

Profran Consultants Presents

A Practical Look at Funding Your Business



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A PRACTICAL LOOK AT FUNDING YOUR COMPANY

How to Raise Capital from Investors

The very first step that most companies take when seeking private capital is the creation of an executive summary and a business plan. While executive summaries and business plans are an important facet of raising capital they are not designed to be investment documents.

Executive Summaries and Business plans typically just provide general information about the company, its business model, goals, etc. While this information is important to investors, it does not provide a basis or structure for accepting capital investment.

A business plan does not allow a company to accommodate multiple individual investors. Most business plans state an aggregate amount of funding needed, "\$500,000" for example, but provide no structure to allow for fractional investment. This means the company must find one single investor with \$500,000 to invest - and the patience to develop the transaction structure and documents to process that investment. This limitation is probably the single biggest reason why so many companies fail at raising investor capital. Raising capital effectively and properly from investors requires very specific documentation that far surpasses what a business plan provides.

Public companies don't raise capital from investors by putting a business plan in front of them. If you wanted to invest into Dell Computer - do you think Dell would send you a business plan to process your investment? Of course not - you would invest into Dell Computer through a securities offering. The same holds true for private companies seeking capital from investors. Don't expect an investor to invest unless you have presented them with a securities offering. Business plans serve a purpose (especially for start-up companies) - but they should not be relied upon as investment documents.

The Fundamentals of Raising Investor Capital

There are certain fundamentals that you must have in place in order to raise **any amount** of capital from investors properly (whether it be one investor or one hundred):

First, you must have proper transaction structure in place before you interact with investors. The overwhelming majority of companies that are just using a business plan to raise capital (whether for \$50,000 or \$15,000,000) typically have very little transaction structure beyond "we're selling 20% of the company for \$2,000,000". This is wholly inadequate.

How many shares or units are being sold? Preferred return or common ownership? What is the share/unit price? What is the total authorized share/unit pool and how will it affect future dilution of the investment? What is the exit strategy? How is the investor return modeled? Are the securities convertible?

Not addressing this information places the responsibility for creating proper transaction structure on the investor - which is very unprofessional and reflects poorly on the subject company. To raise private capital successfully you need to go well beyond simply stating to investors an aggregate amount of capital needed and providing information on the business. Do not expect investors to have any interest in your opportunity without providing them concise terms and conditions regarding their capital investment in your company. If you were an investor - would you not want the same information and structure provided for your investment?

Second, proper documentation for raising capital from investors is of critical importance. A business plan is not even the bare minimum needed for raising private funding - of any amount. The specific documents needed for raising private capital are:

- **Private Placement Memorandum:** The Private Placement Memorandum, or "PPM", is the document that discloses all pertinent information to the investors about the company, proposed company operations, the transaction structure (whether you are selling equity ownership or raising debt financing from the investors), the terms of the investment (share price, note amounts, maturity dates, etc.), risks the investors may face, etc. Do not confuse the detailed corporate disclosures, SEC disclosures, and transaction structure in a PPM with the general information a business plan provides - they are not the same.
- **Subscription Agreement:** Business plans do not even provide the documentation necessary to allow the investor to **actually invest**. Don't expect investors to provide you funding based on a handshake. Would you invest funds into a company without signing a document that sets forth the terms and conditions of the investment? The Subscription Agreement sets forth these terms and conditions - this is the document the investor signs and returns to you with their investment check. You will have a very hard time raising debt or equity capital without this basic document.
- **Promissory Note:** In debt offerings you need to have a Promissory Note outlining the terms of the loan arrangement with the investors. The note is the actual "loan document" between the company and the investor. It is impossible to have a "loan" without a "loan agreement" that sets forth the terms and conditions of the loan.

Third, in order to sell securities to investors you must follow the rules and regulations that govern these sales as set forth by the Securities and Exchange Commission and State securities regulators. The SEC has specific rules concerning how a private company solicits capital from investors - even if very few investors are involved. The Regulation D Offering program is the exemption program designed by the SEC for private business. It is the most widely used program the SEC offers and provides the proper exemption needed to raise capital from investors. Not raising capital properly can provide investors with a "right of rescission" in the future - meaning they can get their investment back regardless of the circumstances.

Don't rely on your business plan to perform a function it was not designed to accomplish. Let us structure a Regulation D securities offering for your transaction and begin raising capital the right way.

Who Should Use a Regulation D Offering?

Any private company or entrepreneur that is seeking to raise equity capital or private debt financing from investors should have a securities offering in place. Only a securities offering can provide the needed practical framework to accommodate investment.

Even if your transaction will only involve one or two investors - you still need to provide the proper transaction framework, disclosure documentation and investment agreements necessary for raising capital. Raising capital from investors, debt or equity, of any amount requires very specific documentation that far surpasses what a business plan provides. It is imperative that a company seeking capital from investors have in place a Private Placement Memorandum, a Subscription Agreement, and in debt offerings a Promissory Note Agreement. Raising capital without these documents is nearly impossible - they are a necessity.

You also need to use an SEC program, like Regulation D, to properly sell your company's securities to the investors. The SEC and States have specific rules concerning how a private company solicits capital from investors - even if very few investors are involved. The Regulation D Offering program is the exemption program designed by the SEC for private business. It is the most widely used program the SEC offers and provides the proper exemption needed to raise capital from investors. Not raising capital properly can provide investors with a "right of rescission" in the future - meaning they can get their investment back regardless of the circumstances. You could also face fines and other penalties resulting from an improper sale of securities to investors.

The Regulation D Offering Programs are typically utilized to raise from \$25,000 to \$50,000,000 in capital. Regulation D Offerings are used for a wide variety of transaction and industry types: corporate seed capital, corporate expansion capital, film production capital, real estate equity funding (acquisitions, development projects, golf courses, rehab), capitalization for early to pre-IPO stage Internet and technology companies, expansion funding for retail companies, and product development and distribution funding.

A Regulation D Offering provides the fundamentals for raising capital from investors - regardless of your industry type, age of your company, or the size of your organization.

Background Information on the Regulation D Programs

There are several programs that are available under the Regulation D Exemption. Of the available Regulation D Programs we support the 504, 506 and SCOR programs. Most companies typically use the 504 and 506 programs - which program you utilize is based primarily on transaction size. Detailed information on each program can be found in the gray menu on the right.

There are 2 basic types of Regulation D Offerings that can be structured; an "equity" offering where the company is selling partial ownership in the company (via the sale of stock or a membership unit) to raise capital - or a "debt" offering where the company raises debt financing by selling a note instrument to investors with a set annual rate of return and a maturity date that dictates when the funds will be paid back to investors in full.

Offering Types - Debt or Equity

An **equity offering** is where the subject company sells an ownership stake in the company to investors. Equity is usually preferred by early stage companies that need flexibility regarding capitalization. In an equity situation investors profit as the company profits since they are partial owners. This provides the advantage of not having a debt service payment draining revenue from the company in its early stages of growth. Most companies sell 10-30% of their company for a first round funding - obviously there are exceptions but this is the average. We recommend using either a "C" Corporation (where you would sell stock to investors) or a Limited Liability Corporation LLC (where you sell a membership unit to investors). Investors typically profit in two ways from an equity deal; via their proportionate "per share" percentage of company profit (called a dividend) and via the final sale of the security through an exit strategy (example: the company buying the securities back from the investors, the company and its issued and outstanding securities being bought out by another company, going public and selling on the open market, etc.)

A **debt offering** functions much like a private business loan where the company sells a promissory note to investors. The note sets forth the terms and conditions of the loan arrangement between the company and the investor. Thus a note would provide a certain interest rate typically paid annually to investors with a maturity date that dictates when the principal is paid back in full to investors. The notes are sold in fractional amounts providing flexibility for accommodating investors - thus a typical debt offering for \$100,000 would be the sale of 20 notes at \$5,000 per note. An investor investing \$10,000 would get two notes. If the interest rate was 12% then he would get \$1,200 paid to him annually based on the \$10,000 investment. If the maturity date was 36 months then at the end of the 36 months the company would pay back the \$10,000 to the investor. Many early stage companies that lack the required equity or operating history for conventional bank financing will use private debt from investors for a short period of time (12-36 months) to establish a credit and operating history. They then have the capability to take out the private debt loan from the investors with a standard bank business loan at a lower interest rate.

Regulation D Programs

There are three primary SEC Regulation D Programs that offer support for; the Regulation D 504 Offering, Regulation D 506 Offering, and the Small Corporate Offering Registration ("SCOR") Offering.

Determining which program best suits your company is based primarily on transaction size. We normally recommend the standard 504 or 506 offering programs (not SCOR) for most companies.

Regulation D 504 Offerings are typically used for transactions under \$1,000,000 in size.

Regulation D 506 Offerings are used for deals over \$1,000,000.

504 Program

Regulation D 504 Offering: allows companies to raise up to a maximum of \$1,000,000 in a 12 month period - the exemption is renewable meaning the company can use the 504 program again 6 months from their last securities sale under 504.

The 504 is the least restrictive of the Regulation D programs regarding structure, financials, disclosure, and investor suitability. A 504 offering allows a company to sell securities to an unlimited number of purchasers without regard to their sophistication or experience - although some States may limit the company to 35 non-accredited investors while still allowing an unlimited number of accredited investors.

The 504 is the most popular and widely used of the Regulation D programs. Many companies use 504 for an initial round and then float a 506 for a larger second round - both offerings can be done in a 1 year period because they are separate exemption programs.

The 504 program is available for private corporations only. Public reporting companies cannot use the 504 program.

The 504 program is regulated at the Federal level and State level (the State the investor resides). Companies using the 504 program must file a Form D notification filing with the SEC (included in our service) and may be subject to informational filings at the State level depending on the residency of the investor. We have streamlined the State filing process - most companies only need to file in 1-5 States to sell out a 504 offering.

506 Program

Regulation D 506 Offering: allows companies to raise capital through the sale of securities with no principal amount cap per 12 months. The 506 program provides an exemption for limited offers and sales of securities without regard to the dollar amount of the offering. Most companies use the 506 program to raise amounts from \$1,000,000 up to \$50,000,000 - although there is no cap on how much capital can be raised via a 506.

506 offerings have basic disclosure requirements regarding transaction and company details - our PPM documents exceed the Federal minimum disclosure level. Only financial statements for the most recent fiscal year need to be certified by an independent public accountant. If an issuer cannot obtain audited financial statements without unreasonable effort or expense, or if the company is a start-up with no operating history, only the issuer's balance sheet (to be dated within 120 days of the start of the offering) must be audited. An issuer can forgo providing audited financial information if the offering is made solely to accredited investors or if the information on the balance sheet is not material to the investment decision.

A 506 offering allows up to 35 non-accredited investors and an unlimited number of accredited investors. 506's are exempt from State securities laws - the Federal regulations supersedes the State rules, however most States will want a copy of the Form D submitted if you are selling securities to investors that reside in their State. As with the 504 program a company must file Form D in conjunction with a 506 offering to notify the SEC of the offering.

SCOR Program

Small Corporate Offering Registration ("SCOR") Offering: The SCOR is a more complex version of the 504 offering. The SCOR offering provides a standardized disclosure format that is accepted by 43 States and allows increased freedom of solicitation and advertising over the standard Regulation D 504 exempt program. The standardized disclosure format (the U-7 form) also allows the company to comply with a large number of individual States securities laws utilizing one regional review instead of filing the offering with each individual State the company sells securities in.

The SCOR does require audited financial statements for the past 2 fiscal years for offerings exceeding \$500,000 and has a maximum 12 month cap of \$1,000,000. You must also have 10% equity relative to the amount of capital you are raising through the offering. We typically recommend the standard 504 over SCOR due to its lack of restrictions, its ease of implementation, and its use of the more sophisticated and professional PPM disclosure document. The SCOR U-7 disclosure document is a question and answer document that we do not feel is very professional in its appearance to investors.

If you have any questions about whether a SCOR or 504 would be best for your transaction please feel free to call us directly to discuss specifics.

Document Creation

Step two of preparing an offering involves the creation of the documents, these include:

- **Private Placement Memorandum:** The Private Placement Memorandum, or "PPM", is the document that discloses all pertinent information to the investors about the company, proposed company operations, the transaction structure (whether you are selling equity ownership or raising debt financing from the investors), the terms of the investment (share price, note amounts, maturity dates, etc.), risks the investors may face, etc. Do not confuse the detailed disclosures and transaction structure in a PPM with the general information a business plan provides - **they are not the same.**
- **Subscription Agreement:** The Subscription Agreement sets forth the terms and conditions of the investment. It is the "sales contract" for purchasing the securities. It is practically impossible to raise capital without this document - investors are not going to invest into your company or opportunity based on a handshake. Would you invest into a company without having the terms and conditions of the investment set in writing and agreed to by both parties?
- **Promissory Note:** In debt offerings you need to have a Promissory Note outlining the terms of the loan arrangement with the investors. The note is the actual "loan document" between the company and the investor.

- Form D SEC Filing: The Form D is the notification filing that is sent to the SEC in Washington, DC. It notifies the SEC that you are using the Regulation D program and provides them basic information on the company and the offering. It is not an approval document or registration - it is merely a filing that notifies the SEC that you have a Regulation D Offering in place.

Marketing

A Regulation D Offering will solve all of the technical issues you will face when dealing with investors (investment structure, investment documentation, etc.) - these are issues that should be addressed before you interact with investors. **Not addressing them ahead of time presents a very unprofessional image of you to the investor.**

The Regulation D Programs can be used by domestic as well as foreign corporations. While the programs can be used by any corporation type - the preferred structure is a stock "C" Corporation or Limited Liability Corporation "LLC".

Internet Marketing To Investors

The advent of the Internet has provided private companies with a powerful tool that allows the capability to cost effectively introduce their opportunity to a large number of potential investors. There are many web-based services available that are specifically designed to promote private investment opportunities. Internet marketing is a proven way to locate potential investors.

The problem is that most companies are severely hampering their ability to effectively use these Internet resources to raise capital because they are using only a business plan to promote their investment opportunity. Most of the investors that will be contacted via the Internet (whether through your corporate site or on a commercial marketing site) will not have the capability to capitalize an entire transaction - thus being able to accommodate a pool of these investors in a sophisticated and legal manner becomes critical. A Regulation D Offering will allow you to make the most out of marketing your opportunity to investors via the Internet.

Savvy companies are also providing links to their private placement memorandum and subscription materials on their corporate websites so that interested parties can acquire the investment documents online. These documents are password protected - thus the investor must pass through an investor suitability questionnaire first before they are allowed access to the offering documents. This turns your corporate website - and the traffic that it encounters everyday - into a resource for locating potential investors.

Transaction Structure

In order to raise capital properly it is crucial that you have a pre-set transaction structure. What is transaction structure?

- How much of the company are you selling for the requested capital?
- How are you raising capital - equity or debt?
- If equity - what is being sold - stock, units, preferred or common?
- What is the share structure of the company?
- Do I as an investor face the risk of dilution in the future?
- What is the available share capital of the company?
- What is the minimum amount of capital the company needs to move forward?
- In debt transactions - what is the annual rate of return, maturity date, and note amount?
- What is the minimum any one investor can invest?

In a Regulation D Offering the company dictates the terms and conditions of the investment to the prospective investors. This is important because you want to provide to investors a clear, concise investment proposal with zero ambiguity. It is not the investors job to set up your transaction properly for investment. If you do not have in place proper transaction structure investors will see your company as unsophisticated and they will probably not invest.

Transaction Structure

There are many advantages to utilizing a Regulation D Offering. The main advantages concern complying with the Federal and State rules for private securities sales and providing a sophisticated and professional means for investors to invest into your opportunity.

Remember - it is not the investor's responsibility to figure out how to invest into your opportunity - it is your job to provide them the efficient and legal means to do so.

The Practical Issues Satisfied

Any investor that invests capital into your business, debt or equity, is going to get a security in return for their investment. In an equity situation they will receive stock or a membership unit, in a debt transaction they will receive a note or "debenture". These are deemed "securities" by the SEC and as such you are required to follow the rules and regulations set forth at the State and Federal level when you sell a security to an investor. This is true whether you need to raise \$25,000 from 3 investors for a coffee shop or \$10,000,000 for a software company.

The Regulation D Offering programs were specifically designed by the SEC to provide the proper legal framework, rules and regulations that allow a company to sell securities in a private transaction. Using only a business plan to raise capital and the "under the table" illegal securities sales that can result are future trouble for the company owner.

These problems can be avoided by using the Regulation D programs. The programs are fairly straightforward to utilize; thus the risks of raising capital the wrong way far outweigh the small investment of time you will make preparing a Regulation D Offering and raising capital properly.

A Regulation D Offering will solve all of the technical issues you will face when dealing with investors (investment structure, investment documentation, etc.) - these are issues that must be addressed at some point in time and they should be addressed before you interact with investors. Not addressing them ahead of time presents a very unprofessional image of you to the investor.

Accommodating Numerous Investors

A Regulation D Offering provides the fundamentals necessary for accommodating numerous investors much more successfully and efficiently than utilizing only a business plan. A business plan alone cannot provide the basic necessities needed for raising capital from investors effectively. Business plans typically confine businesses and entrepreneurs to locating one or two "super-wealthy" individuals with the capability of investing a substantial amount of capital.

Even then - you still need to have in place the appropriate disclosure documentation, transaction structure, and investment documents to interact with those one or two investors properly and allow them to invest.

For example - you are seeking \$500,000 and you are using only a business plan to raise capital. I am an investor with \$25,000 to invest - a fraction of the \$500,000 that you ideally need for the company. The very first thing I will see as an investor is that I am not able to participate in your deal - I have only \$25,000 and you are seeking \$500,000. It is not readily apparent how I can help you. There is certainly no transaction structure in place that would allow me to invest into your deal. How much of the company would I get for the \$25,000? In what form - debt, equity, common stock, membership units? What documents would I sign to actually issue you the investment check for \$25,000? You certainly don't expect me to invest \$25,000 on a handshake - do you?

Trying to find one big investor with the financial capability to capitalize your entire transaction is like finding a needle in a haystack. There are exponentially more investors available with \$5,000 to \$25,000 to invest than super-wealthy investors with \$500,000. "Super-wealthy" investors are hard to access and, since they are taking the majority of the risk by being the only investor, typically demand a large amount of ownership and control for their investment. As stated earlier - even with just one or two investors you still need to have in place the legal capability to sell them securities, the appropriate disclosure documentation, and proper investment documents for them to sign outlining the terms and conditions of the investment. All things a Regulation D Offering provides.

A Regulation D Offering provides the legal framework, structure, and documentation that allows multiple individual investors to participate in the investment opportunity. A Regulation D Offering turns everyone into a potential investor. 99% of the private companies that are successful at raising funding do so by pooling together the investment of numerous smaller investors - only 1% raise the capital they need through one investor or venture capital firm. How do you like your odds?

Limitations of a Business Plan

Lets make one thing very clear - business plans are not investment documents. Raising private capital (in any amount) properly goes well beyond the creation of a business plan. A business plan just delivers an idea - it does not provide the documentation or investment framework needed to raise capital from an investor. Don't expect investors to give you capital based on a handshake. For example – would you invest funds into a company without signing a document that sets forth the terms and conditions of the investment? The Subscription Agreement sets forth these terms and conditions - this is the document the investor signs and gives you with their investment check. You will have a very hard time raising debt or equity capital without this basic document.

Another example (for debt transactions) would be the Promissory Note Agreement – the note is the actual loan agreement between the investor and the company. You can't have a business loan without a loan agreement. A business plan does not provide this key document.

The Private Placement Memorandum, or "PPM", is the document that discloses all pertinent information to the investors about the company, proposed company operations, the transaction structure (whether you are selling equity ownership or raising debt financing from the investors), the terms of the investment (share price, note amounts, maturity dates, etc.), risks the investors may face, etc. Do not confuse the detailed disclosures and transaction structure in a PPM with the general information a business plan provides - they are not the same. A Private Placement Memorandum and Subscription Agreement, combined with your business plan, provides the fundamental documentation needed to raise capital properly from investors.

Would you invest into a private company that did not approach you in a sophisticated manner? Would you invest into a company that did not even provide the basic documentation needed to raise capital?

If you answered "no" to the questions above - don't expect that investors asked to invest into your business will answer differently.

Ability to Use Stockbrokers

A Regulation D Offering enables the company to utilize a vast and effective network of sophisticated and regulated funding resources unavailable to companies that just have a business plan. Brokerage firms, fund managers, and individual stockbrokers are all potential funding resources that can assist in selling a Regulation D Offering. These are some of the most efficient and effective resources for raising capital - they are in fact some of the same resources a public company uses to raise capital from investors. When you consider that a single stockbroker typically has access to dozens if not hundreds of investors - it is easy to see why Regulation D Offerings can provide a company with an inexhaustible resource for raising investor capital.

For companies that are seeking large amounts of capital having access to resources that can raise \$5,000,000 - \$15,000,000 is critical. There are very few resources available that truly allow a company to raise that amount of capital - securities brokerages are one of those resources.

Limited Liability for Principals

When raising capital from investors you are engaging in an act that can have very serious implications. One of the benefits of an offering is the capability to limit the liability of the principals or managers of the company.

The detailed disclosures in a Regulation D Offering memorandum limit the liability of company principals by disclosing all pertinent information to the investor before they make an investment decision. Most business plans do not disclose the proper information to properly inform investors of potential risks and key investment considerations.

If you have not provided proper disclosure to an investor - and they become disenchanted with the investment or if the company fails - the investor has the capability to cause problems for principals due to their negligence in properly informing the investor about the specifics of the investment transaction. Limit your liability by raising capital using proper techniques and documents.

Individual Investors - Better Than VC's

Many private companies waste time seeking funding from venture capital groups. Less than 1% of companies that successfully raise private capital do so through a venture capital firm. Think your company will be one of the few in that one percentile?

Most venture capital firms are interested in capital investments exceeding \$5,000,000 and companies in ultra high growth industries capable of producing very high annual returns. They also typically seek companies that are "mezzanine" stage - the stage right before completing an initial public offering. This leaves earlier stage companies or companies seeking small amounts of capital with little interest from VC firms.

Most private companies would not want true venture capital in the first place. VC firms typically take a controlling interest in your company and usually want to have a say in day-to-day management. Most entrepreneurs are very hesitant to give up control of their business to outsiders.

A Regulation D Offering allows private companies the ability to leverage the smaller amounts of equity capital they need by efficiently raising capital from a number of individual investors. Don't waste your time on the VC scene - provide your company with the fundamentals it needs to raise capital from individual investors - the best source of funding for private companies.

Pre-Offering Structuring

The first step in preparing a Regulation D Offering is to set the transaction structure properly. The process is specific to the type of corporation that you have and whether you are preparing an equity or a debt offering.

In an equity offering one of the first primary items that needs to be addressed is the share or membership unit structure of the company. In "C" Corporations, many early stage or new companies have corporate structures that incorporate a minimum amount of available share capital (the total pool of shares or units the company can draw from to issue to founders or sell to investors). Many companies opt for 1000-2500 total shares to keep their corporate structure simple. This type of structure is not the preferred stock structure for a Regulation D offering or for raising capital in general.

Re-setting your share capital is a simple process that is critical to having a clean transaction structure in the offering. This is also the time to set the share or unit price, determine how much of the company you are going to sell to investors, and make sure that the principals of the company have the proper amount of shares issued to them to assure they are retaining the amount of corporate ownership they want post-offering. You will also set the minimum offering amount and the maximum offering amount. The maximum offering amount is the total amount of capital you are seeking to raise. The minimum is the minimum amount of capital you need to move the company forward with its business plans (albeit on a smaller scale or with debt financing complimenting the investors equity). The minimum offering amount sets the effective range of the offering. Other pre-offering issues concern which program to use, minimum subscription amount per investor, and the effective term of the offering.

In a debt transaction the structuring is very straightforward - more so than an equity offering. You will set the debt offering structure - the amount of each note and the number of total notes offered to investors to reach your maximum offering amount. You will also set the annual interest rate return and set the term of the loan or "maturity date" of the notes.

For example - to raise \$100,000 in debt you may sell 20 notes at \$5,000 per note with an annual interest rate of 12% and a maturity date of 36 months. As in an equity offering you will set a minimum offering amount which will determine the effective range of the offering. Thus you may have a \$20,000 minimum offering amount which would equal four \$5,000 notes.