601 ([wiley.sharp@spcp.io](mailto:wiley.sharp@spcp.io)).