

Resource

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Closing

Once the parties have finally negotiated all of the primary and ancillary transaction documents and the VC Firm has completed its due diligence to its satisfaction the transaction can move into the Closing stage. As its name suggests, the closing is where the transaction is consummated and “closed” by way of the execution of all the relevant documents by the Company and the investors and the capital being delivered to the company, generally by way of wire transfer.

At this stage, the transaction documents become effective, the company has the investment capital in their account and the VC Fund and any other participating investors are issued their stock. The term sheet is no longer relevant as the

transaction documents are the only governing documents applicable to the investment and the shares issued.

While this seems like a relatively simple stage, it's also one of the most important and takes preparation and well-planned communications in order to make sure it runs smoothly. A few steps will occur in a specific order in most closings, that, if the various parties are not engaged and paying attention, can cause delays. For example, once the negotiations of the documents are complete, the signature collection process to sign the documents commences. If there is a large investor syndicate, you'll need to have all of these folks ready to sign documents in a timely fashion. Plus, signatures are needed just from those involved directly in the transaction: there will be Board and stockholder approvals needed as well, which must be received by the company before the transaction can close. If a large stockholder is out of touch and can't provide their approval, for example, this will cause delays in getting the company funded.

The most important part of closing is therefore a well thought out and well communicated plan of action, that is addressed well before it's time to actually "close." Gunderson closes thousands of transactions smoothly each year, and will help you prepare your closing plan and can take the lead on any communications.

Subsequent Closings

Many financing may also feature a "subsequent closing" provision, under which, the company may use the same documents to issue additional shares for some period of time into the future. These provisions typically allow for one or more sales of the same security as a way to raise funds from investors who, for example

- i. become aware of or are invited to the financing only after the initial closing, (ii) needed additional time to get funds together to make their purchase, or
- ii. were not available for some reason to provide signatures or other required documents in time for the primary closing.

A purchase agreement with a subsequent closing provision will generally allow for somewhere between 45 and 90 days (though as always, these are deal-specific) for the company to complete such additional sales, and usually include a cap on how much additional investment may be made –in order to protect the lead investor's ownership percentage from too much additional dilution.

Investments consummated pursuant to these provisions are often dealt with alongside the other post-closing matters. However, it's important to prepare for these

closing throughout the entire process to be ready to approach the additional subsequent closing investors in a timely manner. Often, following the initial closing, the company's executive team that has been focused on the financing will want to get back to business, and the subsequent closing may be overlooked. Making sure you're prepared to reach out to any subsequent closing investors is as important as the initial closing process in order to close on those additional funds in time, and having a plan can ensure your preparedness. Your Gunderson team will work with you to make sure that everyone is tracking all relevant participants and any necessary documents needed to efficiently close on all additional investments in a subsequent closing.

Next section: [Part 6. Post-Closing](#)

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