

Resource

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Pre-financing preparation and best practices

Prepare your pitch deck

To secure venture capital (VC) funding, founders “pitch” venture capitalists, telling their company’s story and providing an opportunity to invest in exchange for equity ownership. A pitch deck may include:

- An introduction to the team, the company’s business model, vision, product-market fit and competitive advantages;
- Key metrics, marketing and sales strategies, financial and growth projections;
- Financing information – amount to be raised, use of funds and what investors might expect in return for their investment at the time of an exit.

Importantly, the pitch deck must include various legal disclosures similar to other securities solicitation or investment materials (e.g., forward-looking statements, risk factors, regulatory and financial disclosures, legal disclaimers). Reach out to your Gunderson team for advice on these legal disclosures and assistance with reviewing and finalizing pitch materials.

Build a data room

The financing process includes investor review (“due diligence”) of the company and its financials, intellectual property, employees, capitalization, stock and options, corporate records, customers, contracts and anything else material to the business. Organize diligence items (final copies signed, labeled, categorized) using a cloud file storage platform (e.g., Box, Dropbox) so that you are ready to respond to requests and answer questions. What is reviewed and to what degree depends on the investor, but preparation now will enable investor counsel to start its due diligence review right away, potentially reducing the time needed to get to closing.

Review company records

Are you missing signed contracts? Does the company own/have rights to essential IP? Have all employees signed a PIIA (Proprietary Information and Inventions Agreement)? Do you have complete records of pre-seed financings? Is the company’s on-line corporate record book (charter and bylaws, board and stockholder actions) complete? Is the cap table up-to-date and accurate? Resolve deficiencies before they are identified by investor counsel and more importantly, before they become major issues.

Notify corporate counsel

Your Gunderson team can assist with finalizing the pitch deck, organizing the data room, clean-up matters and term sheet review. Advance notice also provides time to grant equity awards (stock, options) before the financing process begins (see [potential pitfalls](#) below).

Consider certain financing matters

- Is the company in a good financial position, at least for the short-term (6-9 months), or is closing an equity round of financing critical to make next month’s payroll?

*A sense of urgency may provide an investor with leverage to insist on terms that are considered “off-market” for early-stage companies (see **key financing terms** below). Seek guidance from your Gunderson team on the “give-and-*

take” and terms that, if accepted, may set precedents for future financing rounds.

- How much of the company are you willing to sell to investors?

Most investors focus on post-closing percentage ownership and work backwards to “price” the financing accordingly. The amount raised (including the sale of convertible securities) and the price per share (based on the company’s valuation) largely determine the dilutive effect to existing stockholders.

- How will any outstanding convertible securities (SAFEs, notes) be treated? What is the discount or valuation cap?

Convertible securities typically convert into a “shadow series” (e.g., Series A-1) if the price per share is lower than the new money (e.g., Series A) price per share. Both series of preferred stock enjoy the same rights and preferences but the “original issue price” at the time of a liquidation event equals the price paid.

- Are you seeking a lead investor?

Preferred stock financings usually have an investor who “leads” the round with the largest investment. The lead investor prepares and sends a term sheet to the company’s founders. (Note it is not customary in the industry for VC investors to sign non-disclosure agreements.) The lead investor’s counsel typically takes charge of diligence review and negotiations on behalf of the other investors. If possible, avoid working with additional legal counsel brought in by other investors as it may complicate the financing process, adding time and cost.

- After the lead investor’s investment, how much will remain for other investors? Are there any pre-seed pro rata commitments?
- If the financing round is not fully subscribed, will subsequent closings be permitted?

Subsequent closings may be beneficial if some investors are ready to close before others, and especially if the company is short on cash. However, consider the time needed to continue fundraising (i.e., time not spent on building the business) and added cost. The company should have the flexibility to accept additional investments without the lead investor’s approval.

- Have you prepared a forecast of option grants for the company’s employees and other service providers?

The size of the available stock plan pool will be factored into the pre-money capitalization. Aim to negotiate a share increase that will accommodate forecasted equity compensation needs without adding unnecessary dilution to you and other existing stockholders.

Know your investors

Investors diligence a company and get to know the founders; founders should do the same with investors. Investors can provide valuable support and advice to founders and executives as a company grows, which in turn helps to protect their investment in anticipation of a profitable return. Practically speaking, investors may remain on a company's cap table for a number of years so be sure they are people you can work with, trust and respect.

Key financing terms

NOTE: This is a high-level summary only and not intended to be all-inclusive or comprehensive.

Depending on importance (to the company and/or the lead investor), key financing terms may be negotiated at the term sheet stage or during the financing process. Look for:

Economics

Term	Standard	More investor-friendly; off-market at early stage
Dividends	Non-cumulative; payable when and if declared by the board (private company boards rarely declare)	Cumulative; accrue whether or not declared by the board; payable on liquidation event or redemption
Liquidation preference	Proceeds paid to preferred stockholders as a group (" <i>pari passu</i> ") before common stockholders	Proceeds paid to holders of a certain series of preferred stock before other preferred stockholders
Liquidation multiple	Payout from proceeds equals amount invested (1X)	Payout is a multiple of amount invested (e.g., 2X); guarantees a certain return on investment

Term	Standard	More investor-friendly; off-market at early stage
Participating vs. non-participating	Non-participating; amount of proceeds is the greater of (i) liquidation preference or (ii) amount paid as if converted to common stock	Participating (a “double dip”); paid liquidation preference <u>and</u> then participates in residual payments to other stockholders
Anti-dilution protection (in the event of a subsequent issuance of securities at a lower price)	“Broad-based” weighted average is standard (conversion price adjustment takes into account all of the company’s outstanding securities)	“Narrow-based” weighted average (increases the conversion price adjustment by “narrowing” what is included as outstanding securities) “Full ratchet” (the conversion price is adjusted downward to the price of the dilutive securities)
Redemption rights	Stock is not redeemable at the option of the holder	Stock may be repurchased by the company at the option of the holder or automatically on a certain date

Governance/Control

Term	Standard	More investor-friendly; off-market at early stage

Term	Standard	More investor-friendly; off-market at early stage
Board size and composition	<p>Founders control the board of early stage companies</p> <p>Lead investors commonly ask for a board seat</p> <p>Seat reserved for current CEO</p> <p>Understanding how control dynamics will shift as the company grows is critical</p>	Investors control
Board observer rights		
Protective provisions	Limited to standard	More stockholder control
Operational restrictions (special director approvals)		Off-market – one or more preferred directors must approve
Series protections		One or more series of preferred stock have voting controls
Investor rights	Registration rights, information and inspection rights, rights of first offer, rights of first refusal and co-sale on founder stock	

Potential pitfalls

- Agreeing to financing terms or signing a term sheet before consulting with corporate counsel

*Your Gunderson team offers experience and knowledge, can identify what is market at any given time and explain what terms may affect future rounds of financing or a successful exit. See **key financing terms** above.*

- “Shopping” a term sheet

A “no-shop” provision, standard in term sheets, restricts the company from looking for a better deal while an investor is reviewing diligence and negotiating documents. The investor is spending time and money on this process. While non-binding, when an investor signs a term sheet the investor is ready to move forward unless a significant issue surfaces or a material event occurs during the due diligence process.

- Issuing equity after discussing the company’s valuation with potential investors

The issuance of equity-based compensation to the company’s service providers – notably stock options – usually requires that the board determine the fair market value of the common stock. Once an investor has proposed a company valuation in connection with its investment, whether orally or in writing, it often triggers an increase in the fair market value of the common stock, and it’s now undetermined. The company should not grant stock or stock options during this time and throughout the financing process. Granting stock or options without a reliable FMV risks tax complications for the company and for the award recipient.

- Issuing preferred stock to non-accredited investors

Take caution when offering investment opportunities to family and friends. The securities exemptions best suited for VC-backed companies require that either the investor be accredited (e.g., a certain salary threshold or net worth supporting the ability to bear investment risk) or the company provide detailed disclosure materials.

- Publicizing the fund raise on social media

The securities exemptions best suited for VC-backed companies limit the manner of offering, meaning that, among other things, the securities may not be sold by any form of general solicitation or general advertising. This includes a mention on Facebook, LinkedIn or other social media, meetings and informal get-togethers for the purpose of soliciting interest to invest. Your investors will generally be a small group known to you and the other founders and directors.

- Paying someone to help fund raise

Brokers (selling securities for the accounts of others) and dealers (buying and selling securities as part of a regular business) must register with the SEC before selling unregistered securities. There is an exemption from this

registration for issuers and associated persons (officers, directors, employees) if they are selling for the issuer's account only and are not compensated based directly or indirectly on securities transactions. Otherwise, a company cannot hire an employee or engage a consultant to find investors and sell the company's securities without violating securities laws unless that person is registered to do so.

You just signed a term sheet for your first preferred stock financing round. What needs to happen to get the cash in the company's bank account?

Founders aim to have the equity financing round close as soon as possible to land the investment and get back to the business of building the company. However, it is important to remember that fundraising is not a unilateral process and does not operate on any specific clock or cadence. Equity rounds may be simple and expedited and others complicated and protracted, often for reasons outside of the company's control. Getting to closing depends not just on how fast the company can move, but also the new investors, the board of directors, current stockholder base, and any other parties that will need to be involved.

Your Gunderson team will be instrumental in guiding you through the financing process, including (1) investor review of due diligence and calls to discuss, (2) negotiation of a restated certificate of incorporation and investor agreements, (3) preparation of a disclosure schedule and (4) board and stockholder approvals.

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Related resources

Intro to Financing and the Venture Capital Ecosystem

Types of investors providing capital to startups, basic terminology regarding the structure and focus of venture capital investors and an overview of basic types of

structure and roles of venture capital investors and an overview of basic types of venture capital financings.

Preparing for a Venture Financing

Tips and insights on ways to prepare for an upcoming equity financing

Featured Insights

FIRM NEWS

Gunderson Dettmer Launches Catalyze: An Exclusive Community Platform Built to Support and Empower Companies Throughout the Startup Journey

INSIGHTS

Gunderson Dettmer Releases 2025 Mid-Year Venture Capital Report

CLIENT NEWS

Gunderson Dettmer represented Statsig in its \$1.1B acquisition by OpenAI

RESOURCE

Example Pre-Seed Due Diligence Checklist

RESOURCE

6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)

INSIGHTS

Ryan Purcell Guest-Authors “6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)” for Not Another CEO

INSIGHTS

Client Insight: Quarterly Employment Law Update – Summer 2025

INSIGHTS

Private Market Liquidity: A Review of Tender Offers

INSIGHTS

Client Insight: Eighth Circuit Vacates FTC's "Click-to-Cancel" Rule

INSIGHTS

Client Insight: One, Big, Beautiful Bill Enactment: Impacts To Qualified Small Business Stock

INSIGHTS

Client Insight: "Click to Cancel" Amendments to the FTC Negative Option Rule and California's Automatic Renewal Law

FIRM NEWS

Gunderson Dettmer Practice Areas and Partners Recognized by Chambers USA 2025 Guide