May 28th, 2020

Submission via Web Site

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets; File Number S7-05-20

We appreciate the opportunity to comment on the proposed rules.

Wefunder is the largest funding portal by investment volume. We are also an exempt reporting investment advisor that forms venture capital funds for accredited investors. Founded in 2011, we helped Senator Brown, Senator Merkley, and Rep. McHenry during the drafting of the JOBS Act. Since then, we've helped issuers raise over $135 million from over 600,000 investors via Regulation D, Regulation A+, and Regulation Crowdfunding.

We are a Public Benefit Corporation with a dual mission:

1) To democratize investing so that every American has the opportunity to invest in the companies that they love.
2) To increase the number of small businesses and startups that get formed, by spreading the best of Silicon Valley culture to the rest of America.

As one of the few platforms to raise funds for companies that are competitive among professional investors (as evidenced by over $4 billion in venture capital backing companies first funded on Wefunder), our comments are focused on improving the regulations so that unaccredited investors may back higher quality issuers under Regulation Crowdfunding.

We are impressed by the proposed rules. Overall, as a package, we believe these rules are highly beneficial to both issuers and investors. However, there are areas that can be improved. Our letter is divided into seven parts:

I. Why SAFEs are important for Regulation Crowdfunding offerings

78. Should we harmonize the limitations on the types of eligible securities issuable under Regulation Crowdfunding with Regulation A as proposed? ... In the alternative, should we modify Regulation Crowdfunding only to exclude particular security types, such as SAFEs?

79. If the popularity of SAFEs is in part due to a desire by issuers to avoid a complicated capitalization table, would our proposed amendments permitting crowdfunding vehicles to use Regulation Crowdfunding appropriately alleviate that concern? Are there other reasons why issuers issue SAFEs or other security types in Regulation Crowdfunding offerings that we should be aware of when considering whether to exclude particular security types?

Since a SAFE is a security convertible into an equity interest, we support harmonizing the types of securities eligible under Regulation Crowdfunding with that of Regulation A+.

However, if SAFEs were barred from Regulation Crowdfunding, the most promising early-stage startups would be far less likely to use the exemption. Reg CF would be less useful for seed-stage financings. Many startups – especially those in Silicon Valley – don't raise with equity until after they've raised $2 million, at which point venture capitalists negotiate the terms of the equity during the Series A.

Reg CF would also have lower potential investment returns. The highest potential startups raise under Regulation D with a SAFE for their seed round. If they are not allowed to use the same security that they already raised with from accredited investors, they will be less likely to utilize the Reg CF exemption. Retail investors would therefore lose access to promising startups.

The role of SAFEs in the startup ecosystem

We'd like to clarify the role of SAFEs in the startup funding ecosystem:

- *On Wefunder, SAFEs outperform all security types based on investment returns*. Of all security types on Wefunder, SAFEs have the highest unrealized and realized investment returns, with almost 4 billion dollars of follow-on financing after raising their first funding on Wefunder[1]. In comparison, startups that raised with priced equity on Wefunder have had almost no significant follow-on financing events from professional investors or measurable increase in valuation.

- *SAFEs are the most common method to finance startups in Silicon Valley under Reg D*. In 2019, it was estimated that over 80% of startups in Silicon Valley raised their first funding with SAFEs[2]. This includes the seed rounds of some well-known startups now valued at over $100 million, including Cruise, Coinbase, Gingko Bioworks, Checkr, Rappi, Twitch, Boom Supersonic. (Four of those were funded on Wefunder.)

[1] https://wefunder.com/results

[2] https://angel.co/blog/for-seed-funding-safes-have-won-against-convertible-notes

Not all SAFEs are alike

We'd like to clarify a misconception. The SAFEs used in Reg CF are not the same as under Reg D.

The SAFE was created by Y Combinator in 2013[3]. The Y Combinator version of the SAFE is used by the vast majority of startups under Regulation D.

In 2016, because of the cap table concerns, Wefunder and Republic both pioneered different variants of the SAFE for crowdfunding.

Wefunder's version proxied any voting rights to the CEO of the company (as with every other security offered on Wefunder: convertible notes and equity alike). Republic's version went further. Republic's Crowd SAFE doesn't convert into equity until an acquisition or IPO.

It is true that a cap table fix will alleviate many of the investor unfriendly clauses in Reg CF-specific SAFEs (and all other Reg CF-specific securities). As of May 2020, Wefunder now uses a custodian to hold securities in "street name" to support one entity on the cap table. As a result, we now mandate that if a startup uses a SAFE on Wefunder, it must use the same version that an accredited investor would invest under – namely, the Y Combinator version of the SAFE. We now also do this for every other security: we only support those with terms where it is customary that accredited investors invest under.

SAFEs are easier for retail investors to understand than priced rounds

Some claim that retail investors don't understand SAFEs. However, SAFEs are far simpler to understand than equity agreements. Let's compare the two.

Future Equity (SAFE) with a $10 million valuation cap. Your SAFE can convert into equity later, but only if the startup sells equity in a future financing round or gets acquired. The terms of the equity you may receive will have the same rights negotiated by those future investors (typically a venture capitalist). The valuation cap is the most important term. If the venture capitalist values the company above $10 million, you'd get a better deal: your shares will be priced at $10 million. However, if they value it at $8M, you'll both pay the same price per share. (If you don't think this startup can ever raise funding from a venture capitalist or get acquired, don't invest.)

Stock for $2.95 per share. How many shares are outstanding and is the valuation post-money and pre-money? What are the liquation preferences? Is it participating preferred or non-participating preferred? Does it have anti-dilution? Is it full-ratchet or broad-based weighted average anti-dilution? How large is the fully diluted option pool? Was the option pool calculated on post-money or pre-money valuation? Is the stock preferred or common? If it's preferred, which rights and protective provisions need the consent of the preferred

[3] https://www.ycombinator.com/documents/

(acquisition, dividends, issuing new stock, repurchasing shares, etc)? Who appoints and can fire the board members? How many board members do the common elect and the preferred elect? Does the founder stock vest? And that's just the start.

Even as the CEO of Wefunder, I do not fully understand the full import of all of these terms, nor the patience to read though 30-50 pages of legal documents to figure out if the startup tried to sneak in a detail. Instead, I've paid lawyers hundreds of thousands of dollars to advise me. A reasonable investor investing only $100 certainly will not take the time to do research.

This also explains the popularity of SAFEs and convertible notes at the seed round under Regulation D. Even accredited investors investing $25,000 to $250,000 do not want to negotiate the details of a priced equity round. With a SAFE, at the seed round, they are making a simple bet: if that startup can't later raise from a venture capital firm who will handle the negotiation, it will likely fail anyway - so why waste money and time on lawyers to do it now?

With that said, the SAFE has an unfortunate acronym. We are sympathetic to the view that a security offered to retail investors should not be implied to be "safe". This is why they are labeled as a "Future Equity Agreement" on Wefunder.

The root of the problem is broader than SAFEs and impacts all securities

We believe the SAFE is a scapegoat for the underlying problem: some companies choose inappropriate securities with bad terms. Unfortunately, this is true of all security types, especially common stock (which a professional venture investor would find outrageous).

Now that we have a solution for one entity on the cap table, part of the problem is fixed. On Wefunder, we now mandate that any security offered to our investors have the same voting and information rights as those customarily offered to accredited investors under Reg D.

Yet, this alone won't solve the issue. On Wefunder, we are moving to a model where a "lead investor" (a more sophisticated angel investor) negotiates the choice of security and the key terms. It is our intention to build up a community of "leads" so that we can eventually mandate that every offering on Wefunder have an experienced investor set the terms.

We think it's early for the SEC to mandate that every offering have a "lead" that invests under the same terms and is accredited (or deemed sophisticated by the intermediary). However, we would be happy if this happened. The industry would move faster. We'd rise to the challenge.

However, if the SEC bans the SAFE from Regulation CF, it makes the goal of having retail investors invest under the same exact terms of accredited investors impossible to achieve. If startups are forced to choose a different security than the one they had used with accredited investors, it will likely have worse economic terms to compensate them for the trouble.

II. Improve SPVs & issue custodian guidance

66. Should we permit crowdfunding issuers to use crowdfunding vehicles as proposed? Would this approach encourage crowdfunding issuers to offer voting rights or other advantageous terms to investors?

76. A crowdfunding vehicle may constitute a single record holder for purposes of Section 12(g), rather than treating each of the crowdfunding vehicle's investors as record holders as would be the case if they had invested in the crowdfunding issuer directly…

Starting with our first comment letter in 2014, Wefunder has consistently advocated to allow SPVs in Regulation Crowdfunding offerings. The cap table fix is our most important issue. We appreciate the staff's work on investigating the complexity in an attempt to come to a solution.

The bad news is that the SPV envisioned in the proposed rules is unworkable. We won't support them on our platform. It's too costly with little benefit to either investors or issuers.

The good news is that there is a simpler and less controversial way to solve the cap table issue: issuing clear guidance that a securities intermediary (including, a bank, broker-dealer, and a SEC-registered transfer agent) is allowed to act as a custodian and hold securities in "street name" on behalf of beneficial owners. It also should be clarified that those beneficial owners don't count towards the 12(g) threshold (as with a broker-dealer custodian holding securities in "street name").

How to make SPVs workable

We've long advocated that an exempt-reporting investment advisor should be able to form SPVs for Reg CF, exactly as already done on AngelList, FundersClub, and Wefunder for accredited investors under Reg D (per the FundersClub and AngelList no-action letters[4]).

This model has worked well in accredited crowdfunding platforms and is similar to the nominee structure that Seedrs operates with retail investors in the United Kingdom.

We continue to believe SPVs formed by an exempt-reporting adviser is the best solution to protect investors. There would be a lead investor associated with the exempt reporting adviser with a fiduciary duty to advocate for retail investors, along with an economic incentive to do so.

In our solution, the term "exempt reporting adviser" would include an investment adviser to one or more "crowdfunding vehicles." "Crowdfunding vehicles," which would be exempt from investment company registration, would be defined as a SPV formed specifically to invest in the securities of one company pursuant to Regulation Crowdfunding and to only offer its securities to investors pursuant to Regulation Crowdfunding.

[4] https://www.sec.gov/divisions/marketreg/mr-noaction/2013/angellist-15a1.pdf

This new class of exempt reporting advisers would be able to receive incentive compensation and share that compensation with a lead investor and would not be required to pay for annual custody rule audits that would otherwise make the arrangement uneconomical. In other words, the same arrangement used in accredited investor crowdfunding could be used in retail crowdfunding.

Why the proposed SPVs are unworkable

The proposed SPVs are complex and costly, while offering little benefit to issuers or investors.

The benefit of an SPV – for both issuers and investors – is to have *one single lead investor,* associated with the SPV's adviser, who is empowered to make decisions on behalf of all investors, who has a fiduciary obligation to act in their best interests, and who can be compensated for doing so. The staff went to great lengths to remove this benefit in the proposed rule, presumably because of the custody rule that registered investment advisors must comply with makes it uneconomical.

We maintain that the custody rule is not appropriate for illiquid, privately-held securities. We also maintain the existing regulations designed around an exempt-reporting adviser forming venture capital fund SPVs are perfectly suited to this use-case.

We also urge the staff to think about how SPVs can be useful to protect investors. The proposed rules seem to be envisioned as a very complex and costly way to technically have one entity on the cap table for the purposes of 12(g), but without any benefit to the issuer who still needs to communicate with possibly thousands of strangers to make corporate decisions.

In the real world, many small investors investing $100 do not want to spend any time reading legal documents to authorize corporate actions, multiple times over possibly the next 10 years. They'd vastly prefer to authorize a "lead investor" to make such decisions. Moreover, unlike the public markets, the default outcome of a startup is death. If a lead investor was compensated by other investors to provide mentorship and advice to an early-stage startup, death would be less likely an outcome.

In terms of compensation, we believe management fees should be banned, and that carried interest be capped at no more than 10%. Investors should only pay if they earn a return, because the lead investor has maximized the value of the security through his or her decisions.

A custodian is an alternative solution

While we'd prefer an exempt reporting adviser/SPV solution, there is an alternative path. As of May 2020, Wefunder has allowed companies to use a SEC-registered transfer agent as a custodian. Wefunder pays all costs. Nearly every company has decided to take advantage.

We should have discovered the custodian solution years ago. We could never convince a bank or a broker-dealer to act as a custodian: the costs were too high, as their regulations were not designed for this use-case. It was non-obvious that a SEC-registered transfer agent (with a much lower cost structure for non-public securities) could act as a custodian. To my knowledge, we've helped form the first SEC-registered transfer agent to do so.

We request guidance to clarify that an SEC-registered transfer agent may act as a custodian

The exact guidance we'd like to see would confirm that, in the context of offerings pursuant to Regulation CF, an SEC-registered transfer agent can act as a securities custodian, provided that its custody services comply with Rule 17Ad-12 of the Exchange Act. The guidance also would confirm that securities offered pursuant to Regulation CF that are held of record by an SEC-registered transfer agent as a custodian on behalf of beneficial owners shall be treated as held of record by one person for purposes of Section 12(g)(1) of the Exchange Act and Rule 12g5-1 thereunder.

III. Allow Lead Investors to be compensated to protect investors

Whether an issuer uses a SPV or an SEC-registered transfer agent to act as a custodian, the role of a compensated lead investor is critical to making Reg CF work better for retail investors.

Wefunder rolled out the concept of a Lead Investor in May 2020. This is now live. Leads are eligible to be paid performance-based compensation by retail investors contingent upon the issuance of SEC guidance that such compensation is permissible. We advocate strongly for such guidance to be issued. (Refer to Appendix A to view the specifics of Wefunder's implementation.)

Wefunder has no financial interest in any performance-based compensation. Our sole interest is fixing Regulation Crowdfunding so it can be more appealing for issuers, while also better protecting the investments of retail investors.

We feel so strongly on this point, that we've put our money where our mouth is: investors on Wefunder are now told they will be charged 10% of their profits in the future if the SEC deems such payments permissible, even though Wefunder has no stake in this interest, and it may decrease our revenues due to a lower investment conversion. Plus, taking this risk will likely cost at least several hundred thousand more dollars in legal bills if the SEC does not offer the requested guidance.

The Lead Investor is an investor advocate

The Lead Investor:

- Performs due diligence on the startup and negotiates investment terms
- Invests under the same terms as those offered to the crowd
- Transparently discloses why they decided to invest
- Discloses all potential conflicts of interest, including prior investments
- Helps the startup succeed, with advice, connections, and mentorship
- Directs the signing of documents on behalf of all Reg CF investors, such as SAFEs converting to equity, follow-on financing authorizations, acquisitions, or other actions
- Has an interest in maximizing the value of securities
- Will be financially incentivized with performance-based compensation (if permitted by the SEC)

To help protect investors, the Lead Investor *must work for the investors, not the issuer*. The lead investor is designed to aggregate investor power and fight for their interests. If they are solely paid by the issuer – or can be fired by the issuer – than there is little investor benefit. The whole concept falls apart. They must be accountable to investors, not issuers.

Why a Lead Investor is important to investors

Over the last four years, Reg CF has been rife with offerings that have outrageous terms that no professional would invest under. Common stock is the most egregious. Worse, investors almost always have no voting rights or power. They are a fragmented pool of small retail investors with no one looking out for them. They take on the risk of investing at the earliest stage, and, if they happen to "pick a winner", they are forced out of the company by VCs who want to "clean up the cap table". This has already happened. It is outrageous.

This is happening because some have an idealistic notion that Reg CF will perform best if $100 investors have a direct relationship with the company, with no role for a person or entity in the middle who will fight for their interest. All evidence suggests the real world works otherwise.

- *A Lead will negotiate better economic and control terms.* Without a Lead Investor (one person they can get corporate consents from), no sane and rational founder – with any other funding option - will crowdfund from thousands of strangers that have any sort of voting power. With a Lead Investor, we can convince issuers to offer the same securities that professional investors traditionally use. Further, if a lead must invest their own money on the same terms, they will presumably negotiate more reasonable terms.

- *Someone who invests $250 does not want to read pages of legalese over the years.* About 80% of investments on Wefunder are under $500. Our median investment is $250. Even if they have the sophistication to do so, someone who invests $250 does not wish to read and investigate the meaning of possibly hundreds of pages of legalese to consent to future corporate actions. *They want to pay someone else to do this*.

- *If retail investors have no power, venture capitalists (with lots of power) will harm their interests*. One of the best companies[5] who raised with Reg CF (as measured by follow-on financing and unrealized IRR) forcibly re-purchased their Reg CF investors at a 4X return. This sounds nice to someone who is not sophisticated. But what it actually means is that Reg CF investors take all the risk by investing at the earliest stage, but are not allowed to reap their full reward. Given the risk and power law of returns of startup investing, it is nearly impossible to earn a return by investing in a diverse portfolio.

- *Unlike the public markets, the default outcome of an early-stage startup is death*. Unlike investing in Apple, startups are likely to fail, and their odds of failure dramatically increase if they don't receive help and mentorship. $250 investors can help in some ways: they can drink more beer at their local brewery, for instance. However, these small investors can increase the odds of a successful investment if they are allowed to band together and agree that a professional – say a former brewery owner – should be paid a part of the profits of the investment to mentor the first-time brewery owner.

[5] Bennet, Megan. "No Eternal Return for small investors". Albuquerque Journal. August 2019. https://www.abqjournal.com/1350602/no-eternal-return-for-small-investors.html

Lead Investors need to be compensated based on performance

Leads don't need to be compensated if they've invested a large enough stake on the same terms. For instance, if a professional investor with domain expertise in that industry is investing $250,000 on the same terms, that is enough financial incentivization to offer a first-class mentorship and investor-protection experience.

However, most Reg CF issuers do not fit this model. A more typical Reg CF issuer raises $200,000 from a thousand investors investing a median $250, while the lead invests $5,000.

Sophistication is often not correlated with the amount of money invested. For instance, a doctor may invest $25,000 in her local brewery, but also may decide that she would be better served if the Lead was a former brewery owner who invested only $5,000. The former brewery owner would likely be more qualified to oversee a brewery investment than a doctor.

We feel financial incentives drive human behavior. Right now, the entire Regulation Crowdfunding ecosystem has a clear incentive: "Pump and dump every company that might be able to raise money, and then forget about helping those companies succeed." This is the outcome of an industry that makes money primarily on up-front transaction fees, with very little stake in eventual success.

The industry would be better served by incorporating an element of the venture capital model, which has proven to be a great wealth-creation engine for helping startups grow. We would ban management fees (all capital of Reg CF investors should be invested in the company), but strongly advocate that it is in the public interest to allow retail investors the right to decide to hire an entity to help their investments succeed, compensated with a performance-based fee that works like carried interest : investors only pay if they earn a return.

Specific Guidance Requested

In the absence of SPVs advised by an exempt-reporting adviser, we request the following guidance be offered. We believe that an investor should have the right to hire a registered investment adviser that does not custody securities that is permitted to charge performance fees to Regulation CF investors, provided that:

- Securities are not on the public markets
- Investors have made their own investment decision to invest in each specific issuer
- Performance fees are capped at no more than 10%
- As required by the Advisers Act, the adviser is a fiduciary and discloses all risks and conflicts
- The compensation is clearly disclosed in the Form C and Form ADV
- Investors may opt out of the arrangement before the round closes

IV. Improve testing-the-waters by allowing a bank to hold funds

28. Should we, as proposed, amend Regulation Crowdfunding to permit testing-the-waters for a Regulation Crowdfunding offering, similar to the current testing-the-waters provision of Regulation A? …

Testing-the-waters will help set better terms & reduce harm to issuers who fail at their raise

We support the proposal to allow testing-the-waters in Regulation Crowdfunding offerings. Currently, many issuers are forced to spend over $10,000 on lawyers and accountants to prepare for a Regulation Crowdfunding offering. Over 30% of issuers then fail to raise any funds. This harms the small businesses that Congress intended to help.

Testing-the-waters is also likely to help potential investors set more reasonable terms of the offering, before the Form C is filed and the crowd may invest. Currently, many founders "guess" with little investor feedback. With testing-the-waters, it will be easier to introduce them to potential investors that can negotiate terms more acceptable to the market.

Non-binding commitments should be able to be accepted by a bank or broker-dealer

For issuers approved by a registered intermediary, we strongly encourage the Commission to allow a broker-dealer or bank to accept funds in escrow for non-binding commitments, subject to additional restrictions. Those include: the issuer must be approved by an intermediary, the intermediary is liable for overseeing communications, all potential investors must be directed to the intermediary's portal, and all solicitation materials must be on file with the intermediary in advance. (Wefunder would also be happy to file on EDGAR prior to the Form C).

To be clear, under this model, if a commitment is transferred into an escrow account, funds can be returned at any time and no investment contract has been signed. Investors only sign an investment contract after the Form C is filed. The proposal is more similar to asking a potential investor to fund their own account at a specific bank to prove they have the funds available.

From our experience with Regulation A+, we know that less than 10% of commitments lead to an investment. Given the outliers of larger investment sizes – and if they are "real" - it is sometimes hard to predict if a fundraise will succeed at the smaller raises more typical in Regulation Crowdfunding (in contrast to Reg A+). If a bakery wants to raise $20,000 for an oven, and someone on the Internet says they'd invest $5,000 under certain terms, is that true?

Testing-the-waters should be used to help founders set more reasonable terms by introducing them to potential "lead investors". Investors who can transfer funds into a third-party bank to provide evidence of their seriousness will lead to a healthier marketplace – founders will be able to better predict if their raise will succeed, and investors who decide to transfer funds can have more negotiating leverage when setting terms.

Requiring an intermediary can help protect investors, for both Reg CF and Reg A+

Adding our proposed additional restrictions will protect investors by adding more oversight.

We know from experience that many early-stage founders inadvertently don't follow solicitation and promotion rules. They don't understand the nuances that lawyers do and spend far less money on external counsel, unlike later-stage Reg A+ issuers.

One of Wefunder's roles is education. If communications happen on our platform, we are more likely to be able to spot potential compliance issues and provide corrective guidance early. It will also allow us to more easily spot fraudulent actions and report them to FINRA and the SEC. If fraudulent communications happen off of our platform, we will be less likely to spot it.

Despite the differences between Reg A+ and Reg CF, we believe it makes sense to harmonize the testing-the-waters rules between the two, by also modifying Regulation A+. That is, if a Regulation A+ issuer decides to use an intermediary that has a relationship with a bank, in return for the greater investor protection an intermediary may provide, non-binding commitments may also be transferred into a specific bank account.

V. Increase financial statement thresholds up to a $5M offering limit

A $5M offering limit will make Reg CF much more appealing

60. Should we, as proposed, increase the Regulation Crowdfunding offering limit from $1.07 million to $5 million? Is another limit more appropriate? Would increasing the limit encourage more issuers to use Regulation Crowdfunding? Are there additional investor protections we should consider in connection with the increase?

The proposed increase in the annual Regulation Crowdfunding limit to $5 million will make the exemption much more attractive to prospective issuers, as the disclosures required of Reg CF issuers will be more commensurate with the amount of capital that may be raised.

The current Reg CF exemption is an orphan. Typically, early-stage startups raise about $2 million for their first seed rounds under Reg D. Raising only $1 million is not very appealing – particularly when it requires so much extra accounting work (one can do side-by-side rounds of course, but it is unnecessarily complex). Further, we've talked to a number of later-stage companies that would like to raise $3-5 million. They don't want the expense and time-consuming nature of a Reg A+ offering (more appropriate for raising $20M+), but Regulation CF also isn't appropriate for their needs. Raising the cap to $5M per year would fix this issue.

Modifying financial statement thresholds can make Reg CF suitable for early-stage companies

112. What would be the costs and benefits of the alternative of scaling up financial statement thresholds in Regulation Crowdfunding in proportion to the proposed change in the offering limit (from $107,000, $535,000, and $1.07 million to $500,000, $2.5 million, and $5 million, respectively)?

Raising the offering limit to $5M will find the orphan Reg CF exemption a home on one end of the spectrum: later-stage companies.

However, there is a further opportunity to modify the thresholds required for financial statements in order to make sure Regulation Crowdfunding stays true to its original intention: helping very early stage companies that lack capital access get off the ground. The current rules do not do this well. The accounting burden is too high.

We believe a more appropriate framework for Regulation Crowdfunding is to take the total amount raised across all Regulation Crowdfunding offerings conducted by an issuer, total up the amount raised across all years, and then impose these thresholds:

- *Under $250,000: cash accounting*.
- *$250,001-$500,000: GAAP required*.
- *$500,001 - $5million: GAAP & CPA Review*.
- *Over $5 million: GAAP & Audit*.

The main benefit is a much more appealing framework more suitable to earlier-stage offerings. All startups start out with cash accounting. It often takes several thousand dollars and a few weeks to convert those financials into GAAP format. Yet GAAP financials are often not useful to evaluate the potential of the earliest stage investments.

We believe it is important to aggregate amounts raised across all years, as that will give a better indication of the stage of the company and the amount of capital unaccredited investors have at risk. *With the current proposed rules, the SEC has structured a system where a company should never close the first offering until they raise $5 million*. No company is going to do a second Reg CF offering if they need an audit after $500,000; it doesn't make economic sense. Instead, they would keep the first offering open and do rolling closes for the next several years.

CPA reviewed GAAP financials are the only barrier to a workable micro-offering

64. Should we consider creating a "micro-offering" tier of Regulation Crowdfunding consistent with these recommendations? If so, should that micro-offering exemption be limited to offerings of debt securities conducted through an intermediary, but with no specific disclosure requirements? Would an aggregate offering limit be appropriate, such as $250,000, as recommended by the 2017 and 2018 Small Business Forums?

We know from vast experience that we can help nearly any company file a Form C from scratch within a day… except for the conversion of cash accounting to GAAP and a CPA review. That can cost thousands of dollars and up to a month to complete.

To repeat, it is not the annual reports, nor any other Form C disclosure that repels early-stage companies from raising with Regulation Crowdfunding. It is only the accounting requirements. Allowing cash accounting for offerings under $250,000 is the only solution required.

Over 90% of the investment volume in Reg CF is in equity investments. We see no reason to limit a micro-offering to debt. On the contrary, we would think that it is more important to have a higher level of disclosures in a debt offering, as the potential investor would like to evaluate when current cash flow could support repayment.

However, with an equity investment in an early-stage company just getting off the ground, financials matter less, as the investor is making a bet on the future value of the company in the next 5+ years. That decision is more weighted on if they believe the vision of the founder can be made into a reality – there often is no market traction yet. For an equity investment in an early-stage growth startup, financials are generally only useful for an investment decision at the Series A, when the unit economics of the traction must be more carefully evaluated.

VI. Simplify investment limits to increase investor comprehension

62. Should we remove investment limits for accredited investors in Regulation Crowdfunding offerings as proposed? If so, should we require verification of accredited investor status, as suggested by several commenters? Should the limits be modified in some other way?

63. Should we amend the method for calculating the investment limits for non-accredited investors in Regulation Crowdfunding to allow those investors to rely on the greater of their annual income or net worth as proposed? Is there any evidence to suggest that a more restrictive approach to investment limits is warranted for Regulation Crowdfunding offerings? Should we align the non-accredited investor limits in Regulation Crowdfunding with those in Regulation A Tier 2?

We highly support the change to "greater of" and the removal of the investment limit on accredited investors.

We believe the current investment limits lead to nonsensical outcomes. For instance, if an accredited investor with $30 million in cash had a bad enough year in the stock market, they may legally invest only $2,200 that year in Regulation CF offerings.

Further, we believe that retail investors are better protected when accredited investors invest side by side on the same terms, under the same exemption. With the "lessor of" standard, accredited investors are forced to negotiate a separate Regulation D 506(c) deal with the issuer. This is needlessly more complex.

Wefunder has voluntarily verified financial information on our platform for anyone who invests more than $20,000 since 2016, using the 506(c) rules as a model, but retaining our flexibility for using our judgement. However, we would be concerned that if the SEC mandated this for Regulation Crowdfunding. Our common-sense approach would end up being very costly to perform, as Wefunder would have to justify every decision to FINRA with extensive documentation. Over the past four years, we've seen little evidence that investors who invest over $20,000 are trying to circumvent their investment limits to justify any cost burden.

We'd propose harmonizing Regulation CF to Regulation A+ Tier II, except have both exemptions be limited by Reg CF's prior 12-month standard, instead of Reg A+'s per-offering standard.

It would be simpler to say "If you are not an accredited investor, you may invest up to 10% of the greater of your net worth or income, across all your non-public investments, in the last 12 months". The current labyrinth is a large source of frustration to investors. Currently, Wefunder investors are mystified why different offerings have different investment limitations. Trying to explain the various calculations for each exemption on the phone to a "normal" person (i.e., not a securities lawyer) is kafkaesque and ripe for satire.

Try explaining the current investment limitations to your mom! It'll be fun!

VII. Other comments

18. Should we consider revisions to Regulation Crowdfunding that relate to intermediaries in light of the proposed integration safe harbors? For example, should we revise the portal requirements under Regulation Crowdfunding to permit concurrent Rule 506(c) offerings to be offered and sold via a portal's internet platform? What other Regulation Crowdfunding rules should be revised to facilitate Rule 506(c) offerings concurrent with Regulation Crowdfunding offerings? Should we provide guidance regarding issues that may arise when an intermediary seeks to host concurrent offerings? Should we expand any of our rules, for example, the rules under Regulation Crowdfunding, to permit certain entities to act as intermediaries for sales of securities to accredited investors in concurrent Rule 506(c) offerings?

While this is clearly in our self-interest, we believe a funding portal should be allowed to facilitate sales of Regulation D and Regulation A+ securities and earn a fee for doing so.

Currently, we do host Reg D and Reg A+ offerings but charge no transaction fees. We are not willing to become a broker/dealer in order to do so, as it would impose additional costly regulations that are not relevant to the services we provide.

We believe a funding portal which does not recommend offerings or hold custody of funds should be able to charge a fee for other exemptions beyond Regulation Crowdfunding, without being forced to unnecessarily become a broker/dealer. We can provide a valuable service to both investors and issuers that make use of these exemptions.

31. Should we allow for oral communications about the offering outside of the funding portal's platform channels, as proposed? If so, what would be the benefits of allowing more communications? Should we impose any additional requirements to address investor protection concerns?

Due to legal ambiguity, some lawyers recommend that issuers do not speak with potential investors face-to-face, and instead only direct them to an online funding portal for all information. This leads to an absurd outcome that is terrible for investors: potential investors lack the opportunity to look a business owner in the eye and ask the hard questions. Instead, retail investors are making a decision based solely on an online web page presentation. Rather than investors having the opportunity to talk to owners face-to-face, only the funding portal can. Wefunder does not want this role.

We would like additional guidance that a funding portal may help businesses set up these in-person information events (for instance, providing logistical help during the event), as long as it is not implied that the intermediary or any member of intermediary is endorsing the company as a suitable investment. Wefunder once received a warning from FINRA (along with a $50,000 legal bill) simply because one of our employees was present at such an event, even though they never mentioned they were with Wefunder or spoke to any potential investors about investing.

If this additional guidance is issued, Wefunder will help more issuers set up these events, giving more potential investors the opportunity to ask questions in person. Additionally, we would

live-stream the session on the Wefunder portal in real-time. We would display the video on their profile, and transcribe it and upload to EDGAR before closing. We believe this is the best balance between allowing investors to get face-to-face answers while ensuring all investors get equal access to information so the "wisdom of the crowd" may work.

We would like the SEC to offer clear guidance that this is permissible. We believe this gives much more high-quality information to investors. However, we stopped facilitating these events after FINRA disagreed.

32. Should we expand the types of information considered to be the terms of the offering for purposes of Rule 204? For example, should we amend the definition of "terms of the offering" to include information about the planned use of proceeds of the offering or about the issuer's progress toward meeting its funding target? Should we amend Rule 204 to allow for oral communications pertaining to any disclosure required by Rule 201 that is included in the filed Form C? Alternatively, should an issuer that uses advertising that includes the terms of the offering be permitted to include additional information, such as information about the planned use of proceeds of the offering or the issuer's progress toward meeting its funding target, even if such information is not included within the definition of the "terms of the offering"? Are there other steps we should take to clarify the advertising restrictions in Rule 204?

We'd encourage simplicity. In the real world, early-stage founders are not lawyers, nor have money to hire them to oversee their communications. They often have inadvertent violations in their communications. Wefunder helps to educate them as best as we can. We'll be more effective at our job if we can point them to a few simple (and very clear) guidelines to follow.

We personally believe that as long as a communication is not misleading and points potential investors to the portal to make an investment, it doesn't particularly matter if any term of an offering is included. We'd prefer to tell a founder "Don't say anything that could be construed as misleading, make sure it sounds fair and balanced, and make sure you direct investors to Wefunder". Those are rules that can be more easily followed without a lawyer on staff.

(In practice, under current rules, we advise founders not to mention any terms of an offering, period, as doing so will more likely lead to compliance violations.)

Thank you again for this opportunity. As always, I am happy to respond to any questions or provide further information.

Sincerely,

Nicholas Tommarello
CEO, Wefunder

Appendix A:
Wefunder's current solution using a custodian and lead investors

Overview

In May of 2020, Wefunder rolled out a new solution to allow an issuer to have one entity on the cap table, with the vote of all Reg CF securities directed by a lead investor. It works like this:

- Wefunder Portal LLC, our funding portal, decides whether to work with an issuer.
- The issuer hires XX Investments, an SEC-registered transfer agent, as a custodian that will hold securities in "street name" on behalf of the beneficial owners.
- All investors in the offering must agree to hire XX Investments LLC as their custodian. Additionally, they give a power of attorney to XX Team LLC to make all voting decisions.
- The issuer must decide on a Lead Investor before their offering closes.
- XX Team LLC hires the Lead Investor as a consultant. XX Team LLC, based on the direction of the Lead, then directs the custodian, XX Investments LLC, how to vote.
- XX Team LLC earns no revenue except 10% of any future investor profits (contingent upon SEC guidance). This revenue will be typically split 50-50 with the designated Lead Investor and a pool of other mentors in the XX who may decide to help the startup.

The intention is to solve the biggest problem with Regulation Crowdfunding: allowing one entity on the cap table, where securities are directed by the vote of a single person, known in advance to the founders and all investors. Additionally, the intention of the XX is to financially incentivize a pool of experts to help startups succeed after they have raised funding. While we set it up, Wefunder does not own XX Investments or XX Team and has no interest in their fees.

FAQs

There's a wealth of public information covering all details.

- The Wefunder Investor FAQ: https://help.wefunder.com/#/leads
- The Wefunder Founder FAQ: https://help.wefunder.com/#/lead-investors
- The XX Lead Investor FAQ: https://xx.team/faq

Agreements

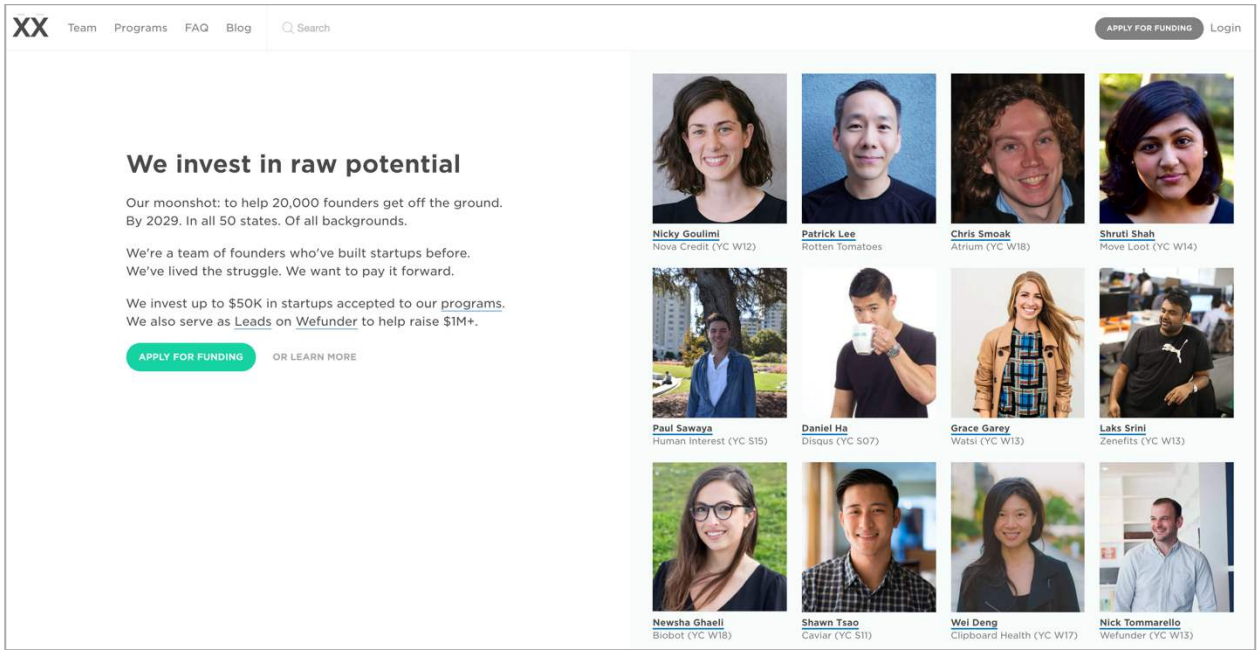
All of our agreements are public and easily accessible.

- Issuer & XX Team Agreement: https://wefunder.com/legal/lead-investor
- Lead Investor Contractor: https://wefunder.com/legal/lead-investor-contractor
- Custodian & Voting Agreement: https://wefunder.com/legal/custodian
- Investor Terms of Service: https://wefunder.com/terms#custodian
- Legal overview: https://wefunder-production.s3.amazonaws.com/mofo.pdf

Web Site Screenshots

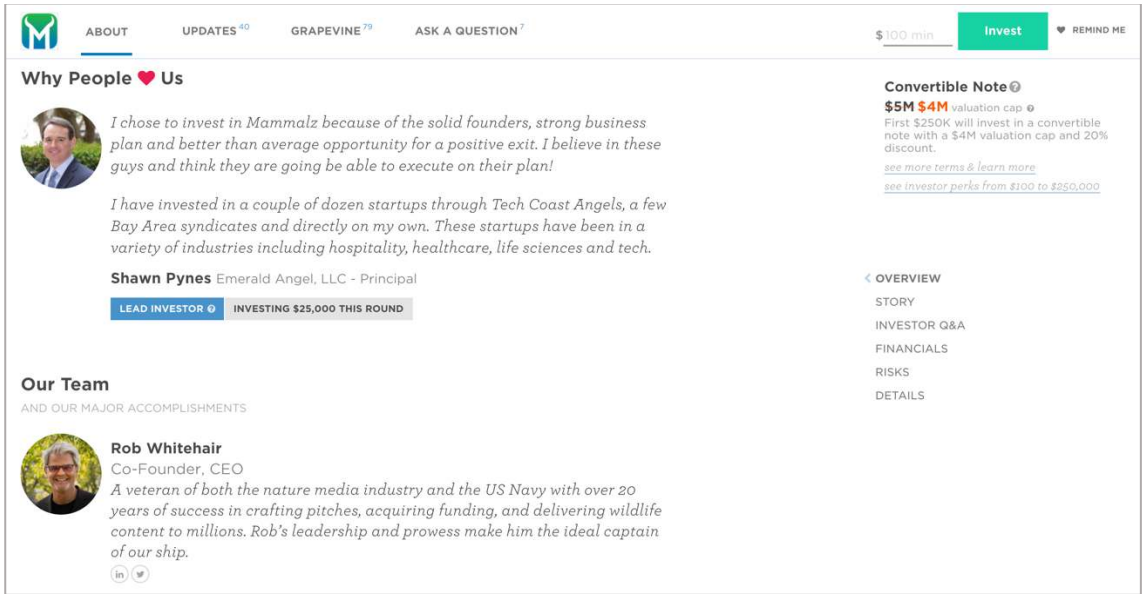
XX Web Site

The XX Team is a pool of mentors who help issuers succeed after they've raised funding.
https://xx.team/

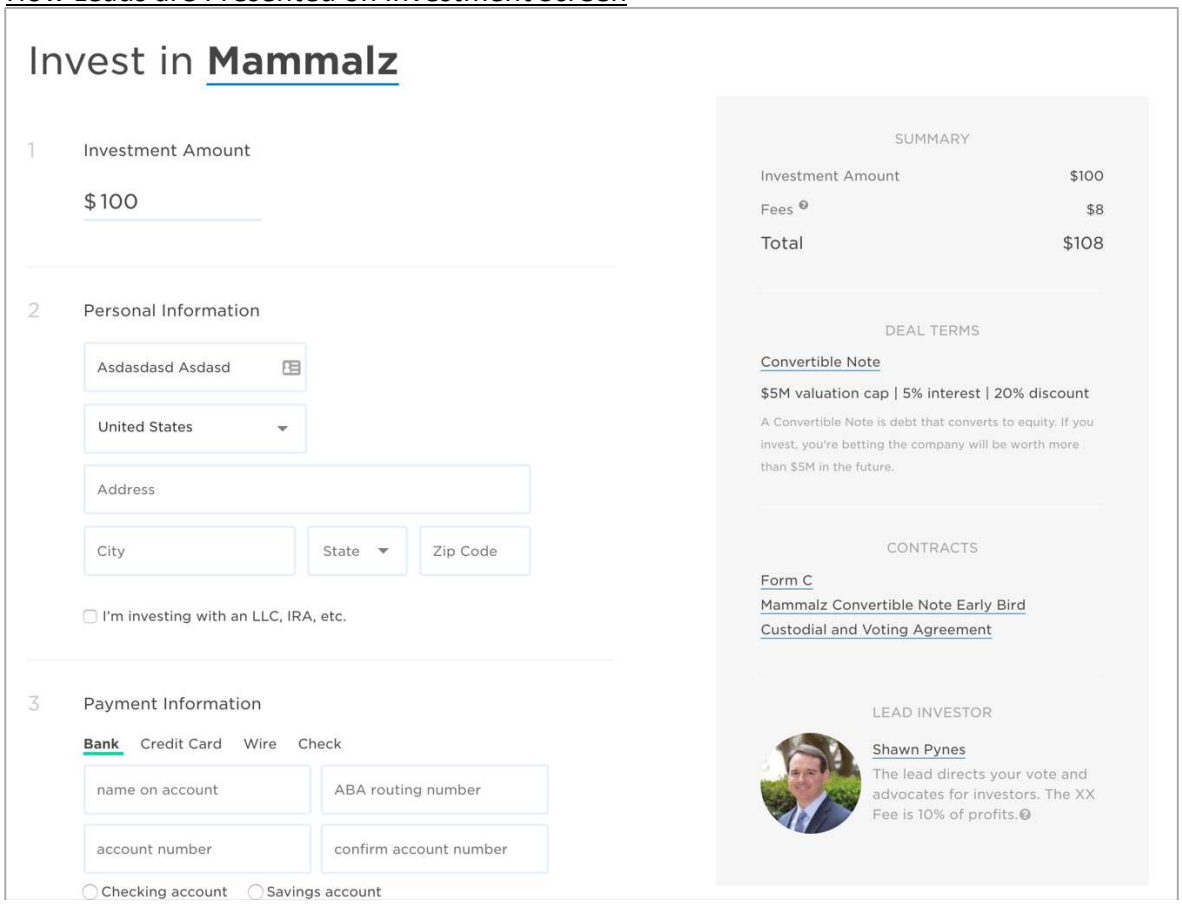


How Leads are Presented on Company Profiles

Lead Investors must disclose if they've invested previously, how much they are investing now, why they decided to invest, and if they have any other potential conflicts of interest.



How Leads are Presented on Investment Screen



The disclosures on a Form C

The Company is using the services of XX as part of its offering. XX is comprised of XX Investments, LLC, XX Team LLC, and the Lead Investors who provide services on behalf of XX Team LLC. The services of XX are available to companies that offer securities through Wefunder Portal LLC and to investors who invest in such companies through Wefunder Portal, but XX is not affiliated with Wefunder Portal or its affiliates, and XX Team is not affiliated with XX Investments.

XX Investments is the Company's transfer agent and also acts as custodian, paying agent, and proxy agent on behalf of all investors that enter into the Custodial and Voting Agreement with XX Investments through the Wefunder Portal website ("Investors"). XX Investments holds legal title to the securities the Company issues through Wefunder Portal (which are uncertificated) on behalf of Investors. Investors, in turn, hold the beneficial interests in the Company's securities. XX Investments keeps track of each Investor's beneficial ownership interest and makes any distributions to the Investors (or other parties, as directed by the Investors).

In addition to the above services, at the direction of XX Team, XX Investments votes the securities and take any other actions in connection with such voting on behalf of the Investors. XX Investments acts at the direction of XX Team, because XX Team holds a power of attorney from each Investor that has entered into the Investor Agreement to make voting decisions on behalf of that Investor. XX Investments will not charge Investors for its services. XX Investments does charge the Company $1,000/year for services; however, those fees may be paid by Wefunder Inc. on behalf of the Company.

As noted, XX Team holds a power of attorney from each Investor that has entered into the Investor Agreement to make voting decisions on behalf of that Investor. Pursuant to the power of attorney, XX Team will make voting decisions and then direct XX Investments to vote and take any other actions in connection with the voting on Investors' behalf. XX Team will act, with respect to the Company, through our Lead Investor, who is a representative of XX Team.

XX Team will not be compensated by Investors for its voting services, unless and until such time as the Securities and Exchange Commission ("SEC") or the SEC staff issue guidance that would permit XX Team to receive a percentage of any distributions Investors would otherwise receive from the Company. To take into account the possibility of the SEC or the SEC staff issuing such guidance (the "Guidance"), the Investor Agreement that each Investor enters into contains a provision whereby each Investor authorizes XX Investments, at any time following issuance of the Guidance, to distribute to XX Team 10% of any distributions the Investor would otherwise receive from the Company. Any such compensation paid to XX Team would be shared with our Lead Investor.

XX Team, through our Lead Investor, may also provide consulting services to the Company and may be compensated for these services by the Company; although, fees owed by the Company may be paid by Wefunder Inc. XX Team will share its consulting compensation with our Lead Investor.

The Lead Investor is an experienced investor that we choose to act in the role of Lead Investor, both on behalf of the Company and on behalf of Investors. As noted, the Lead Investor will be a representative of XX Team and will share in compensation that XX Team receives from the Company (or Wefunder Inc. on the Company behalf) or from Investors (to the extent any compensation is paid by Investors). The Lead Investor will be chosen by the Company and approved by Wefunder Inc., and the identify of the Lead Investor must be disclosed to Investors before Investors make a final investment decision to purchase the Company's securities. Investors will receive disclosure regarding all fees that may be received by the Lead Investor. In addition to the fees described above, the Lead Investor may receive compensation if, in the future, Wefunder Advisors LLC forms a special purpose vehicle ("SPV") for the purpose of investing in a non-Regulation Crowdfunding offering of the Company. In such a circumstance, the Lead Investor may act as a portfolio manager for that SPV (and as a supervised person of Wefunder Advisors) and may be compensated through that role. Although the Lead Investor may act in multiple roles and be compensated from multiple parties, the Lead Investor's goal is to maximize the value of the Company

and therefore maximize the value of the Company's securities. As a result, we expect that the Lead Investor's interests should always be aligned with those of the Investors.

Investors that wish to purchase the Company's securities through Wefunder Portal must agree to (1) hire XX Investments to serve as custodian, paying agent, and proxy agent with respect to the Company's securities; (2) give a power of attorney to XX Team to make all voting decisions with respect to the Company's securities; and (3) direct XX Investments, at any time after issuance of the Guidance, to share 10% of the Investor's distribution from the Company with XX Team. The Company may waive these requirements for certain investors with whom the Company has a pre-existing relationship.

The XX arrangement described above is intended to benefit the Company by allowing the Company to reflect one investor of its capitalization table (XX Investments) and by simplifying the voting process with respect to the Company's securities by having one entity (XX Team), through one person (the Lead Investor), make all voting decisions and having one entity (XX Investments) carry out XX Team's voting instruments and any take any related actions. The XX arrangement also is intended to benefit Investors by providing the services of an experienced Lead Investor (acting on behalf of XX Team) who is expected to make value-maximizing decisions regarding Investors' securities. XX Team (acting through the Lead Investor) may further benefit both the Company and Investors by providing consulting services to the Company that are intended to maximize both the value of the Company's business and also the value of its securities.