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Roadmap for a REIT IPO

A summary guide to going public

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There is no question that much has changed in the world of real estate finance since the financial crisis.

At the time of this writing, the commercial debt markets continue to present challenges for many owners, investors and developers as demand for financing continues to exceed supply for many property sectors. The Commercial Mortgage Backed Securities (CMBS) market continues to be largely stalled and is unlikely to return to the volume it was generating at its peak - with significant portions of the loans underlying the circa 2005-2007 CMBS issuance wave now nearing maturity. Private equity, which dominated much of the real estate market immediately prior to the financial crisis (in part fuelled by cheap and plentiful financing), has not yet fully returned to the market. In the residential debt markets, the GSE's effectively are the sole market provider of financing with only limited private capital participating.

We have seen the beginning of a resurgence of the real estate public equity markets. This resurgence has generally been based on more conservative financing levels and longer-term hold investment timelines. As a result, in addition to significant capital being raised by existing REITs to both de-lever and in some cases expand; we are also seeing the potential for a new wave of REIT Initial Public Offerings (IPOs). Recent new IPOs have been designed to raise capital to deleverage existing property portfolios and increase growth to take advantage of expected market opportunities. In addition, so called "Mortgage REIT's" are being viewed as potential private capital formation vehicles that may help provide more liquidity to the residential and commercial mortgage markets. However, many of these recent offerings have met with mixed success.

Going public is a monumental decision. It forever changes how a company does business. Moreover, from a practical standpoint, completing a public offering can be time consuming and expensive and can take substantial management focus away from the day-to-day operations of the company. This is why adequate preparation for a public offering is critical — and can be the key to the IPO's success.

This is where we can help. Through our specialists' global presence and extensive knowledge of capital markets, PricewaterhouseCoopers can provide you with the insight you need at every stage. PricewaterhouseCoopers' Real Estate Services practice is a top choice for assurance and tax consulting services among businesses in the REIT industry. We have deep experience in helping real estate companies enter the public market and operate as a public company after an IPO.

We have prepared this summary guide to assist you in completing your REIT IPO and to provide a resource on REIT issues and terminology to those who are new to this area.

We believe PwC offers a powerful combination of personal service, specialized experience, and global reach that sets us apart. Especially now, in these difficult times, you can look to our people, knowledge, organization, and experience to reach beyond your expectations.

Sincerely,

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US Real Estate Leader

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Executive summary

With the REIT IPO market window beginning to open once again, we have prepared this guide to help real estate companies address the various matters of the IPO process including:

- The process and timeline of an IPO
- Preparation of the registration statement
- Tax planning, structuring, and ongoing compliance
- Corporate governance in the public market
- Accounting and internal controls considerations

This publication presents some of the information you will need when contemplating whether to go public or to pursue alternate means to finance growth. The purpose of the guide is to assist you in making an informed decision by addressing such factors as the advantages and disadvantages of going public, an estimate of the costs, timing, and some alternatives. It outlines the “process” of going public, discusses the registration and ongoing reporting requirements of a public company, and provides an overview of the securities markets in general as well as issues unique to the real estate industry. The guide also summarizes the most significant accounting, compensation, and tax-related considerations of going public.

Key challenges

While going through the process some of the key challenges you may face are as follows:

- Selecting and negotiating with investment bankers
- Selecting appropriate legal and accounting/tax advisors
- Structuring transactions in a tax-efficient manner
- Preparing financial statements that conform to SEC requirements
- Aligning management compensation with shareholders’ view of performance
- Managing the IPO process expeditiously among a crowded field of competitors
- Building the personnel, controls, and systems infrastructure necessary to operate successfully as a public company
- Managing the complex requirements for continuing to qualify as a REIT
- Avoiding “dealer” issues and other REIT “penalty” taxes
- Managing dividend levels to balance both tax requirements and financial goals
- Evaluating financing strategies, including unsecured, secured, and revolving credit lines
- Containing administrative costs
- Developing a business strategy that allows you to position for opportunities that frequently arise during and emerging from a downturn

Our team will work through these challenges with you. We will help you develop a work plan and leverage our regulatory and industry specialists to deliver value to you throughout the IPO process and beyond.

PwC’s industry focus

The process for a REIT IPO can be grueling and time consuming. For such a challenging undertaking, it is more important than ever that you have the support of a professional services firm that understands your business and financial transactions as well as the REIT IPO process. We believe PwC is that firm.

We place a high value on both our “human capital” and our technology to support our people. We are committed to making appropriate investments of our resources to increase the value of that capital. While geography and service line are important, our firm believes that our clients derive the greatest benefits through our industry specialization. Our depth of experience in specialized areas has made us the preeminent professional services firm — especially in real estate and real estate finance.

We have a long history of working with clients to complete REIT IPOs, then expand and grow. We serve a wide range of real estate industry clients, including many of the largest and most well-known public REITs, real estate opportunity funds, private real estate owners/operators/developers, home builders, traditional real estate advisors, insurance company separate accounts, international real estate investment vehicles, and public real estate operating companies.

Our experience in these areas will enable us to help you address today's problems, as well as assist you in identifying opportunities or challenges that will affect you tomorrow as you implement your long-range business plans.

How we deliver

Our critical role is that of a trusted business advisor, rather than only as auditor or tax advisor. It includes providing insight and experience on how to deal with the REIT IPO process, what the systems/control needs are, and how to operate in the public market.

As your business advisor, we are committed to delivering value throughout the year. We will deliver this commitment through:

- A proven, responsive, and proactive engagement team (one that has dealt with both up and down markets)
- A team that at all levels possesses the deep knowledge and relationships to bring the best resources to address your opportunities and challenges
- Collaborative matter resolution
- A team with significant successful working relationships
- Knowledge of your strategy and familiarity with operations similar to yours
- A team with leadership in the real estate and commercial mortgage industries that is current on your issues
- Access to unparalleled resources locally, nationally, and globally
- A service plan designed to address your needs
- An absolute commitment to service, audit quality, and independence
- A resource for innovative ideas and business solutions

Our real estate professionals would be happy to meet with you and discuss the typical REIT IPO process and your plans. You can rely on them to help you assess your overall readiness and provide a strategy/work plan for IPO completion.

The decision to go public

What does "going public" mean?

Going public is the process of offering securities — generally common and/or preferred stock or bonds — of a privately owned company for sale to the public. The first time these securities are offered is referred to as an initial public offering, or IPO.

Public offering

An IPO in which a company sells its unissued securities and receives all the proceeds in the form of additional capital is called a "primary offering." A securities sale in which securities held by the owners of the company are sold, and from which the owners receive the proceeds, is called a "secondary offering." IPOs are almost always primary offerings, but may include a small number of shares held by the present owners.

What is the reason to go public?

The most important question a CEO should ask is, "Why do I want to go public?"

Some of the reasons are:

- To raise money for expansion of operations
- To deleverage financing on existing property portfolios
- To increase market value
- To acquire other companies or property portfolios
- To attract and retain employees
- To diversify and liquefy personal holdings
- To provide liquidity for existing owners/shareholders/investors
- To implement an estate tax-planning strategy for current owners
- To enhance the company's reputation and business profile in the market (which could, for example, assist in completing transactions with tenants)

It is very important to recognize the reasons to go public and to keep your goals in mind throughout the IPO process.

Tip

Begin early to position your company to go public by ensuring that a sufficient number of years of audited GAAP financial statements (generally three at a minimum) are available before starting the IPO process. You will save fees, headaches, and, most importantly, time. It is virtually as important to establish, document, and evaluate internal controls and to implement accounting and information systems that can handle anticipated growth in the business and financial reporting obligations as a public company.

Early preparation in establishing stock option plans, simplifying the capital structure, and conducting corporate "housekeeping" can be performed more easily before starting the IPO process. However, exercise care with shares or options granted within three years, and particularly within 12 months, prior to an an IPO at prices less than the anticipated IPO price. This is potentially dilutive to the company's outstanding shares and its earnings per share. Also, additional compensation expense may need to be recorded if the fair value of the stock at the grant date is later determined to have exceeded the options' exercise price. One way to help minimize this risk is to seek professional accounting advice and to obtain an appropriate appraisal of your company's value at the time the option grant occurs.

Is going public right for your company?

A company usually begins to think about going public when the funding required to meet the demands of business expansion begins to exceed its ability to raise additional private/venture capital or debt capacity. But simply needing capital does not always mean that going public is the right, or even possible, answer. Your company must also be perceived as an attractive investment candidate with a solid business plan, management team, and growth prospects.

How can you determine if your company is a public offering candidate? Your answers to the following questions can help.

Does your company have an attractive track record?

Generally, a company that outpaces the industry average in growth will have a better chance of attracting prospective investors than one with marginal or inconsistent growth. Some underwriters consider a company to be a typical REIT IPO candidate if it has a portfolio of at least $1 billion in assets and an offering size of $200 million to $300 million or more. In some cases, companies' existing operations and portfolio may be too small to attract sufficient attention. In these cases, the companies frequently utilize private equity capital to grow the portfolio in advance of an IPO.

In other cases, so-called "blind pool" vehicles may also be utilized if a management company or team has a compelling strategy. As a general rule, these have historically been completed using lower-growth, "core" investment strategies rather than growing actively managed property types, especially those that include development/redevelopment activity. However, this has recently changed because such vehicles have been used to capitalize on more opportunistic strategies including distressed debt, mortgage lending, and distressed property types such as hotels.

Has your company received venture or private capital funding?

Many growing real estate companies that do not have a proven track record or sufficient size can increase credibility and validate their business strategy and management team before they go public by first raising private equity to expand their portfolio and overall market reach. Investments from private equity sources are viewed as "smart money" that can also help increase valuation leading up to an IPO.

Has your company reached the point where prospects for maintaining a strong "funds from operations" and earnings growth trend in the future are reasonably good?

Funds From Operations (FFO) and its related growth prospects are the critical factors looked to by REIT IPO investors. Many companies that have successfully gone public have shown that market opportunities support an increasing annual growth rate. This growth potential should be even larger if institutional investors are expected to buy significant blocks of shares in the company.

Are your company's properties highly visible and of interest to tenants and the investing public?

The established company can answer this question with historical revenue and tenant data.

Has your company developed the necessary financial processes, associated internal controls, and financial statement integrity to support management's reporting obligations as a public company?

The Sarbanes-Oxley Act of 2002 (SOX) was enacted on July 30, 2002, largely in response to a number of major corporate and accounting scandals involving some of the most prominent companies in the United States. Among other things, SOX established a requirement that CEOs and CFOs explicitly evaluate and report to the public on the effectiveness of Disclosure Controls and Procedures ("DC&P") including internal controls over financial reporting ("ICFR"). For a new public company, management will be required to deliver a report that assesses the effectiveness of the company's internal controls over financial reporting, pursuant to Section 302 of the Sarbanes-Oxley Act, as part of the Company's second annual report, which is generally the year subsequent to the registration statement becoming effective. Section 404 of the Sarbanes-Oxley Act requires your independent, registered public accounting firm to deliver an attestation report on the operating effectiveness of internal controls over financial reporting in conjunction with its opinion on your financial statements as of the same date if your Company is an accelerated or large accelerated company. For most REIT IPO's, this will be necessary in the year following your IPO.

Many private companies have control infrastructures suitable to a private environment. However, in many cases, these would not meet the more stringent standards necessary under SOX for a public company. Substantial work could be needed to implement appropriate processes, document the system of internal controls over key processes, assess their design, test their operation, and remediate any deficiencies identified. This can be very time consuming, costly, and challenging. Additionally, existing accounting personnel may need to be augmented. Even as a private company, if there are control deficiencies identified during the IPO process there could be a requirement to disclose the details of such deficiencies in the registration statement.

Is management capable and committed?

In any public offering, the quality of the management team is a key factor. To have credibility with the investing public, the organization must have experienced leadership that functions well as a team. In addition, management with significant ownership demonstrates to investors its vested interest in the company's future.

To have a successful IPO, management must be committed to the time and effort involved in meeting registration requirements, conducting analysts' meetings, and providing financial reports required for both the Securities and Exchange Commission and shareholders on a timely basis. It must also be prepared to upgrade the company's system of management controls and financial reporting to comply with full disclosure requirements and shorter financial reporting deadlines; both of these are necessary to maintain credibility and investor confidence after the IPO.

Do the benefits outweigh the costs of going public?

Selling equity represents a permanent forfeiture of a portion of the returns associated with growth. Also, raising equity capital in the public markets can entail substantial costs, such as the underwriting discount, plus other fees and expenses. (See the discussion on costs that appears later in this section.) Whether the benefits outweigh the costs is a question you may not be able to answer realistically until several years after your IPO.

Is the market right?

The demand for initial public offerings can vary dramatically, depending on overall market strength, the market's opinion of IPOs, credit markets, industry economic conditions, technological changes, and many other factors. When a bull market is booming, the market window for new corporate offerings tends to open and these new REIT offerings enjoy bursts of popularity. In a declining market, however, the market window tends to close quickly and IPO activity slows down and could even come to a stop.

Tip

The sooner you are ready to enter the market, the more likely you will be to time to an opportune market, which can provide an opportunity for greater proceeds and market valuation.

Although no one can accurately forecast the market's mood, you must consider the importance of timing and be prepared to alter your company's timetable. The usual time, if you are adequately prepared from the initial meeting of all of the team members until completion of an offering, can take at least three (under the best circumstances) to six months and, in some cases, even longer. However, if you are not prepared and/or need to create significant financial reporting or complete multi-period audits, the timetable can be much more protracted and costly. Due to their complexity, most property REIT IPO's tend to be somewhere in the middle of this time horizon.

Hot markets accept many offerings, but you do not want to be the deal that is just one day too late. Recognizing the urgency of the registration process is critical. Market conditions will also impact the valuation of your company and the eventual pricing of its stock.

Pros, cons, and expenses of going public

All in favor

- **Cash/long-term capital**

  In a public offering, cash and long-term capital are obtained to support growth, increase working capital, invest in existing property development/redevelopment, acquire new properties, loans and other assets, and retire debt, among other goals.

- **Increased market value**

  Although valuations for public versus private markets go in cycles, in many industries, the value of public companies tends to be higher than that of comparable private companies. This is partly the result of increased liquidity, available information, and a readily ascertainable value.

- **Exit strategy**

  Liquidity and greater shareholder value could be achieved for the shareholders. Subject to certain restrictions and practical market limitations, shareholders may, over time, sell their stock in the public market. Alternatively, existing stock may be used as collateral to secure personal loans.

- **Equity offerings**

  An equity IPO increases corporate net worth, does not need to be repaid, and might permit additional borrowing on more favorable terms because of an improved debt-to-equity ratio or more effective use of collateral.

- **Prestige/reputation**

  The visibility for shareholders and their company is usually enhanced. For example, a regional real estate company might more easily expand nationally following a stock offering because of the increased visibility.

- **Ability to attract and keep key personnel**

  If a company is publicly owned, employee incentive and benefit plans are usually established in the form of stock ownership arrangements to attract and keep key personnel. Stock option plans, for example, might be more attractive to officers and other key personnel than generous salary arrangements because of the significant upside potential.

- **Less dilution**

  Provided the timing is right, a company might achieve a better price that results in less dilution compared with other forms of equity financing.

- **Mergers/acquisitions**

  Mergers and acquisitions may be achieved with stock or operating partnership unit (OPU) transactions (see "tax structuring" discussions) on a tax-advantaged basis for sellers at better pricing while conserving cash.

All opposed

- **Expenses**

  Many factors play a role in determining the cost of a REIT IPO, but in all cases these costs are significant. Outlined in the accompanying table is the range of IPO costs that should be expected if you decide to go public. Many of the expenses of a completed IPO shown below are reflected in the financial statements as a reduction of additional paid-in-capital and, therefore, are not expensed in the statement of operations. However, if the IPO is not completed, such costs must be expensed.

Cost range (typical REIT roll-up IPO)

Legal	$1,200,000 - $2,000,000
Accounting	$800,000 - $2,000,000
Printing	$300,000 - $400,000
Blue Sky	$20,000
Transfer agent/registrar	$10,000
Miscellaneous	$120,000 - $250,000
Underwriters' discount and commission	Typically between 6% and 7% of the aggregate offering proceeds
SEC filing fee	$80.90 per $1 million of the aggregate offering amount. Note: The SEC filing fees increase five days after the date on which the SEC receives its fiscal year regular appropriation.
NASDAQ national market	$5,000 plus a decreasing marginal fee per million shares listed

- **Ongoing expenses**

  As a public company, you are required to report and certify financial information on quarterly and annual bases. Ongoing expenses related to this include administrative and investor relations costs including quarterly reports, proxy materials, annual reports, transfer agent fees, and public relations. External auditor costs are also more significant because of quarterly review requirements and SOX 404 requirements that are not necessary for a private entity. In addition, you will now be paying premiums for directors' and officers' liability insurance — which can be very significant in the years immediately following an IPO.

- **Loss of control**

  Ownership limitation provisions are common for REITs in general to protect REIT tax status in relation to certain ownership tests (such as the "five or fewer" test; see "Tax structuring" section). These provisions reduce the likelihood of hostile transactions; however, there is still a reduction in management's control when operating in the public market. In addition, if an umbrella partnership REIT (UPREIT) structure is used by the sponsors for tax purposes, a holder of the operating partnership units may need to request redemption (and thereby trigger tax consequences) to vote the related shares.

- **Loss of privacy**

  The registration statement and subsequent reports require disclosure of many facets of your company's business, operations, and finances that may never before have been known outside the company. Sensitive areas of disclosure that will be available to competitors, customers, and employees include: (1) the compensation of officers and directors, including cash compensation, stock option plans, and deferred compensation plans; (2) the security holdings of officers, directors, and major shareholders (insiders);

(3) details of transactions consummated by the company which may include the filing of legal documents related to those transaction, and (4) extensive financial information (such as financial position, operating revenue, operating costs, net operating income, net income, segment data, related-party transactions, borrowings, cash flows, major tenants/customers, and assessment of internal controls).

- **Pressure for short-term performance**

  In a private company, the business owner/manager is free to operate independently; however, once the company becomes publicly owned, the owner acquires as many partners as the company has shareholders — and is accountable to all of them. Shareholders expect steady growth in areas such as leasing, profits, market share, and innovation.

  Thus, in a publicly held company, management is under constant pressure to balance short-term demands for growth with strategies that achieve long-term results. Further, often the inability to meet analysts' expectations of short-term earnings can dramatically hurt the marketplace's long-term valuation of your company.

- **Restrictions on insider sales**

  Stock sales by insiders are generally restricted. Most underwriters require that a company's existing stockholders or OPU holders enter into contractual agreements to refrain from selling their interests during a specified time following the IPO, typically at least 180 days and in many cases as long as two years. This is considered the "lock-up" period.

- **Investor relations**

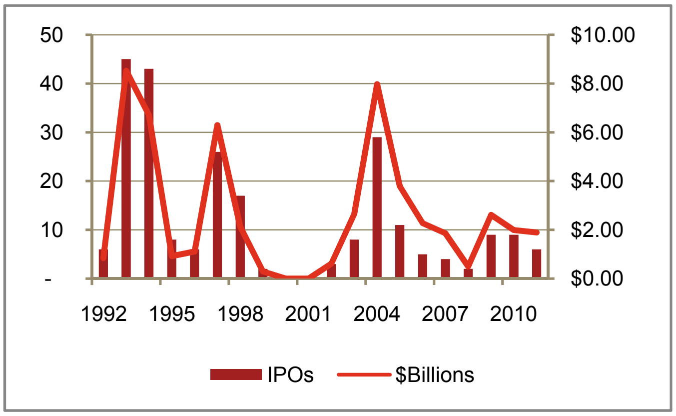
  Investors' inquiries, investment-community presentations, and the preparation, printing and distribution of quarterly and annual financial reports require a significant time commitment by management. They often also require additional personnel or public relations resources.

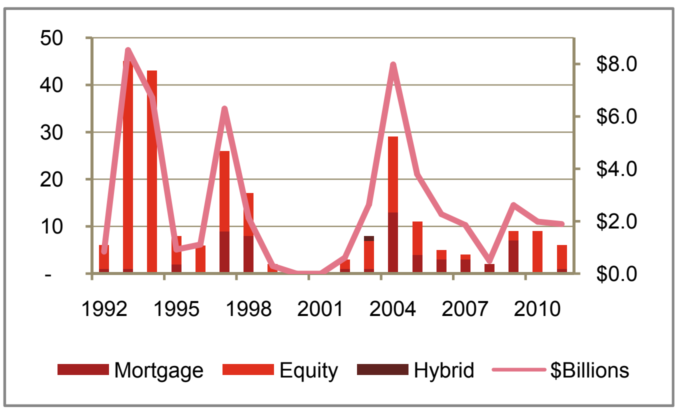
- **No turning back**

  The IPO process is essentially one way. Taking your company private again can be difficult and costly.

Timing — the REIT IPO "window"

The stock market is one of the most unpredictable aspects of going public. The term "market window," which refers to the appetite and capacity of the stock market to complete IPOs, opens and shuts on short notice, especially in the REIT sector. Below is a graph of the REIT "market window" from 1991 through 2009.





By most accounts, the initial public offering of Kimco Realty Corporation in late 1991 marked the "dawn of the modern REIT era." Kimco was the first REIT to go public following the 1986 revision in the REIT tax regime that allowed REITs to actively operate as self-managed entities. The Kimco IPO unleashed a wave of more than 70 REIT IPOs during the two-year period of 1993 and 1994. However, by late 1994, the REIT IPO window had closed as investors digested the prior offerings. During the next two years, just 14 new REITs managed to squeeze through the REIT IPO window. The REIT IPO window opened again for a short time in 1997-1998 to allow new companies into the public space. In the five years that followed, just 16 REITs managed to slip through the window as investors shifted their focus to the "new economy". During 2000 and 2001, there were no new REIT IPOs. During 2004 and 2005, with the economy in full throttle, the IPO window opened again for more than 40 newly minted REITs, including a number of "specialty" REITs and a slew of residential mortgage REITs seeking to capitalize on the housing boom. Thereafter, the REIT IPO markets quieted again as the economy slowed in response to meltdown in the credit markets and the collapse of asset prices, including REIT stocks through 2008.

In early 2009, REIT stocks bottomed out as investors embraced efforts to reequitize the REIT sector through secondary offerings. Investors also became selectively receptive to a handful of mortgage REITs hoping to profit from the severe dislocations in the credit markets and the void in debt capital available to real estate. In 2010 and early 2011, several blind pool REIT IPOs focused on the lodging sector were also successful as the economy began to show signs of an emergence from recession. The mortgage REIT trend also continued with sponsors looking to take advantage of opportunities in agency and non-agency residential mortgage debt. By mid-2011, IPOs of all types faced significant headwinds in the form of stock market volatility, pricing pressure on new issues and fears of a double-dip recession in the US.

In some cases, the growth prospects are significantly higher for a particular property type or local sector than the broader market. For example, history suggests that lodging is typically among the first of the property sectors to recover following an economic downturn. Thus, lodging REITs might appear to be a "favored property type" in the near term. Industry observers also expect ample investor demand to benefit certain specialty REITs that could be tied to those sectors of the economy most likely to show good future growth, including biomed, data hosting, infrastructure, and government use.

A company within a currently favored property type enjoys a more broadly opened REIT IPO window. Going public while the market is strong versus missing the market by as little as several weeks can result in a postponed or withdrawn IPO and significant expenses or a lower market valuation. In addition to reviewing how companies in your property sector and overall industry have fared, you should also look at how the property sector and overall market are valued.

Various types or categories of REITs

The REIT sector has some peculiarities. A number of different types or categories of REITs are used to describe nuances in how they raise capital, invest proceeds, operate, or are managed. These include the following:

- **Private REITs**—As the name suggests, these are privately owned REITs that might have issued shares pursuant to one of several securities exemptions. Frequently, they are subsidiaries of larger private equity funds or other corporate entities.

- **Registered but not traded REITs**—These are fully registered with the SEC but are not listed on any exchange. These entities have to comply with all the SEC reporting requirements in general (including quarterly and annual reporting, Form 8-K reporting, proxy filings, and reporting on internal controls by management). However, because these entities lack a "public" float (as defined by the SEC to be traded equity), they are usually considered to be nonaccelerated filers, have later filing deadlines, and do not require external auditor opinions on SOX 404.

  As a result of the lack of a trading venue, the investors in these instruments do not have the liquidity (and some would argue the price volatility) associated with a publicly traded security. Frequently, these investments are "sold" through a retail distribution channel to high-net-worth individuals for long-term holdings in their retirement accounts. They may allow for redemption requests by the holders during the life cycle prior to the liquidity event; however, these redemptions are at the discretion of the board of trustees of the REIT on a quarterly basis and are usually subject to a haircut to reported fair value per unit. Typically, these investment vehicles have a defined investment period. Thereafter, a "liquidity" strategy of some type is pursued, including a planned disposition of the properties and liquidation of the entity, merger with another public entity, etc.

- **Publicly traded REITs**—These entities are fully registered with the SEC and listed on a publicly recognized exchange, such as the NYSE or NASDAQ. Although these shares are listed, their real liquidity depends on market action or trading volume with respect to a particular stock.

- **REIT roll-up** —These REITs are formed in conjunction with an IPO whereby preexisting operating entities/properties are combined into a single operation under one new public company. The mechanisms for completing this combination can vary significantly among transactions and are generally driven by tax planning or marketing strategies. Frequently, the transactions involve the use of an UPREIT format to defer tax consequences to the existing owners (see "Tax structuring" section for more information).

- **Blind pool REITs** — Newly formed entities which raise capital to be invested after the offering at the discretion of the sponsor pursuant to a predefined investment strategy as outlined in the prospectus. Blind pool transactions avoid certain issues such as historical financial information of predecessor operations but may have certain incremental reporting requirements including "prior performance" information on similar investments by the sponsor.

- **Internally versus externally managed REITs**—Another distinction is how management is involved with the entity. Generally, REITs are either "internally managed," with management as employees of the REIT/operating partnership, or "externally managed" pursuant to a management contract with no direct employees. Usually, private REITs and registered but not traded REITs are externally managed on a for-fee basis by a related party manager. The related party fees for these types of vehicles can be significant and will vary based on the underlying investment premise and effort involved (e.g., "core" investment portfolio strategies typically have lower fee arrangements than those of more "opportunistic" vehicles).

> Publicly traded REITs can be managed either internally or externally. Frequently, externally managed public REITs that reach a certain size will “internalize” their management through an exchange of stock with the owners of the advisor. This internalization generally occurs several years subsequent to formation once the platform has grown. It operates to better align management and the shareholders by limiting the enterprise value growth going solely to management.

Generally, this publication focuses on REIT roll-ups for “internally managed,” publicly traded REITs. However, many of the issues discussed herein also apply to “registered but not traded” or “externally managed” REITs. Also, many of the issues discussed herein are more commonly associated with traditional REIT roll-up transactions than blind pool transactions.

Current regulatory and disclosure issues

Sarbanes-Oxley Act of 2002

Private companies are required to comply with only some provisions of the Sarbanes-Oxley Act, which carry increased penalties and liabilities for certain crimes. Public companies, however, must comply with each provision of the act. Waiting until the registration statement is being prepared and marketed to address compliance with the act is a daunting task. Additionally, with this type of compliance strategy, it might be difficult to find an underwriter willing to proceed with the offering. Accordingly, private companies contemplating an initial public offering should consider the following provisions of the act:

Internal controls—The registrant's management (CEO and CFO) must provide certain certifications in periodic filings with the SEC regarding the company's internal controls. Additionally, on an annual basis, the external auditor is required to audit the company's internal controls over financial reporting. Accordingly, to prepare for the applicable internal controls certifications once you become a public registrant, it is recommended that you establish, document, and monitor compliance of executing internal controls as early as possible.

Audit committee—Public companies must have independent audit committee members, including one qualified as a financial expert. Accordingly, companies should evaluate the composition of the audit committee and seek qualified individuals.

Board of directors/trustees—Directors/trustees must be truly independent. Further, at least one board member must have a financial background—either as a CPA or as a previous CFO. One member of the board must chair the audit committee, and outside directors must meet in executive session. It has become more difficult and more expensive to attract and retain board members because of the perceived higher risk and shift from equity to cash compensation.

Auditor relationship—A public company's external auditor cannot provide certain nonaudit services, including but not limited to internal audit, legal, and valuation services. Additionally, permissible nonaudit services must be preapproved by the audit committee. Accordingly, companies should evaluate the existing relationship with their outside audit firm to avoid any possible improprieties.

Tip

Be sure to give yourself enough time to recruit proper outside directors. In the post-Sarbanes-Oxley environment, you should allow four to six months for this process, which can be done concurrently with your IPO process.

Tip

All too often, going public is viewed as the only means, rather than one of several useful business alternatives, to achieve a company's objectives. PwC can share the deep insight that will enable you to make an informed, intelligent, and objective decision.

Code of ethics—Public companies must establish a code of ethics, and if one is not established, they must disclose the reason for not establishing one. Having a code of ethics and demonstrating diligence in compliance are likely to be key elements in preventing any alleged corporate misconduct.

Loans to company executives—Public companies cannot extend or maintain credit in the form of a personal loan to or for any director or executive officer. Accordingly, appropriate actions should be taken to make certain these types of arrangements can be extinguished prior to the initial public offering.

Cheap stock

The SEC frequently challenges the exercise prices of stock options granted while a company is private, claiming that the exercise prices were below the market value of the stock at the time of grant. The resulting difference between the exercise price and the market value must be accounted for as compensation expense and amortized over the vesting periods of the options. Stock options may be one of the major components of compensation for your company and can be significant, thus having a material effect on reported financial results. Whether this will negatively impact the IPO valuation depends on the current market view of this expense.

Companies preparing for an IPO need to carefully review their option pricing history. Where option prices are significantly less than the price of any other equity instruments sold near the dates of option grants, there will be close scrutiny by the SEC, and the closer the grant dates are to the IPO, the more intense the review will be.

Beneficial conversion features of preferred stock and debt

Similar to the cheap stock issues, the SEC focuses on the conversion price embedded in convertible preferred stock and debt securities issued within one year of an IPO. The SEC compares such conversion prices with the IPO price to determine whether a “beneficial conversion feature” exists (in other words, the conversion price is below the fair value of the common stock on the commitment date). If it is determined to be recorded as a beneficial conversion feature, the “in the money” portion would be a reduction to net income available to common shareholders and therefore reduce earnings per share. In the case of convertible debt securities, the “in the money” amount would be considered to be additional interest expense.

Revenue recognition

Revenue recognition continues to receive a great amount of attention from the standard-setting bodies as well as from the SEC. Areas that can be particularly complicated to deal with are:

- Lease accounting (straight-line rent);
- Lease terminations/modifications;
- Sales of real estate;
- Partial sales and transactions with joint ventures; and
- Property management, leasing, and asset management arrangements.

Business combinations

In recent years, a number of standards have been issued regarding the accounting for business combinations. Recently, the Financial Accounting Standards Board (FASB) issued a new standard on accounting for business combinations. This standard significantly modifies the definition of a business and, as a result, most operating real estate subject to lease(s) will be considered a business combination under the standard. Further, the FASB has also issued ASC 810 (formerly SFAS 167), which represents a new way to account for variable interest entities.

In most cases, except for transactions among parties deemed to be under common control, a business combination will be accounted for at fair value. As will be discussed in more detail later, in many REIT IPO roll-ups, some or all of the transaction is considered a transaction among entities deemed to be under common control, and such transactions are recorded at predecessor basis with no step up to fair value. Generally accepted accounting principles require the purchase price allocation in a transaction that qualifies as a business combination to begin

Tip

As distracting as your IPO may be, keep a keen eye on your business! IPOs are so absorbing that you can lose track of the business. Just be cognizant of this “distraction potential” and plan for it to ensure your business does not come out of the IPO process weaker than going in. It may be useful, for example, to appoint an IPO team captain to manage the process.

with an analysis to identify all of the tangible and intangible assets and liabilities acquired. The fair value of each asset and liability must be estimated. Companies and their auditors should adequately test and challenge the underlying assumptions and data used to develop the valuations. These assessments tend to be very complicated because each transaction will have unique facts and circumstances specific to the company. In addition, the application of purchase accounting to real estate operations can be complex, including valuing assumed debt and allocating basis to lease-related intangibles. This would include above- and/or below-market leases, in-place lease values, and tenant relationship values. Roll-up transactions can be especially complex (see "Matters unique to real estate" in the "Going public process" section for more information). Your accounting advisors should be involved with these assessments from the outset.

Consolidation issues

The FASB has also recently issued a principles-based standard for accounting for variable interest entities. The guidance sets out consolidation principles such as the risks and rewards of ownership that must be considered prior to applying traditional voting interest considerations. Many of these considerations are complex, and they are frequently the topic of SEC comments in connection with roll-up transaction reporting.

Liability versus equity classification

The classification of liabilities and equity in financial statements has also been placed under scrutiny. This has resulted in the issuance of a new standard that clarifies this classification. Certain financial instruments that were previously classified in the "mezzanine" section of the balance sheet may now be required to be classified as liabilities. This frequently occurs in connection with private equity that has date certain redemption features. In many cases, what had previously been considered minority interests in consolidated subsidiaries and reflected between liabilities and equity on the balance sheet may now be considered part of equity. However, with respect to redeemable or puttable securities (for example, operating partnership units in an UPREIT), if certain criteria are not met, these interests can still be deemed "temporary equity" and reflected at redemption value between liabilities and equity (see below).

Temporary versus permanent equity classification

Scrutiny has also been placed on the classification of noncontrolling interests in consolidated subsidiaries such as operating partnerships, DownREIT vehicles, or other consolidated ventures for outside interests in those entities not owned by the REIT where the current holder has the right to request redemption. If the company can be forced to redeem the interests for cash or other assets under any scenario outside the company's control, then such noncontrolling interests need be reflected as "temporary" equity. If the redemption feature is considered to be at fair value, then there is no implication to net income. However, there is an impact to the balance sheet where these instruments will be reflected at the lesser of (i) the adjusted ratable book value per unit or (ii) the redemption value pursuant to the contract terms.

Segment reporting

The SEC continues to question registrants on the determination of business segments and the adequacy of segment reporting disclosures. The agency's concern is frequently whether there is an inappropriate aggregation of multiple segments or an inadequate explanation of the basis for aggregating segments.

Preparation is the secret to success

The planning process for an IPO can start on the day your company is incorporated or as late as 90 days before the public offering. We recommend that you follow an orderly plan over a one- to two-year period if possible. This window gives your company time to think, act, and perform as a public company.

Develop a deep management team

As a company prepares for its IPO, it must expand its management capabilities. The investment community wants to be sure that management running your company is not a "one-man band." This may require adding individuals with public company experience in marketing, operations, development, legal, accounting and finance. Frequently, investors/investment bankers also desire to see a qualified CFO with pre-existing public REIT experience in place prior to going through the IPO process. The team needs to be cohesive and share a long-term vision for the company in order to obtain maximum financial returns and valuation.

Develop budgets, and measure performance

Throughout the IPO process, underwriters and analysts will ask mature companies for projections and will compare their historical performance to past budgets. Accordingly, you should start preparing aggressive but attainable budgets and be ready to articulate why variances might occur.

After you have gone public, budgets and projections will become an important tool for research analysts and market makers of your stock. Furthermore, this information and your ability to meet earnings estimates can significantly impact your stock's performance. The ability to deliver on promised growth becomes critical to your stock's long-term performance. Often, overpromising growth prospects leads to the market "penalizing" the company with a decline in stock price and restricted access to new capital. Similarly, all things being equal, those that deliver on their promises have ongoing access to more capital and the possibility for further growth.

Tip

As one of many planning considerations, work up an initial timetable that builds time in for delays. If you should encounter delays, you may be able to avoid the need to include interim or updated financial statements, and the associated costs.

Begin positioning your company early! Have audited financial statements and a well-documented and conservative business plan; ensure that legal "housekeeping" is thorough; cultivate relationships with the professionals who can and will help you, including underwriters, lawyers, and accountants. If you wait until "crunch" time to have multiple-year audits, you may face two nasty surprises: first, high costs of reconstructing financial statements; and second, figures that show the company may be performing at a level below expectations.

Another critical planning point is your equity oriented incentive plans, which should be in place before the IPO. Too often the question of how to compensate key executives arises late. It simply won't do to issue a significant amount of stock or options with an exercise price of $1 a share when an IPO is contemplated with a much higher per-share price in the near term. This could cause additional compensation expense to be recorded. On the other hand, if there are clear and distinct reasons for the company's valuation to increase significantly, these should be thoroughly documented, ideally through an independent and timely appraisal.

Build a positive public image

A positive image can enhance the initial sales effort and maintain the public's interest in the stock in the aftermarket. Accordingly, most companies will need to enhance or create such an image with those who will buy their stock and with those who influence buying decisions (such as financial analysts, stockbrokers, the financial press, and industry publications). A positive image cannot be developed overnight; it can take months or even years to accomplish, so the earlier you get started, the better. Further, it is important to start building the public image well before the beginning of the "quiet period" (see "The going-public process").

Creating or enhancing your company's image might require hiring a public relations firm well in advance of the public offering. The firm can assist you with getting your company's "story" out prior to the offering and with external communications and shareholder relations after you have gone public. Other ways your company can enhance its public image include adding analysts and business press editors to your mailing lists, participating in trade shows and conferences that analysts attend, and publicizing key employee appointments.

Build relationships with an investment banking firm, law firm, and independent auditor

These relationships will serve to establish your company's credibility. Factors to consider in selecting such firms for your IPO process are discussed in "Identifying your going-public team — the players" and "Choosing your investment banker."

Establish incentive compensation plans

Development of a long-term incentive compensation plan is critical to keeping management and employees motivated. Today, many companies establish such plans shortly after formation for the benefit of their management team and employees. As discussed in "Current regulatory and disclosure issues," plans involving the granting of equity securities (including options and warrants) within one year prior to an IPO could require recording an additional compensation charge if these securities were issued at below fair market value at the date of grant.

Many investment bankers like to see preexisting option plans in place with options issued to the management team. Frequently in REIT roll-up transactions, this is done in conjunction with the IPO. If much of an individual's wealth is associated with the growth of the company and the value of the unexercised options, the underwriter will see a long-term commitment, and this could help the valuation of the company.

Review loans to executives

Section 402 of SOX prohibits publicly traded companies from providing certain personal loans to directors and executive officers. Among the reasons identified were concerns over the use of company funds to provide personal financing to insiders. As a result, companies should work with appropriate legal counsel to determine which loan arrangements are considered prohibited and take appropriate corrective actions prior to the public offering to eliminate such existing loans.

Have your financial statements audited, and resolve potential disclosure and accounting issues

A company that wants to go public needs to have audited financial information that are in accordance with generally accepted accounting principles ("GAAP"). It is easier and more cost effective to perform audits of financial statements in the normal course of business, rather than shortly before going public. Further, audited financial statements provide increased credibility to your company. Another consideration is that if you have grown the business through acquisitions, then separate audited financial statements of properties or businesses acquired might be required at the time of the offering. Obtaining audited financial statements of these companies after the fact can be difficult and costly and could potentially delay your IPO timetable.

As your company gains financial sophistication, it should also begin preparing quarterly financial statements. Some offering documents include the prior four, eight, or twelve quarters to reflect growth and trends. Having them prepared can add to an investment banker's evaluation of your company.

As noted in “The SEC and securities regulations” (Appendix A) and “Current regulatory and disclosure issues,” company financial statements included in your IPO registration statement will have to conform to positions and practices prescribed by the SEC staff, which could differ from financial statements previously prepared.

Many property REIT IPO’s are not a single existing company but rather “roll-up” transactions which represent the combination of separate property entities and management companies. These REIT roll-up transactions can be particularly complex in evaluating financial statement reporting requirements. Frequently, they involve bringing together multiple entities that have some level of related ownership or operations. In these cases, there is often no entity that is the clear predecessor. Several sets of financial statements might be required, with one of them deemed predecessor. Most frequently, the one chosen to be the predecessor prescribed as will be the largest or oldest of the related entities combined with all other entities part of the IPO that are under common control (“Control Group”). Acquisitions of interests outside the control group might be considered purchase business combinations and subject to purchase accounting. Care should be taken in doing this analysis and documenting conclusions as this is frequently an area of significant SEC focus during the comment letter process. Having to change the reporting entities or include additional audited financial statements or significant pro forma financial statements could negatively impact your speed to market or even your ability to complete the registration statement process and the IPO.

Extensive discussion and evaluation could be necessary in connection with reaching conclusions in this area. Accordingly, given the time that could be lost and the implications to the success of the process, you should discuss these issues early with your accounting advisors and legal counsel. In some cases, prefiling discussions on these matters with the SEC might be prudent.

Draft management’s discussion and analysis

Many companies face difficulties describing the reasons for their performance. A registration statement and all future registrant financial statement filings with the SEC will require inclusion of management’s discussion and analysis (MD&A) related to these financial statements. MD&A requires a quantitative and qualitative discussion of your company’s performance. You will need to describe in depth such items as changes in revenue volumes and cost structures, liquidity and capital resources, sources and uses of cash flows, tenant relationships, employee compensation, unusual nonrecurring charges, significant environmental exposures, and other risks and uncertainties.

As you complete your year-end and quarterly financial statements, you should take time to write your MD&A. It can be difficult to remember why insurance costs went up or when a marketing campaign commenced three years after the fact. The practice of writing quality, comprehensive MD&A will expedite your registration process and will be a major step toward reporting as a public company post-IPO.

Identifying your going-public team — the players

You need expert direction to stage a successful IPO. It is a big production with an imposing cast of characters. Your company will audition and pick some of these professionals, but one of the starring roles is assigned to you. The SEC is a stock character who has long since memorized the lines and knows how to play the role.

Tip

Even with an experienced team of advisors, make sure your company takes an active role in controlling the progress of the IPO. Remember: Of all the parties involved, the company has the most at stake.

Securities and Exchange Commission

The SEC is charged with ensuring a fair and level playing field for public companies and their investors. It has the authority to pursue civil and criminal prosecution against those who breach established procedures. Liability could arise from material misstatements or omissions in a registration statement. If the SEC finds mistakes during the registration process, it can delay your IPO. If it finds mistakes or omissions after your company goes public, your company could soon have a thorough — and unpleasant — understanding of legal liability.

It is your duty to potential shareholders to constantly monitor the drafting of the registration statement. Make sure that you completely understand all of its components and the assumptions behind those components. The outside professionals you hire to execute your IPO are experienced business advisors. They help you make the final decisions but do not make them for you.

The SEC's Division of Corporation Finance reviews the registration statement and, ultimately, allows or denies a registration statement to "go effective" — that is, to sell shares. Registrants generally are assigned to the SEC's Division of Corporation Finance's review branches on the basis of standard industrial classification (SIC) codes. Teams of government attorneys and accountants — and in some cases industry specialists or engineers — review each filing. The chain of review leads up to the director of the division and the issuance of a "comment letter," as more fully described in "The going-public process."

The SEC concerns itself with the thoroughness and clarity of the registration statement and prospectus to make certain that these documents adequately inform potential investors. Keep in mind that the SEC only regulates the vehicle used to offer a security; it does not evaluate either the company or the quality of the security.

Company personnel

The level of a company's participation in preparing the registration statement frequently depends on the expertise of the company's personnel, although typically outside counsel will play a large part in the drafting process. In any case, company personnel will have to provide the necessary information with which to prepare the document and be actively involved in all aspects of the registration process.

You should not underestimate the commitment a public offering will require of you and your staff. The process commands a great deal of your attention and will likely distract you from the day-to-day operations of your business. This is common in an IPO and, in some instances, might necessitate hiring additional staff. As mentioned earlier, your team's commitment to the offering could well be the difference between a successful IPO and a failed attempt.

Your company's securities counsel

As with any selection of individuals to provide professional services, you must have the right chemistry between the management team and securities counsel. Your attorney will become the quarterback of your registration process. Your counsel must be professionally competent and able to put into plain English (see "Current regulatory and disclosure issues" for more information) technically challenging concepts and descriptions of complicated transactions. They must have the ability to evaluate large amounts of information and turn around documents quickly. It is imperative that you find an attorney with experience in the REIT IPO process and your property sector. Moreover, you should choose someone who will protect your interests when dealing with the underwriters and the SEC staff.

The investment banker

A critical part of planning your public offering is the selection of an investment banker or "underwriter." This courting process should start early and will allow each side to develop a level of comfort and knowledge to create a positive team environment. See "Choosing your investment banker" for a detailed discussion of what an underwriter does and how to choose and work with one.

Tip

The underwriter is a key player on your going-public team, so selecting the right underwriter is one of the most important decisions you will make. Take the time to develop a strong and comfortable relationship, and agree on roles and responsibilities. Your underwriter will represent your company in front of potential investors, analysts, and regulators. The underwriter should be as comfortable with and positive about your company as you are.

The underwriter's counsel

The underwriter's counsel is also involved in the IPO process. The underwriter's legal team generally drafts the underwriting agreement and reviews the registration statement and any related agreements and contracts filed as exhibits. The principal objective for review of the registration statement and other due diligence procedures is to ascertain on behalf of the underwriter that the registration statement is complete and not misleading. Another due diligence task performed by the underwriter's counsel is negotiation of the content of the "comfort letter(s)". See "The going-public process" for more detail. In addition, the underwriter's counsel usually prepares the "blue sky" filings necessary to have the registration approved by each state regulators.

Independent accountants

Your independent accountants will play a key role in the going-public process. Drawing on deep experience dealing with the SEC's staff and the registration process, your accounting firm should be uniquely positioned to play a lead role throughout the process as a strategic and technical advisor. The firm will be responsible not only for auditing the various financial statements to be included in the registration statement, but also for reading, in depth, the registration statement and related financial information. Your auditors will issue a comfort letter to the underwriters, organize and participate in any prefiling conferences with the SEC staff that involve the financial statements or related disclosures, and assist in the resolution of comments raised by the SEC staff in its review of the financial information included in the registration statement.

The importance of engaging qualified independent accountants long before the IPO cannot be overstated, particularly if your company has never had its financial statements audited. The first audit of many young and expanding companies often discloses accounting and financial reporting problems that must be resolved before the registration statement can be filed.

Large accounting firms such as PricewaterhouseCoopers LLP, are structured as full-service professional firms, offering services in various lines of business. Your independent accountants, as well as individuals from these other lines of service, can play a valuable role as advisors in a variety of areas before, during, and after the going-public process. Some of these areas include evaluating whether going public is the best alternative for your company; evaluating incentive compensation plans and accounting systems' needs and capabilities; reviewing terms and conditions of acquisitions; and conducting tax planning. You might employ a second accounting firm to provide IPO and financial reporting advisory services.

In selecting an accounting firm, make certain the firm is knowledgeable of your industry and its issues, is experienced in SEC reporting matters and the IPO process, is capable of handling all that will be required of the firm during the registration process and thereafter, and is acceptable to the underwriters. (See "PwC's strengths to serve the REIT industry" and "How we will support your IPO" for more information.)

The financial printer

Another important, but sometimes overlooked, factor contributing to a successful IPO is the role played by the financial printer. The printer is responsible for printing the registration statement and prospectuses according to the format and presentation guidelines specified by the SEC. The major financial printers can also "EDGARize" your document and make the required filing with the SEC via EDGAR. (EDGAR stands for the SEC's Electronic Data Gathering, Analysis, and Retrieval system. It performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others that are required by law to file forms with the SEC.)

With respect to EDGAR, it is important that you file Form ID with the SEC well in advance of the offering to receive your access and identification codes. Because this is specialized printing involving rapid turnaround, only a few printers can adequately handle it. Your underwriters, attorneys, and accountants will be able to recommend qualified financial printers.

The initial drafts of the document are usually maintained by the company's counsel on basic word-processing systems for ease of turnaround during the general drafting process. This is usually the most cost-effective approach because it is easier and cheaper to work on changes in this fashion rather than having them done by the financial printers (they generally charge on a per-change basis). In most cases, it is only when the document is nearing the "final" stages and being prepared for large print runs that it is turned over to the printer to be "EDGARized."

Other professional advisors

A public relations firm experienced in SEC registrations can help guide you through the restrictions of the "quiet period" and make the most of the opportunities that exist, help prepare materials for analyst presentations, and coach management with presentation skills. The "quiet period" begins on the date an offering commences (usually once the company and its underwriter reach a preliminary understanding) and generally ends 90 days following the effective date of the registration statement. During this period the company is limited on what information it can release to the public.

In addition, management teams are hiring speech consultants to help them prepare for the road show.

A stock transfer agent will need to be appointed to provide those administrative and operational services associated with trading stock. The transfer agent issues, cancels, and transfers stock certificates, pays dividends, and handles other corporate actions, as well as distributes shareholder reports.

Another administrative task you must consider is selection of a firm to design and print the company's stock certificates.

Choosing your investment banker

Selecting the right underwriter

Your initial contacts with the investment banking firm will likely be with representatives who are responsible for bringing in new clients and new transactions. You have assembled a team of experts with the skills and talents to advise you in your IPO. But the underwriter is the one who actually puts it all together. A company's dependence on an underwriter for a successful IPO is, therefore, very significant. That is why it is of unique and critical importance that you are familiar with the IPO process before you begin and that you know how to select the right underwriter for your company. You should also understand the basics of your underwriting agreement, as well as valuation and pricing matters, and the after-market support you can expect from the underwriter you choose.

Tip

In April 2003, the SEC announced a global settlement of enforcement actions against several Wall Street firms relating to an investigation of research analyst conflicts of interest. The terms of the settlement included several structural reforms intended to separate the firms' research and investment banking activities. Among the reforms were an agreement that research analysts be prohibited from participating in efforts to solicit investment banking business and the creation and enforcement of firewalls between research and investment banking to prohibit improper communications between the two. Given the limits on interaction between research analysts and investment bankers, the terms of the global settlement will likely impact your approach to evaluating and eventually cultivating a relationship with your investment banker and will result in less involvement from the research analyst in the IPO process.

The underwriter in brief

Technically, you can go to market without an underwriter, but the process is so complex and the know-how so specialized that it is rarely done. The complicated market issues that are arcane to most people are the stock in trade of underwriters, and it is in the best interest of your company's offering to take advantage of their expertise. The "value added" by your underwriter should be the assurance that your IPO will be properly managed and successfully marketed and supported, both before and after going public.

Your principal or "managing" underwriter will work with you to develop the registration statement, coordinate the road show, underwrite certain risks, and form a syndicate. This syndicate is composed of an underwriting group — which bears the risk of the underwriting — and the selling group. The selling group solicits interest from its retail and institutional clients, sells your stock once your IPO goes effective, and provides after-market support. The typical allocation of the underwriter's discount is 20 percent for the managing underwriter, 20 percent for the underwriting group, and 60 percent for the selling group. Each underwriter's share allotment commitment will be stipulated in the prospectus.

Good underwriters and investment bankers have a highly developed sense of what sells (or does not sell) and for how much. They also have an instinct for timing, and they are able to anticipate pitfalls and calculate risks. Underwriters and investment bankers contribute other skills and support, including:

- Experience in marketing, structuring the deal, and facilitating syndications with co-underwriters and brokers to create support for the stock after it is issued;
- Knowledge of market conditions and various types of investors;
- Experience in pricing stock so that it will be attractive to the market;
- The ability to help companies with future offerings; and
- A research department with the capability to analyze the company and its competitors, the market, and the economy as a whole.

Generally speaking, underwriters come in three sizes: “major bracket” or “wirehouse” firms with well-known names; a middle tier comprising mostly regional firms; and local firms. Not surprisingly, the size and scope of your company and of your offering will, in part, determine the size of the underwriter you enlist for your IPO.

Companies anticipating an IPO of $200-300 million or more and possessing the characteristics outlined in “Is going public right for your company?” can readily enlist major bracket underwriters. Regional firms often look for the same types of offerings, only they are in excess of $100 million. Local firms are often associated with smaller, higher-risk, or specialty companies.

A good working relationship with your underwriter is key, regardless of the size of the firm you select. You must have the trust and confidence in your underwriter to provide all the necessary information to execute your IPO successfully. Of course, the professional relationship between you and your underwriter is mutually beneficial. Your underwriter earns money from your offering in a variety of ways. These include:

- **The discount or commission.** This averages around 7 percent but could be up to 10 percent for more difficult or smaller offerings and down to 5 percent for larger or simpler offerings in a competitive market;
- **The right to underwrite future** offerings of the company’s securities;
- **Nonaccountable expense allowance.** This standard practice allows underwriters to bill you an amount that may not exceed 3 percent of gross proceeds without itemizing or otherwise detailing reimbursable expenses;
- **Other compensation,** such as warrants to purchase stock; and
- **Overallotments** (see “After-market support”).

Although these items might seem to allow quite a few charges by your underwriter, maximum underwriters’ compensation — both direct and indirect — is regulated and reviewed for fairness by the Financial Industry Regulatory Authority (FINRA) before the offering may proceed. Blue Sky laws also require a review of underwriters’ compensation by state examiners.

Closely associated with the underwriter is the underwriter’s attorney, who advises the underwriter on its extensive due diligence in the issuance. This attorney will also be thoroughly involved with the drafting sessions and will review the prospectus for compliance with SEC regulations. They will normally handle the individual state Blue Sky qualifications of the issue and work closely with the underwriter in drafting the underwriting agreement and the various underwriter-syndicate selling agreements. The attorney will review all important agreements into which the company has entered. Last but not least, the underwriter’s attorney will review all the corporate documents — such as minutes, bylaws, and articles of incorporation — to evaluate the adequacy of the registration statement disclosures.

The selection process

Selecting the right underwriter for your company is not simple. You could, in fact, be determining the success of your offering then and there, so take your time and be objective. In general, the size of the underwriting firm will correlate to the size of a company’s potential offering. Typically, a company will speak to several underwriters first, and this process is a two-way street. Exercise care in these early interviews to assure the relationship remains balanced. This will prove beneficial, both before and after going public. Ideally, begin building relationships one or two years in advance of your IPO. This might also allow the firm to help raise capital as a “bridge” to an IPO, should the need arise.

Courtship

An investment banking or underwriting relationship is a lot like a romance. It is often built on well-intended words, can get very intense and, for various reasons, can also fall apart. When it comes to your IPO, though, you must be in it for the long haul, so keep your eyes wide open.

Before you become "engaged" with a letter of intent, make sure you have done your homework. Although a letter of intent does not necessarily bind either party, it can prevent you from dealing with other underwriters for a stipulated period. Thus, do not enter into such a letter until you are confident of your choice. After you have identified two or three underwriters who are interested in your company, you must then evaluate each, in part, by answering some important questions:

- What is the firm's experience and track record with REITs? Financial printers (for example, Bowne, R.R. Donnelly, and Merrill Corporation) and independent research firms (Thomson Financial, IPOMonitor.com, Hoovers.com, and others) provide terrific data on underwriters — including number of deals overall and by sector, percentage increase in value, compensation, etc.
- Will the underwriter still provide quality after-market support in an active market?
- Who will lead the underwriting team? Can he or she command the full resources of the firm?
- Can the firm provide complete syndication, after-market support, and other services? Who will price the IPO, and is the personal chemistry good between you?
- Is the size of the planned offering or long-term financing attractive or just within the underwriter's threshold?
- Is the underwriter primarily a retail or institutional firm?
- What is the firm's backlog of other equity business over the time frame of your offering?
- What are the firm's national or regional distribution capabilities, and how do they compare to your company's needs?
- How strong and responsive is the research department and its reputation for your industry? What happens if the market heats up and the underwriter becomes uninterested in your offering or wishes to increase the offering size?
- What kind of unique terms, if any, will the underwriter require?

You can answer some of these questions by talking to the underwriting team, both the leader and team members with whom you will work closely as your offering progresses. You will find other answers by talking to companies with which the underwriter has worked in the past. You should make a few calls because before you say "I do," it is important to know whom your company is about to "marry." Ultimately, you must take the time to form your own opinion and trust your instincts. If the relationship does not work on a personal level, the hard work that must be done will be all the more difficult.

Also be aware that certain indicators that might be offered as "facts" are not necessarily so. The proposed per-share offering price is one such area, and you should exercise caution when evaluating underwriters on this basis. As attractive as the most favorable price may be, the reality is that the final offering price frequently changes — most often downward. In fact, it could be even more important to understand the underwriter's track record and distribution channel and their implications to the ultimate competition of the transaction.

The impact of retail versus institutional investors

An underwriter with a balanced mix of retail and institutional clients can provide shareholder diversity to your company. Institutional investors are usually viewed as longer-term investors, but if they decide to sell, they can cause a considerable swing in the price of your stock. As a result, institutions often wish to have sufficient public float (that is, more than a million shares held by nonaffiliated shareholders) to avoid excessive volatility. Thus, larger offerings tend to attract a greater mix of institutional investors.

On the other hand, even though retail investors can be a little more emotional in their trading, their individual decisions do not usually affect your company's stock unless a significant number act within the same time frame.

The "letter of intent"

This is the first of several written agreements into which you will enter with your underwriter. As noted, though it is a signed document, it is not binding beyond the narrow expense provisions it delineates. The second document, which is binding, is the underwriting agreement. Under normal circumstances, it is usually signed within 24 hours of the expected effective date of the registration statement. By then, the underwriter has received commitments or indications that are commonly well in excess of the offering size.

Between the time you sign the letter of intent and the underwriting agreement, your company will incur substantial expenses with no assurance that the offering will take place. This is not an idle observation. Stories do exist about IPOs reaching the eleventh hour, only to be withdrawn or delayed because market conditions have changed or the underwriter has reconsidered. Since equity REIT IPOs are generally very labor and cost intensive, it is not a trivial consideration.

The underwriting agreement

Underwriting agreements take two basic forms: "**firm commitment**" and "**best efforts**."

Under a firm-commitment agreement, the underwriters pledge to buy all of the stock offered in the IPO and resell it to the public. This arrangement offers the company the most security because the owners know they will receive the full sales price of the issue. However, until the underwriter and the company establish the final pricing and execute the underwriting agreement, the only commitment on the line is the underwriter's reputation.

In contrast, under a **best-efforts** commitment, the underwriter, using its best efforts to sell the stock, is under no obligation to purchase the stock should part of the issue remain unsold. An underwriter that considers the issue to be risky may choose this type of agreement to shift the risk to the company.

Tip

Most IPOs are firm-commitment underwritings. If the underwriter your company is evaluating is only willing to proceed with a "best-efforts" underwriting, you may wish to reevaluate alternatives because this could indicate your company is not ready to go public. As part of the underwriting agreement, it is common for an underwriter to request a "lock-up" of the insiders' stock a period of time typically ranging from six months to two years after an IPO. Even though sales of such shares might be somewhat limited because of other restrictions (i.e., Rule 144), it is the underwriter's goal to maintain a strong aftermarket by avoiding insider sales or "bailouts."

There are variations on these two basic agreements. An "all-or-none" commitment is a modification of the "best-efforts" agreement: All of the stock must be sold by the underwriter or the entire issue is canceled (at considerable cost to the company). In a partial "all-or-none" agreement, the underwriter requires sale of a specified quantity of the issue (typically two-thirds) for the "best efforts" to remain in effect on the remainder of the issue.

Valuation and pricing issues

You might be most concerned with two underwriting functions in particular: valuing your company and setting a stock price. Valuation and pricing issues can require significant time for both the underwriter and management and can have multimillion-dollar implications. Although there is no standard formula, certain factors are always included in the valuation process. First, the underwriter must consider the condition of the market as a whole at the time the IPO is undertaken. Second, the final price will reflect the demand generated as a result of the "road show," the period when your company and underwriter will try to generate interest in the offering.

Tip

Companies often develop projections for strict use with the underwriter in valuation discussions. Avoid sharing such projections with other parties, as this can easily be incriminating evidence if results fall short of your projections. Consult with your attorney and accountant on the use of any projections during the IPO process.

Prices of other successful and similar offerings will also come into play, as will your company's projected earnings and cash flow at the time of the offering. Price/earnings ratios and funds from operations (FFO) of other companies in your industry may be used to extrapolate a price for your stock. Finally, the underwriter will consider a host of other, more subjective factors including: expected growth; recent prices paid by sophisticated buyers in private transactions; inherent risks of the business; the company's stability; and the after-market trading objectives.

Taking all this into account, the underwriter will most likely choose a slightly lower price than the estimate. This is to guard against a weak after-market and to give buyers an incentive to purchase the stock. Major-bracket underwriters generally prefer a price range of $10 to $20 per share.

Tip

Stock splits and reverse stock splits are commonly used to adjust the expected IPO price to be between $10 and $20 per share. Advance coordination with the underwriters is key in ensuring such splits are needed only once. This will avoid unnecessary expenses and confusion.

Underpricing or overpricing occurs when the first trades of the newly issued stock trade above or below the offer price. Underpricing tends to be more persistent than overpricing, according to certain studies. This underpricing, if it is modest, has some arguable merits, which include after-market support, a reward to investors for taking a risk on the IPO, and — provided the market price holds or continues to increase — the enhanced possibility of a successful secondary offering.

A variety of theories for underpricing exists. One theory suggests that underpricing creates a high enough return so that even lower-quality issuances can be fully sold; another considers the phenomenon a reflection of the underwriter's incentive to avoid legal liability and reputational damage. Perception is part of what makes pricing tricky. Selling 20 million shares of stock at $10 a share or 10 million shares at $20 a share will raise the same amount: $200 million. But a lower per-share price can negatively influence an investor's sense of the offering's quality and an underwriter's desire to participate in the offering.

You must realize and keep in mind throughout the pricing process that your underwriters are faced with a tricky job. They must balance the pricing in such a way that neither the company nor the investor comes away totally thrilled — since one party's pleasure comes at the expense of the other party. Underwriters like to say they will attempt to maximize the offering price to the company and provide a reasonable return to investors.

In any case, it is likely that you will not know the pricing of your offering until the day before it becomes effective and the underwriter's agreement is signed. Until that point, the underwriter is not obligated to conduct the offering at any previously mentioned price or price range. Even though underwriters set the price at which the stock is finally offered, they do not control the price. Your underwriter cannot make a $10 stock sell and continue to sell in the after-market at $15; the market is too sophisticated to allow that kind of overvaluation.

The final question involves just how much of your company you will sell. This depends largely on your company's needs for the proceeds, market conditions, and market valuation. A general practice for non-REIT IPOs is to sell 15 percent to 40 percent of the post-IPO outstanding shares. However, REIT IPOs tend to be much more capital intensive, and it is not uncommon for REIT IPOs engaging in substantial deleveraging or acquisitions to sell more than 80 percent. A variety of factors tend to influence the amount, including selling enough shares to justify the expenses and to interest the underwriter, while not selling too many shares because this could cause excessive dilution, be perceived as a bailout, or create problems with state Blue Sky laws.

Timing is of the essence in your IPO. Good underwriters are masters of timing. They are experienced in avoiding seasonally slow periods and, more importantly, finding a "window" in the market, the most advantageous time to make a successful offering at the best price. When this "window" opens, it generally places enormous time pressure on everybody. At this point, the primary concern of your entire team should be to exercise extreme care and due diligence such that pressure does not result in failure to make proper disclosure.

After-market support

After all that work has been done and your IPO has succeeded, your underwriter still has more work to do. Competent after-market support entails providing research data on your company and its competitors to the financial community as well as financial and business advice to you. A quality road show should leave an unsatisfied demand that will further help the after-market support and performance of your company's stock.

The quality of the firm you select and its ability to take large positions in your stock are important to supporting the after-market value of your shares. The underwriter's after-market support may come into play shortly after the IPO, should speculators jump on the issue hoping to "flip" it or turn it around and sell their stock quickly at a profit. If too many people sell their shares and flood the market, the stock's price could fall below the offering price. If this happens, the underwriter must have the financial resources to buy the stock and, if necessary, hold it until the stock's price rises.

SEC rules permit underwriters to offer and sell to the public more shares than they are contractually obliged to buy (an "overallotment"). The underwriter may take advantage of this provision to stimulate demand in the after-market or to help maintain an orderly market for a "hot" stock. To stimulate demand, the underwriter sells shares directly to investors. To cover this short position, the underwriter will enter a bid to buy the stock in the after-market, which helps support the price.

To help maintain an orderly market, the underwriter buys from the issuer a set number of additional shares (typically up to 15 percent of the offering) at the offering price, solely for covering overallotments. The "Green Shoe Option" — so-called because the first instance involved the Green Shoe Company — must be exercised within 30 days of the effective date. Thus, this additional supply of stock can help unsatisfied demand from causing a "run-up" of the stock.

The going-public process

The following is an overview of key steps in the IPO process and items to consider about the establishment and filing of Form S-11:

Going public and being public: an organization's execution blueprint

	Pre IPO	Post IPO
Accounting, Reporting & Financial Effectiveness	Evaluate and resolve complex accounting issues, SEC reporting and other issues; consult on financial statements and other S-11 information with auditor and service providers. Review SEC Comments and Revised S-11 Accelerate financial close and reporting timeliness; enhance policies and procedures to support accelerated timeline and certifications; enhance management reporting, including budgeting and forecasting Assess accounting and finance gaps Recruit additional finance talent and improve departments	Prepare 10-Q in 45/40 days and 10-K in 90/75/60 days. Continue to enhance management reporting
Governance & Leadership	Assess corporate governance gaps Provide solutions for Board / Audit committee (independence) gaps pre-filing	Perform incremental compliance and transparency enhancements
Internal Controls	Assess internal controls gaps Create SOX 404/302 compliance plan Execute SOX pre-filing steps (Sec.301) Recruit SOX talent Perform Road Show	Execute SOX 404 readiness
Media & Investor Relations	Assess media and investor relations gaps Establish process for earnings releases and earning calls Provide solutions for personnel and process gaps pre-filing (in conjunction with reporting needs)	Perform incremental enhancements
Treasury & Risk Management	Assess treasury needs Provide solutions for personnel and process gaps pre-filing	Perform incremental enhancements
Legal	Assess legal needs Create appropriate legal entity structure; obtain required regulatory approvals Retain securities counsel, retain underwriters	Operate under new legal guidelines
Tax	Assess tax needs Create appropriate tax structure and strategy for public company Provide solutions for personnel and process gaps pre-filing	Ensure tax strategic plan and enhancements and monitor REIT compliance
Human Resources	Assess HR and benefits needs Create appropriate compensation, benefit plans and agreements for public company Support recruiting and reorganization efforts of work streams throughout the organization	Ensure adequate resources and administer new plans
Technology	Assess IT needs Modify or enhance technology capabilities to support financial reporting requirements, and to support effort to work streams throughout the organization	Perform incremental enhancements
Project Management	Establish project governance Manage the pre-filing activities	Manage the post filing activities

S-11 Effective

Ideally two years in advance of going public, you should do your best to operate as though you are already a public company. You will learn invaluable lessons in managing expectations.

Typical two-year timeline

Before effective date

	2 Years	4-8 Months	1-3 Months	20 Days	1-10 Days	Offering Day
Company	Act like a public company	Select the team; hold organizational "all hands" meeting Prepare financial statements in accordance with GAAP/SEC requirements, and engage a firm to audit these financial statements	"Quiet period" begins; hold "all hands" meeting; execute letter of intent; select printer and transfer agent; "clean up" financial statements, and review their compliance with Regulation S-X	"Cooling off" period begins; executives perform road show		Execute underwriting agreement; issue press release
Company's counsel		Perform "housekeeping" of company records; draft S-11	File w/the SEC; file NYSE/NASDAQ listing application	Clear SEC comments	Pricing amendment filed; acceleration requested; file final registration statement	
Independent accountant			Complete audit/review of annual and interim financial statements; review registration statement	Audit/review updated financial statements, if necessary; assist in the responses to SEC comment letter	Deliver draft "comfort letter"	Deliver final "comfort letter"
Investment banker			Assess market; make presentation to board; continue due diligence	Distribute "red herring"; orchestrate road show; solicit expressions of interest	Form syndicate; place "tombstone"	Execute underwriting agreement
Investment banker's counsel			Begin due diligence; undertake "Blue Sky" filings		Continue due diligence	

	2 Years	4-8 Months	1-3 Months	20 Days	1-10 Days	Offering Day
Financial printer				Print preliminary registration statement/ prospectus (red herring); produce SEC regulation "filing packages" Communicate that all comments have been resolved and there are no further comments		Print final registration statement/ prospectus
SEC		Conference regarding issues, if necessary	Review preliminary registration statement; issue comment letters and review responses			Declare offering effective

After effective date

	5-7 Days	0-30 Days (optional)
Company	Provide certificates; collect proceeds	Provide additional certificates; collect additional proceeds
Company's counsel	Deliver documents/opinions	Update closing documents
Independent accountant	Deliver "bring down comfort letter"	Second "bring down comfort letter"
Investment banker	Provide net proceeds	Exercise overallotment option; make determination about issuing research report
Investment banker's counsel	Assist in closing	Assist in second closing

Once a preliminary understanding with your underwriter has been reached, the IPO process begins in full force. A "quiet period" also begins during which your company is subject to SEC guidelines regarding publication of information outside the prospectus. The opportunity to enhance awareness of your company and its name, products, and geographic markets will be limited, since any publicity that creates a favorable attitude toward your company's securities could be considered illegal. However, the continuation of established, normal advertising and publicizing of information is acceptable.

This phase of the offering should start with a sense of urgency, because the clock is ticking. You will need to juggle four tasks in parallel timelines while keeping your business running as usual. These four tasks are:

- The preparation of the preliminary prospectus;
- The investigation of your affairs for underwriter due diligence;

- The monitoring of market conditions for pricing purposes; and
- The preparation of marketing materials for the road show.

Typically, REIT IPOs take somewhat longer than other types of IPOs. You can generally expect the process to take anywhere from three to eight months from the time your company decides to go public until it receives the proceeds from an offering. This is frequently longer in the case of more complex REIT roll-up IPOs or those with significant historical acquisitions. The duration depends on, among other things, the readiness of your company to go public, market conditions, the time necessary to complete required audits of the predecessor or separate financial statements for property acquisitions, and the availability of the information that must be disclosed in the registration statement. The principal steps in an IPO process are listed below.

Tip

As excited as you might be about your IPO, do not promote it during the quiet period. Allow the quiet period to be just that — quiet. Keep confidential company information confidential. Spreading news about the company to friends, family, and even in casual conversation to the person next to you on an airplane, can be a real temptation — and can mean real trouble.

Of course, you are not the only source of information. Keep in mind as well that the press, which is by definition independent, will time its articles according to its interests, which might not be in the best interests of your offering. Excessive attention during the quiet period might not be helpful, and managing press interest should not be left to chance. Work with your experienced public relations firm and SEC counsel to properly maintain the quiet period.

Conducting the "all hands" meeting

The first step in the IPO process is arranging an "all hands" meeting. This meeting should be attended by all members of the registration team — company management, independent accountants, underwriter, and your company's attorneys, as well as the underwriter's attorneys. The purpose of this initial organizational meeting is to discuss the nature of the offering and an appropriate SEC registration form, coordinate responsibilities for sections of the registration statement, establish a timetable for the anticipated filing date, and share information regarding the working group's availability. Throughout the IPO process, additional meetings (either in person or via teleconference) will take place to discuss progress, any problems, review drafts of the registration statement, and determine whether the registration process is on schedule.

Registration statement form

The determination of the SEC form to be used for registration purposes is a legal determination that your company makes in consultation with counsel and the underwriter.

Form S-11 is the basic registration statement for real estate company IPOs including REITs. In general, it is more extensive and voluminous than other registration statements. The guidance, as set forth in this guide, does not incorporate guidance for smaller reporting companies, as defined, which differs from other reporting companies. You should consult with your legal counsel and external accountants to determine the appropriate requirements for your company. In addition, a number of special disclosure rules and filing requirements are unique to real estate. The following guidance is meant to be a general summary of financial reporting requirements; however, depending on the facts and circumstances of your IPO, there may be different requirements. Your company's legal counsel and external accountants can help in determining what your specific financial reporting requirements might be.

Registration requirements	Form S-11[1]
Annual income statements	3 years
Balance sheets	2 years
Annual statements of cash flows	3 years
Annual statements of stockholders' equity	3 years
Comprehensive income	3 years
Earnings per share (4)	3 years
Financial statement schedules	Depending on the financial statements, you might be required to include a Schedule III, which includes a listing of the real estate properties held by the registrant and/or Schedule IV, which includes a listing of certain mortgage loans secured by real estate.
Management's discussion and analysis	Required, including a discussion of the results of operations for all periods presented.
Interim financial statements (with footnotes)	Required if the registration statement is to be effective more than 134 days after the most recent audited balance sheet that is included in the registration statement.[3] This includes a balance sheet as of the most recent interim period, year-to-date comparative statements of income and cash flows, and a year-to-date statement of stockholders' equity.
Selected financial data	5 years (although not required to be audited the two earliest years of income statement data is often reviewed by the independent accountant)
Selected quarterly financial data	Not required in an initial registration statement. If presented, it will likely be reviewed by the independent registered public accountant.
Separate financial statements for significant acquisitions	Required (see below)
Pro forma financial information[2]	Required

(1) The requirements are those for the registrant and its predecessor(s) for the periods indicated or from inception, if less.
(2) Additional information on pro forma financial information requirements can be found in the "Financial information" section under "pro forma financial information".
(3) Your independent registered public accountant will perform a review, as opposed to an audit on the interim financial statements.
(4) Since most predecessors of REIT IPOs are in the legal form of a Partnership, generally EPS will not be presented for historical periods in the Registration Statement on Form S-11. Consult your independent accountant to determine your Company's requirements.

Accompanying notes to financial statements are required for all included financial statements.

Matters unique to real estate

A number of issues and transactions that are somewhat unique to real estate IPOs include:

- Roll-up transactions
- Blind pool REITs

Each of these areas will be discussed in more detail in the following sections. While the discussion covers the frequent reporting issues for formation of a REIT IPO, many possible permutations of reporting requirements could arise under different formation fact patterns. The company should begin working with its external accountants and counsel as soon as practical when the general terms and direction of the planned offering are known to help identify and resolve these issues on a timely basis so that they do not adversely impact the timing of the offering.

Roll-up transactions

An evaluation of the financial statement needs for a REIT roll-up transaction is often quite complex. Generally, these transactions involve more than a single entity including the issuer of the securities and the predecessor entity or group of entities. The level of complexity depends on the commonality of control and ownership of the existing property portfolio. Frequently, a REIT roll-up IPO registration statement requires that several sets of financial statements be included. Generally, these are included in the following order (if required):

- Pro forma financial statements (required)
- Financial statement(s) of the legal registrant which is the new REIT (required)
- Financial statements of the predecessors (common)
- Financial statement(s) of "related businesses/properties" which are not under common control of the entity deemed to be the accounting acquirer (common)
- Financial statement(s) of third party acquisitions (common)

The discussion below relates to requirements for the initial registration statement process only and does not cover any separate requirements for existing registrants. Additionally, certain types of roll-up transactions require separate reporting to the participants under the Limited Partnership Roll-up Reform Act of 1993. In some cases, the company must fulfill additional reporting including proxy like documents and an opinion as to the fairness of the roll-up transaction. Discussion of these matters should be with legal counsel.

Pro forma financial statements (required)

Pro forma financial statements are prepared to show the effects of the transactions contemplated in the registration statement (such as the offering itself, the use of proceeds, the formation transactions assuming the combination of entities participating in the roll-up, etc.) and certain completed transactions that are significant. Generally, these financial statements are prepared assuming that the transactions occurred at the beginning of the earliest period presented for the pro forma income statements and as of the date of the latest historical balance sheet presented, for the pro forma balance sheet.

Nonrecurring gains/losses relating to the formation transaction(s) or use of proceeds are included in the pro forma balance sheet and are usually disclosed but are not included in the pro forma income statement because they are not indicative of future operations. These could include transaction gains/(losses) expected to be recorded upon the IPO or write offs of certain deferred charges upon the consummation of the transaction(s).

Additionally any items that are not functionally supportable at the time of the IPO cannot be included as an adjustment to the pro form formal statements. These typically include items such as expected professional fees, salaries and other G&A costs expected to be incurred as a public Company. Many registration statements will disclose these amounts.

These pro forma financial statements are not audited. However, as they are often complex and expected to reflect the post-acquisition accounting, your external accountants will review these statements for consistency and appropriateness.

Financial statement(s) of the new REIT (required)

The financial statements of the new REIT are frequently referred to as the "seed balance sheet." In most REIT roll-up transactions, a new REIT is created prior to the transaction. It is the issuing entity for the new securities being offered to the public and the legal registrant. Generally, this is the general partner and (post-transaction) majority owner of the operating partnership in an UPREIT structure. All operations of the post-transaction entity are conducted at the operating partnership level.

The "seed balance sheet" must be audited as of a date that is within 134 days of the first filing or the latest year-end if it existed then. Generally, it consists only of small items and therefore the audit is not complex or very time consuming. In situations that predecessor financial statements are also presented, the seed balance sheet will no longer be presented after the IPO is consummated. During the process of the IPO, this seed balance sheet will be updated on an automatic basis at every quarterly period end but is not required to be audited for each update unless a new year-end is being presented.

Financial statements of the predecessor/acquirer (required)

Generally a blind pool REIT IPO does not present predecessor financial statements in the registration statement and instead only presents the seed balance sheetas of a date within 134 days of the filing of the registration statement. However in a roll up REIT IPO pre-existing entities that are controlled by the control group are being acquired legally by the new REIT. You will need to determine whether common control exists among all of the entities being contributed and if not, which entity is the accounting acquirer and which entity or combination of entities represents the predecessor. All entities under common control of the accounting acquirer will be combined to form the predecessor financial statements. An evaluation of the financial statement reporting requirements is done in the following steps:

Step 1 – Determine which entity is the Accounting Acquirer

The SEC has generally taken the position that the accounting acquirer in any business combination must be one of the combining legal entities. Deciding which entity is the accounting acquirer requires significant judgment and is a key part of determining which financial statements will be required in the Registration Statement. The first step in this process is to decide which entities will be part of the IPO (i.e. will be subsidiary of the OP/REIT after the transaction), which will generally be a decision driven by legal and tax implications. Once you know this,you will need to decide which one of those entities should be considered to be the accounting acquirer by carefully weighing the following criteria.

- Relative voting rights in the combined entity after the transaction
- Composition of the governing body of the combined entity
- Composition of senior management of the combined entity
- Terms of exchange of the equity interests
- Relative size of the of the entities measured in total assets, revenue and equity

Step 2 – Define the "control group"

The next step is to determine the control group of the accounting acquirer. To make this evaluation, one must first determine what constitutes the "control group." As part of the roll up, there may be different groups that own thye various properties that are being contributed into the IPO. When making the determination of the various groups which control those properties accounting rules and SEC guidance provide for a very narrow view of a control group that generally includes the following:

- An individual or enterprise holding more than 50 percent of the voting ownership of each entity;
- A group of shareholders holding more than 50 percent of the voting ownership of each entity, and a preexisting written agreement that exists requiring them to vote a majority of the entities' shares in concert; and
- Immediate family members (married couples and children, but not their grandchildren) holding more than 50 percent of the voting ownership.

In many cases other than these, significant judgment is required to determine whether common control exists.

The rules are generally written for corporate entities where control is evidenced by voting rights provided to equity instruments. The real estate industry, however, commonly uses partnerships or limited liability companies whereby control is often considered to be derived through a general partner or managing member interest. However, some of these control rights can be obviated by the ability of limited partners to terminate or "kick out" the general partner or managing member.

In many REIT roll-up transactions, the control group is often defined as the management company and its owners. However, if these entities are jointly controlled by unrelated individuals, this evaluation becomes more difficult.

Step 3 – Define which of the contributed entities are deemed to be under common control

The next step is to determine if any of the entities being contributed to the IPO are under common control. Similar to the concept of a control group, the concept of "common control" is narrowly defined. Several factors must be considered to determine whether common control exists. While majority voting ownership interests is the most common form of control, control can also be established through other means, including variable interests under the variable interest entities subsections of ASC 810, contractual or other legal arrangements, or the rights of a general partner in a partnership (see ASC 810-20-25). An assessment of whether common control exists is based on all of the facts and circumstances surrounding the relationship(s) between the parties (both direct and indirect). Generally, entities consolidated by the same parent, or that would be consolidated if consolidated financial statements were required to be prepared by the parent or controlling party, are considered to be under common control.

Generally, entities/properties that are part of a common control group are reflected in the pro forma financial statements and post-transaction accounting at their historical carrying values (frequently referred to as "carryover basis").

For the entities deemed to be part of the common control group, all of the entities' historical financial statements are presented on a combined basis for the periods required, which makes up the "primary financial statements." These financial statements must also be audited. Combination rules generally provide that elimination entries be recorded in combined financial statements similar to those required in consolidated financial statements. Most commonly, when the management company is included in the common control group, this includes elimination of management contracts and other related party transactions between the combined entities. In many cases, if entities/properties are not considered to be under common control, they could be part of acquisitions of related businesses/properties described in the next section. REIT roll-up transactions frequently include entities and/or properties that are managed by the control group but are not part of the common control group. Sometimes the common control group has an existing investment in these entities and accounts for them under the equity or cost methods.

In the pro forma financial statements, any cost/equity method investments owned by the predecessor group which will then be controlled by the REIT upon the IPO will be eliminated. In addition, the pro forma financial statements would reflect the acquisition of these entities/properties at 100 percent of fair value (including the portion previously held by the control group). The holding period gain on the portion previously held would be included in the pro forma balance sheet and disclosed but would not be presented in the pro forma income statement because it is nonrecurring and not indicative of future operations. In addition, the effects of related party transactions such as property management contracts (where the management company is included in the roll-up) will be eliminated as a pro forma adjustment.

Financial statement(s) of "related businesses/properties" (common)

As part of its initial registration statement, the company will need to file historical financial statements of the registrant and predecessor group, as described above. Additionally, if during the periods presented by the predecessor there have been significant acquisitions of either a business (as defined by SEC rules) or real estate operations (as defined by the SEC rules and interpretations), the Company may need to include historical financial statements of the acquired entities/properties for periods prior to their acquisition. Additionally historical financial statements may need to be provided for those business/properties that are not included in the control group but will not be acquired by the new REIT.

> ***Tip***
>
> If a required audit cannot be completed for any reason, significant delays in the IPO process can occur. For post-IPO transactions, the company could become a deficient filer. In certain limited circumstances (such as bankruptcy and dissolution of the seller), the SEC has granted some relief. Obviously, making such relief requests can cause delays in the IPO process.

The SEC has different rules for "real estate" and "business" acquisitions. Further, it does not use the same definition of a business as is applied in GAAP. In general, the SEC staff has considered properties that derive their operations largely through longer-term leasing to be real estate operations (such as apartments, office buildings, and retail and industrial buildings). Real estate with shorter-term revenue cycles that are more susceptible to market conditions and management factors (such as hotels, parking garages, assisted living facilities, and golf courses) are considered to be businesses.

For financial statement requirements, Regulation S-X Rule 3-05 (Rule 3-05) is the authoritative guidance on acquisitions of businesses, and S-X Rule 3-14 (Rule 3-14) is the authoritative guidance on acquired real estate operations.

As noted, financial statements for significant acquisitions will be required; therefore, the first step is to determine which if any are significant. Also, entities that are related must be evaluated together when measuring significance. Acquisitions or probable acquisitions are considered to be related if any of the following conditions apply:

- The acquisition of one is conditional on the acquisition of the others);
- Each acquisition is conditioned on a single common event (for instance, the IPO/formation transactions); and or
- They are under common control or common management.

S-X Rule 3-05

Rule 3-05 requires that historical financial statements for "significant" business acquisitions and significant probable business acquisitions be included in the registration statement. The level of significance also drives the number of periods which will be presented. There are three tests in measuring: purchase price (investment test), income from continuing operations (income test), and total assets (asset test). If any of the tests are not met, rule 3-05 requires full financial statements, which include balance sheets, statements of operations and changes in equity, cash flow statements, and all related disclosures. 20% significance requires 1 year of historical pre-acquisition financial statements, 40% requires two years and 50% generally requires 3 years.

S-X Rule 3-14

Rule 3-14 requires historical pre acquisition financial statements for both property acquisitions and probable property acquisitions if an acquisition is significant at a 10 percent or higher level. Significance is measured using the company's gross of debt assumed investment in the property (or a group of properties acquired from a single seller or otherwise related properties) compared to the company's preacquisition total assets included in the latest audited balance sheet of the acquirer. The financial statement requirements may also include those acquisitions during the latest audited year or during the current year and probable of being completed that are individually insignificant but are significant in the aggregate at the 10 percent level.

To determine if significance there holds in the aggregate have been met, combine individually insignificant properties acquired during the most recently completed fiscal year for which a balance sheet is included in the registration statement; and separately for those acquired after the end of such fiscal year together with probable acquisitions. When aggregate significance exceeds 10 percent in one of those groups for the properties in that group, financial statements are required for each individually insignificant property acquisition that exceeds 5 percent, as well as for those remaining individually insignificant property acquisitions (<5 percent) necessary to provide greater than 50 percent of the total aggregated group of individually insignificant acquisitions. The SEC staff will not require the financial statements of an individually insignificant operating property acquired from an unrelated party if the acquired operations have been included in the registrant's (or the predecessor entities') audited operating results for at least nine months.

Tip

For IPOs other than blind pool offerings or newly formed REITs with no significant prior operations, S-X Rule 3-14 audited financial statement requirements must be evaluated for acquisitions that have occurred during any of the years presented and the period subsequent to year-end. Post-IPO acquisitions also might require that additional financial statements be filed.

The ability to obtain the data necessary to include these historical financial statements could cause significant delays in preparation or filing the initial registration statement or cause the company to be a deficient filer for post-IPO transactions. Accordingly, when negotiating acquisitions prior to or after an IPO, be sure to include in the "Purchase and Sale Agreement" that the seller will provide and/or facilitate the issuance of audited financial information for the necessary preacquisition operating periods — including signing appropriate representation letters.

Tip

A newly formed REIT without significant prior operations may compute significance by using a base that combines the properties acquired immediately before filing the initial registration statement, those that will be acquired upon closing the IPO, and the probable property acquisitions. With certain modifications to adjust for properties not acquired or that are no longer probable, this base can be used for future property acquisitions after the effective date of the IPO, until the company files its initial Form 10-K.

Rule 3-14 allows registrants to file abbreviated income statements, which "…shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses, and federal and state income taxes." The pro Forma financial statements will include all the relevant adjustments to reflect the impact of purchase accounting (including depreciation and amortization of lease intangibles), restarting existing straight line rents and interest on new financing put in place or assumed (at fair value).

The number of periods to be presented in the Rule 3-14 financial statements is based on the relationship with the seller rather than other measures of significance. If the property is acquired from a related party, then three years of audited operating statements plus the latest unaudited interim period are required. For properties held by the related party for less than three years, financial statements are required for the greater of the period held by the related party or one year. If the property is acquired from a third party then only one year of audited operating statements and the most recent unaudited interim financial statements are required.

Applying these rules in various types of REIT IPO transactions can be complex. Other considerations may include:

- Properties leased to a single tenant,
- Properties leased to the former owner (for example, sale leaseback transactions);
- Recently developed properties; and
- Properties to be demolished

Single tenant properties

For properties that will be net-leased to a single lessee on a long-term basis immediately after an acquisition that transfers substantially all of the property's nonfinancial operating and holding costs to the tenant, separate audited financial statements of the lessee (as opposed to the property operations) may be required if the purchase price of the property is significant. Significance here is calculated as a purchase price that exceeds 20 percent of the greater of total assets at the latest audited year-end balance sheet required to be included in the filing or, as it relates to the distribution period for blind pool offerings, the amount expected in good faith to be raised in the next 12 months pursuant to an effective registration statement.

Where the purchase price of the property exceeds 10 percent but is less than 20 percent of these measures, summarized financial information as defined in S-X Rule 1-02(bb) should be provided in the registration statement. If the tenant continues to be significant at >10% <20% levels after the IPO, the registrant should include this information in the footnotes of its financial statements. If the lessee is a public company that currently files reports with the SEC reference can be made to those filings. The periods presented for net lease property acquisitions should comply with S-X Rules 3-01 and 3-02, which generally means they are for the same periods as the registrant's primary financial statements.

Recently developed properties

A registrant is not required to present financial statements for a property for which there is no rental history in the periods to be presented when the property was owner-occupied or newly constructed. However, if the property is to be net-leased to a single tenant, financial information of the tenant might be required. Generally, if the property has commenced operations in the period, then the financial statements should be presented. However, for periods of less than one year, a registrant could request SEC relief from the reporting requirement.

Properties to be demolished

The SEC staff has indicated it would not object to the omission of the S-X Rule 3-14 financial statements of the acquired or to be acquired property if the prior rental revenues and operating costs of the property are not representative of the new property to be built. The omission of the financial statements should be explained in the filing.

Blind pool REITs

As part of its initial IPO, a blind pool transaction will usually include only an audited "seed balance sheet" of the new REIT created. Generally, no pro forma financial information is required unless there are consummated or probable acquisitions at the time of the filing to reflect (see "Financial statement requirements for third-party property acquisitions").

A blind pool continuous offering has different requirements for property acquisitions during and after the distribution period — largely based on how significance is measured.

When the securities are being sold (referred to as the "distribution period"), the Company must file a sticker supplement describing each significant property that was not identified in the prospectus whenever a reasonable possibility exists that it will be required. Every three months during the distribution period, you will need to file a post effective amendment to the S-11 to consolidate all of the stickers and includddeee or incorporate by reference.audited financial statements for all significant consummated property acquisitions. However, if the post effective amendment is filed to consolidate the stickers or update previously filed financial statements and not to report a fundamental change, you will be able to take advantage of the 71 day rule of extention fo file the financial statements. During the distribution period, an individual property is considered significant if its is acquired from a related property, it is greater than 10% or is one of a group of properties that together aggregate more than 10% and are other acquired from a single seller or are related. Significance during this period is computed by comparing the REIT's investment in the property (gross of debt assumed) to the REITs total assets as of the date of acquisition. After the distribution period but before all of the net proceeds are invested, audited financial statements for every significant property that a company has committed to purchase (by signing a binding purchase agreement) must be filed on a Form 8-K. The determination of significance for the financial statement requirements after the distribution period but before all funds have been invested is based on 10 percent or more of the net proceeds of the offering. This obviates the need to also file an Item 2.01 Form 8-K once the acquisition is completed.

In addition to the financial statement requirements, other reporting requirements might be relevant to blind pools or partial blind pools. The Securities Act Industry Guide 5 ("Guide 5") applies to registration statements for offerings of interests in real estate limited partnerships. The SEC has also extended the application of Item 8 of Guide 5 to a registration statement for an equity offering by a REIT that does not have prior operating results, if the registration statement does not specify the use of a material portion (usually 75 percent or more) for specific acquisitions of the expected proceeds of the offering. Blind pool REITs frequently fall into this category. Item 8 of Guide 5 calls for prior performance tables that illustrate the performance of "programs" sponsored by the general partner or promoter of a program and its affiliates ("sponsors"). In general, the SEC's position is based on the view that if the investment decisions are not being made based on identified assets, they are being made based on the sponsor's ability to identify, acquire, and operate such assets. Accordingly, past performance information of the sponsor is considered very important to the investors as they make their investment decisions.

Although this information need not be audited pursuant to the SEC regulations for the registration statement, as a practical matter, the underwriter will request comfort letter procedures to be done on much of this information. Such procedures could necessitate considerable time and effort by the external auditors. The SEC has recently been reconsidering the level of disclosure required by Guide 5 in light of practical limitations and/or possibility of disclosing extensive information which may not be relevant to the investor. Accordingly, discussion with legal counsel and, potentially, direct discussions with the SEC is recommended in this area. In addition, the potential requirements for Guide 5 prior performance tables (including related comfort letter procedures) should be addressed as early as possible with external securities counsel, external auditors, and the underwriter and its counsel.

Preparing the registration statement

Registration statement preparation and filing can be relatively complicated and time consuming. This technical process requires substantial planning and coordination in order to provide the information specified by the SEC and to do it in the most efficient manner. It involves a great deal of effort by your management team, lawyers, and accountants to position your company as positively as possible while disclosing any negative risk factors.

During the preparation process, your scheduled timetable for going public can fall asunder, causing a delay in the filing date. Therefore, it is imperative that the entire team be thoroughly familiar with the registration statement requirements, be cognizant of the deadlines, periodically assess the status of sections of the registration statement, and review the sections timely.

> ***Tip***
>
> Management knows the business best, so take an active role in providing direction in the drafting process. Resist the temptation to allow the underwriters or attorneys to significantly draft the business discussion without extensive management involvement because this could result in a registration statement that has deviated from reality. The underwriters and attorneys can provide significant insights, but only you can tell your story.

The registration statement, Form S-11, consists of two principal parts. Part I contains the essential facts regarding the business operations, financial condition, and details of management that are required to be included in the prospectus. This part also includes the company's financial statements. Part II represents additional information that is not required to be included in the prospectus.

Form S-11

Information required in the Form S-11:

Part I — Information required in the prospectus

Prospectus summary. This appears at the beginning of the prospectus. It is a short summary describing the company, its business, the type of securities being offered, the amount of estimated proceeds, and the intended use of the proceeds. It may include certain summarized financial information. This section also includes the complete mailing address and the telephone number of the company's principal executive offices. Although not required, many companies include their website address in this section.

Risks associated with the business. Any factors that make your offering speculative or risky must be disclosed. These factors should be specific and include those unique to your company. Risks might include the following:

- Recent adverse developments or operating losses;
- The need for additional financing;
- The dilution to public investors;
- Industry trends or business seasonality;
- The existence of significant competition;
- The company's dependence on a few tenants, banks, joint venture partners, or key members of management;
- Information regarding significant contracts or licenses;
- Impact of current proposed or possible legislation (for example, changes in REIT rules, investment company rules, environmental or healthcare laws); and
- Technological changes.

Use of proceeds. The filing must disclose the planned use of the proceeds from the offering. This section of the registration statement should be carefully drafted because the SEC requires reports on the disposition of the proceeds once the offering is completed. If the actual use of proceeds changes between the filing date and the effective date, it might be necessary to revise this section of the registration statement on the effective date. Typical uses of proceeds include debt reduction, acquisitions, and special distributions to purge undistributed earnings and profits.

Tip

There is no room in your new life as a public company for capriciousness in regard to your use of proceeds from your offering. Use proceeds for the items listed in the prospectus. If you do otherwise, you risk losing credibility for future financings, and you might have to explain differences to the SEC.

Dividend policy and restrictions. Your company must disclose its current dividend policy, any anticipated changes to that policy, and any restrictions on the company's ability to pay dividends. For example, many new public companies retain earnings to finance operations and expansion rather than pay dividends. Restrictions might be based on debt, contractual agreements, or the regulatory environment in which your company operates. However, because a REIT is required to distribute at least 90 percent of its ordinary taxable income, the company should discuss its intentions to comply with these requirements and (if known) whether the company plans to distribute more than the 90 percent required.

Tip

Dividend policy and expected dividend levels have historically been critical elements for the REIT IPO. Extensive focus is placed on the "Magic Page," which relates to adjusted results and expected dividends and coverage.

The "Magic Page" is the popular name for the section on dividend policy for roll-ups of existing portfolios (or, for UPREIT structures, the broader term "distribution policy" is used to cover both REIT dividends and distributions on OP units). This section describes the company's planned distributions out of operations. Generally, the presentation starts with pro forma net income (as affected for acquisitions/dispositions and the effects of the offering) and makes adjustments to arrive at funds from operations (FFO) and further adjustments to arrive at cash available for distribution.

Equity REIT IPOs have traditionally been marketed largely off expected dividend yield. These distributions are typically based on net operating income and, because of depreciation, are more sufficient than required to maintain REIT status. Accordingly, some of a REIT's dividends will represent a return-of-capital for tax purposes. Both the investors and underwriter focus heavily on this section during the marketing process. The SEC also has a long history of comments on what can and cannot be included in this section. Further, because these pages generally include one or more non-GAAP measures, any presentation must comply with "Regulation G."

Capitalization. Although not a requirement of Regulation S-K, the capital structure of a company, both prior to the offering and after all securities offered are sold, is usually presented in a tabular format.

Dilution. As is typically the case in a REIT roll up IPO, when some of the properties but not all are getting carryover basis, when a disparity exists between the IPO price and the net book value for each share of tangible assets, dilution results. The effects of any material dilution to prospective investors must be disclosed; this is usually presented in a dilution table.

Underwriting and distribution of securities. Information must be provided about the price of the securities being offered, the members of the underwriting syndicate, the type of underwriting, and any other relationship between your company and any of the underwriters.

Information about the company's business. Your company must make extensive disclosures about its business. Among these are as follows:

- The company's business plan, particularly if it has less than three years' operating results;
- A description of its properties;
- Information relating to foreign operations, if any;
- Regulations affecting the industry and company;
- Pending or threatened legal proceedings; and
- Revenue, profits, assets, major tenants, and the competitive position of each sector and geographic segment of the company.

Investment policies. The company must disclose its policy with respect to investing in each of the following types of investments:

- Investment in real estate or interests in real estate;
- Investments in real estate mortgages;
- Securities of or interests in a person primarily engaged in real estate activities; and
- Investments in other securities.

The company will also need to indicate whether such policy can be changed by the directors without a vote of security holders; the percentage of assets that the registrant may invest in any one type of investment; and, in the case of securities, the percentage of securities of any one issuer that the registrant can acquire and the principles and procedures the registrant will employ in connection with the acquisition of assets.

Real estate. A description of the location and general character of all materially important properties held or intended to be acquired by or leased by the registrant or its subsidiaries must be disclosed. In addition, your company must disclose the nature of the title to or other interests in such properties and the nature and amount of all material mortgages, liens, or encumbrances against such properties. For leased properties, disclose the principal terms of the lease or any option or contract to purchase or sell any of the properties. Finally, state any proposed program for renovation, improvement, or development, including the cost and method of financing, and the general competitive conditions to which the properties are or may be subject.

Operating data. With respect to each property that is separately described in the prospectus, the following operating data must be disclosed:

- Occupancy rate for each of the past five years;
- Number of tenants occupying 10 percent or more of the rentable square footage and principal nature of the business of the tenant;
- Principal business, occupations, and professions carried on in or from the building;
- Principal provisions of the leases between the tenants including, but not limited to, rental per annum, expiration date, and renewal options;
- Average effective annual rental per square foot or unit for each of the past five years prior to the date of filing;
- Schedule of the lease expirations for each of the 10 years starting with the year in which the registration statement is filed, stating (i) the number of tenants whose leases will expire, (ii) the total area in square feet covered by such leases, (iii) the annual rental represented by such leases, and (iv) the percentage of gross annual rental represented by such leases;
- Each of the properties and components thereof upon which depreciation is taken, setting forth the (i) federal tax basis, (ii) rate, (iii) method, and (iv) life claimed with respect to such property or component thereof for purposes of depreciation;
- Real estate tax rate, annual real estate taxes, and estimated taxes on proposed improvements

Tax treatment. The company must describe any material aspects of the tax treatment under federal income tax laws and the federal tax treatment of security holders with respect to distributions by the company, including the tax treatment of gains from the sale of securities or property and distributions in excess of annual net income. If any of the securities being registered are to be offered in exchange for other securities or property, indicate the federal income tax effect on such exchanges.

Information about the company's officers, directors, and principal shareholders and their compensation. Form S-11 requires that your company identify and describe the business experience of its executive officers and directors; their compensation (including information on stock options, bonuses, profit-sharing plans, and other benefits); the security holdings of directors and principal shareholders; transactions with and indebtedness of officers, directors, and principal shareholders; and the identity of transactions with and compensation paid to promoters.

Management Discussion and Analysis ("MD&A"). In this section, management provides investors and users information relevant to the assessment of the financial condition, results of operations, liquidity, and capital resources of the company, with particular emphasis on the company's prospects for the future. MD&A continues to be an area of focus for the SEC staff when reviewing registration statements and inevitably results in comments — particularly related to the lack of forward-looking information required by each of the major sections of MD&A. It is therefore imperative this section be carefully drafted. It must be written as objectively as possible, pointing out both favorable and unfavorable developments, and should be written from the point of view of the company's management. It should include the following:

- **Results of operations.** A comparison of the income statement amounts for each period presented and an explanation of the reasons for any material changes should be incorporated. The MD&A should also discuss reasons for any recent positive or negative trends, as well as the quality of the company's earnings. Any known trends or uncertainties that have had or are expected to have a material impact on the company should be analyzed as well;
- **Liquidity.** Any known trends or any known demands, commitments, events, or uncertainties that will result in or are reasonably certain to result in the company's liquidity increasing or decreasing in any material way should be identified. Any course of action the company has taken or proposes to take to remedy any deficiencies should be indicated. Also, the internal and external sources of liquidity should be identified and described, and any material unused sources of liquid assets should be briefly discussed. Changes in significant balance sheet items must also be discussed;
- **Capital resources.** A description of the registrant's material commitments for capital expenditures, the general purpose of such commitments, and the anticipated source of funds needed to fulfill such commitments should be included in the MD&A. Further, any known material trends, favorable or unfavorable, in the company's capital resources should be divulged; and
- **Disclosure about off-balance sheet arrangements, aggregate contractual obligations, and other matters.** This section should include, among other things, an explanation of off-balance sheet transactions and arrangements, including the company's relationships with unconsolidated entities or persons who have or are reasonably likely to have a current or future material effect on financial condition, changes in financial condition, revenue or expenses, results of operations, liquidity, or capital resources.

These disclosures in MD&A are required as they relate the predecessor at a minimum but the required information can be supplemented with similar information on a pro Forma basis if management believes it would be helpful to investors. Companies must also present the above information on a segment by segment basis if the company operates in multiple segments as defined by the accounting rules, to provide a more complete understanding of the business.

- **Other disclosures.** Other disclosures that are required in a registration statement include but are not limited to:
  - Legal proceedings, if any;
  - Interests of named experts and counsel; and
  - Certain relationships and related transactions.

Financial information. As described above, the SEC's rules regarding the content and age of the financial statements that must be presented in a registration statement are complex and your company's accountants can be invaluable in helping you comply with these rules. As discussed above, in the Form S-11 registration statement, a company must generally present the following items:

- Audited balance sheets as of the end of the two most recent fiscal years;
- Audited statements of income, other comprehensive income, cash flows, and changes in stockholders' equity for each of the past three fiscal years;
- Selected financial information (summarized from the balance sheets and income statements) for the past five fiscal years;
- Separate financial statements of significant businesses acquired or to be acquired. See above for details of periods required;
- Separate financial statements of significant real estate property operations acquired or to be acquired. See above for details of periods required;
- Financial statements of significant investees that are accounted for under the equity method of accounting. The rules for measuring significance are complex. Your external accountants can be very helpful in navigating through the rules and regulations; and
- Interim financial statements (also referred to as stub-period financial statements) if the fiscal year-end financial statements are more than 134 days old at the time of filing the registration statement. Interim financial statements can be presented in a condensed format and generally are not audited but will likely be subject to a review by your independent accountants.

Tip

Generally, if you are filing the registration statement within 45 days after year-end and audited financial statements for the most recent fiscal year are not yet available, you will need to include audited financial statements for three preceding fiscal years, as well as unaudited financial statement as of an interim date at least as current as of the end of the third quarter of the last fiscal year.

Pro forma financial information Although the need for pro forma financial information most frequently occurs in connection with business combinations, the rule also applies to other events. For example, the disposition of a significant portion of a business might also necessitate pro forma financial information. In addition, pro forma financial information could be required for events or transactions if it would be material to investors or has had or will have a discrete material impact on the registrant's financial statements. For example:

- The registrant's financial statements are not indicative of the ongoing entity (for example, tax or cost-sharing agreements will be eliminated);
- Dividends are declared by a registrant subsequent to the balance sheet date;
- Redeemable preferred stock or debt converts to common stock at either the effective or closing dates of an IPO;
- Other changes in capitalization occur at effectiveness or the closing date of the IPO;
- The issuer was formerly a subchapter S corporation, a partnership, or a similar tax-exempt enterprise; and
- Receipt or application of offering proceeds under certain circumstances.

It is common for an equity REIT IPO to provide pro forma financial information on the use of the offering proceeds, acquisitions that have occurred during the periods presented or are probable of occurring, and already completed capital transactions. Generally, only adjustments that are contractual in nature can be reflected in the pro forma adjustments. The external auditors are generally asked to read and assess the pro forma information for compliance with SEC regulations as part of the comfort letter procedures. As discussed above, for registration statements relating to interest in real estate limited partnerships, additional information might be required, as described in Guide 5 of Item 801 of Regulation S-K. This could include information about prior performance of the general partner and its affiliates. Your securities counsel can provide assistance in determining the applicability of Guide 5 and what information, if any, would be necessary.

Part II — Information not required in the prospectus

This part includes disclosures regarding the expenses associated with the issuance and distribution of the securities, the indemnification of directors and officers acting for the company, any sales of unregistered securities within the past three years, undertaking of representations made by the company acknowledging that it will keep the registration statement and prospectus current, various exhibits (such as certain material contracts entered into by the company, articles of incorporation and bylaws, and underwriting agreement), and various required financial statement schedules.

Sources of SEC technical requirements

The form and content of registration statements, including the requirements for most financial statements and other financial information to be included in the registration statement, are contained in the following SEC rules, regulations, and interpretations:

- **Regulation S-X** is the principal accounting regulation of the SEC. It specifies the financial statements to be included in filings with the SEC and provides rules and guidance on their form and content;
- **Regulation S-K** contains the disclosure requirements for the nonfinancial statement portion of filings with the SEC (otherwise referred to as the "forepart" of the document);
- **Financial reporting releases,** or FFRs, are designed to communicate the SEC's positions on accounting and auditing principles and practices. They are used to adopt, amend, or interpret rules and regulations relating to accounting and auditing issues or financial statement disclosures;
- **Financial reporting manual,** or FRM, is an internal, informal reference document to provide general guidance to the SEC staff when reviewing for compliance with SEC reporting rules. Though technically nonauthoritative, the FRM is a helpful source for companies to best understand how to apply SEC reporting matters. The FRM covers a wide variety of topics such as financial statement requirements, pro forma information, non-GAAP measures, and MD&A;
- **Staff accounting bulletins,** or SABs, represent interpretations and practices followed by the SEC staff and, although not formally approved by the SEC commissioners, they are generally required to be followed by registrants;
- **Industry guides** are intended to assist registrants in the preparation of registration statements. They outline policies and practices required by the SEC staff relative to specific industries. Industries covered by the guides include oil and gas, mining, banking, insurance, and real estate;
- **Compliance and disclosure interpretations (CD&I)** are not rules, regulations, or statements of the SEC but provide insights and interpretation into the rules and regulations of the SEC; and
- **Regulation S-T** governs the preparation and submission of documents filed via the SEC's Electronic Data, Gathering, Analysis, and Retrieval (EDGAR) system.

Tip

Pre-filing conferences are useful in getting early SEC feedback on complex issues such as financial statement requirements in complex roll-up transactions or application of Guide 5 requirements. Although these prefiling conferences take preparation, in many cases, they ultimately help to speed the overall process and reduce risks of significant delays and revisions resulting from the SEC's review process. You should discuss the need for such a conference early in the process with both your accountants and securities counsel.

EDGAR

Beginning in 1996, virtually all documents processed by the SEC, including filings by first-time issuers, are required to be submitted electronically via EDGAR. The SEC has established an EDGAR filer support phone line to assist registrants (202-942-8900). Copies of documents filed with the SEC using EDGAR may be obtained by accessing the SEC website (*http://www.sec.gov*). The general and specific instructions to the relevant "Forms" (S-1, S-11, etc.) can also be obtained on the SEC's website.

Due diligence procedures

Throughout the registration statement preparation process, the entire IPO team will perform necessary procedures to provide a reasonable basis that, as of the effective date, the registration statement contains no significant untrue or misleading information and that no material information has been omitted. These due diligence procedures are performed primarily in response to the Securities Act of 1933. It holds all parties participating in the registration liable for any material misstatements or omissions in the registration statement. Due diligence serves as the primary defense in any actions brought against the parties, other than the issuer, under the 1933 Act.

Due diligence procedures entail reviews of your company and its management by the attorneys and underwriters including, but not limited to, visiting significant or selected properties; reviewing significant agreements and contracts, financial statements, tax returns, board of directors and shareholders' meeting minutes; and performing various analyses of the company and the industry.

Your attorneys and your underwriter's attorneys will also distribute questionnaires to the directors and officers of your company requesting them to review, verify, and comment on the information contained in the draft registration statement. In addition, the directors and officers might be interviewed by the attorneys.

Further, "keeping current" procedures are performed by the independent accountants to ascertain whether anything has occurred up to the effective date of the registration statement with respect to the company's financial position or operations that would have a material effect on the audited financial statements included in the registration statement.

Due diligence also encompasses the reading of the entire registration statement by all parties involved in its preparation to review for material misstatements, omissions, or inconsistencies.

In addition, as part of its due diligence procedures, the underwriter will request comfort letters from your auditors with respect to information that appears in the registration statement outside the financial statements and on events subsequent to the auditor's report date. Underwriters generally request comfort on as much information as possible. However, the more information the underwriters seek comfort on, the more expensive the process will become. In light of this and to avoid any misunderstandings and undue delays, it is important that you, the auditors, and the underwriter agree, in the early stages of the registration process, on the information on which the auditors will be giving comfort.

Generally, two comfort letters are issued to underwriters. One letter is issued when the underwriting agreement is signed (generally the pricing date). A second letter is an updated letter signed at the closing date. After the registration statement is filed but before it becomes effective, the principal underwriter holds a due diligence meeting. The due diligence meeting is attended by the principal underwriter and often by members of the underwriting group, as well as by your company's principal officers, counsel for your company, counsel for the underwriter, and the independent accountants. At this meeting, the members of the underwriting group are afforded the opportunity to exercise due diligence as to the proposed offering. They may ask any questions concerning the company and its business; significant or specific properties' competitive position; recent developments in finance, operations, and other areas; and future prospects.

Tip

There is a natural tendency for underwriter's counsel to request as much comfort as possible because the related cost is borne by the company. Consequently, management should insist on being involved in the negotiation of what will be included in the comfort letters.

3 Months before the effective date Filing the registration statement with the SEC

Prefiling conference with the SEC

Prior to filing the initial registration statement with the SEC, some companies hold a prefiling conference with the staff. A prefiling conference is recommended whenever important accounting or business issues need to be resolved and these problems are of sufficient magnitude to warrant the meeting. The conference is usually attended by the principal financial officer of the company, who should articulate the company's position, with representatives from the company's independent accounting firm and, generally, outside counsel. The primary advantage of having such a conference is that it may speed up the review process because the company could avoid any last-minute delays.

Tip

If your company has any new or unusual accounting and/or disclosure issues, you might want preliminary SEC clearance before you go to print, to save both time and considerable printing expense. The SEC will permit a pre-filing review, in which you and your advisors may review such matters with the agency. These issues can be more easily handled earlier in the process rather than later from the SEC's comment letter. If you or your advisors consider any of your company's issues unusual or groundbreaking, this option may be for you.

Filing and SEC review

Upon completion of the draft registration statement, it is sent to the printer. You will want to make sure this draft is as close to final as possible to avoid unnecessary reprinting/amending costs at the printer. However, it is common for several lengthy and costly drafting sessions to occur at the printer.

When the registration statement has been completed, the document, including exhibits, is filed with the SEC by electronic transmission through EDGAR. The registration statement must contain appropriate signatures in typed form; each signatory must manually sign a signature page acknowledging inclusion of his or her typed signature in the electronic filing. This signature page must be retained by the company for five years.

Once filed with the SEC, the registration statement is processed and reviewed by the staff of the Division of Corporation Finance, generally consisting of an attorney, an accountant, and/or a financial analyst. The group may also consult with other staff members familiar with a particular industry. The staff reviews the documents to determine whether the disclosure is full and fair and particularly whether they contain misstatements or omissions of material facts. The SEC staff's review, however, cannot be relied upon to assure the accuracy or completeness of the data which is management's responsibility.

The review of financial data is performed by a staff accountant, who reads the entire prospectus and the remainder of the registration statement to become familiar with the company and its business. The staff accountant also can refer to published annual and interim reports, newspaper articles, and the Internet for information regarding the company and the industry.

This review is primarily directed at the financial statements, other financial data, and the independent accountant's report. Its purpose is to determine whether the data complies with SEC regulations and all applicable authoritative accounting literature, as well as with various SEC staff interpretations and policies regarding accounting and auditing issues.

Although securities law contemplates a review of registration statements filed with the SEC, it does not prescribe the specific review procedures. The SEC staff has developed and adopted review procedures that provide for issuance of comments to registrants (and permit necessary registration statement revisions to be made) without formal proceedings. The informal comment technique has proved to be an effective method of communicating and resolving questions and defects before a registration statement is permitted to become effective.

Maintaining open communication with the SEC staff serves to expedite the registration process. To save time, company counsel generally maintains close telephone contact with the SEC staff while the registration statement is being reviewed.

A registration statement should be complete at the time the document is filed, including the required age of the financial statements. At times, the staff has received a number of incomplete registration statements by companies attempting to "get in line" for the review process. Depending on the type of commissions, the staff may choose to l not review incomplete registration statements.

The waiting period

Once the registration statement has been filed, the waiting period, or cooling off period, begins, and it continues up to the effective date of the registration. During this period, the company and underwriter are restricted in what activities they can undertake. The underwriter may accept "indications of interest" from potential purchasers, but no sales can be made until after the effective date.

One month before the effective date

Responding to the SEC letter of comment and preparing the amended registration statement

After reviewing the registration statement, the SEC staff typically issues a letter that sets forth questions, possible deficiencies, and suggested or requested revisions. The letter, referred to as a comment letter, is generally mailed or faxed to the company's legal counsel.

Submission of a carefully prepared registration statement usually limits staff comments. Although the registrant might have differences of opinion as to the propriety of a particular comment or request, most comments and suggestions made by the staff prove to be constructive.

Each comment in the staff's letter of comment must be addressed and resolved in writing before the registration statement can become effective. If revisions are necessary, they are made in an amended registration statement that is also filed via EDGAR. In an initial public offering, it is not uncommon to have several rounds of comments and amendments to the registration statement before it becomes effective.

In addition, significant developments often occur during the period subsequent to filing of the initial registration statement and prior to final SEC approval, and these, of course, must be reported. If a development is materially adverse, for example, it would obviously affect the offering's attractiveness. Conversely, a positive development, such as the favorable settlement of a major pending lawsuit, might remove any uncertainty about your company and its future. In other words, any interim developments that materially affect your company and its prospects must be disclosed via amendments to the initial registration statement.

You can generally expect it to take approximately 30 calendar days from the time the registration statement is filed with the SEC for the staff to complete its initial review and furnish its comments to you. Given the relative complexity of many REIT IPOs and the various regulatory disclosures, it is common that there are several cycles of substantive amendments, SEC review, and comment letter responses. Comment letters and responses will be made publicly available on EDGAR after effectiveness of the filing.

In addition to filing the registration statement with the SEC, your company must also make filings in the states in which it intends to offer the securities, as well as with FINRA.

Commencing the selling effort

No offering of securities, either orally or in writing, is permitted before the registration statement is initially filed with the SEC. These rules are very strict, and your company must be careful not to generate undue publicity that could be construed as an attempt to stimulate interest in its securities.

After the initial filing, however, and concurrent with the preparation of the amended registration statement, SEC regulations do permit certain types of promotional activities within the brokerage community, such as those noted below.

The preliminary prospectus, or "red herring"

A preliminary prospectus may be sent to interested institutions or persons prior to the effective date of the registration statement. This preliminary prospectus is a key tool in the lead underwriter's ability to form an underwriting syndicate, which consists of various brokerage companies that will distribute the stock. Although in the past companies occasionally printed and distributed the red herring prior to receipt of SEC comments, companies are now encouraged not to print the red herring until SEC comments have been received, reviewed, and incorporated into the draft prospectus.

SEC rules require that this prospectus substantially conform to the requirements of the 1933 Act and that the cover page bear the caption "Preliminary Prospectus." Prior to the full implementation of EDGAR, this language was required to be printed in red ink (hence the term "red herring"). The following statement must be printed on the cover in type as large as that generally used in the body of the prospectus:

> **"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any State in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such State."**

SEC rules also stipulate that the preliminary prospectus may omit the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, or other matters dependent on the offering price.

"Tombstone" ads

Companies may place tombstone ads in various periodicals announcing the offering and its dollar amount, identifying certain members of the underwriting syndicate, and noting where and from whom a copy of the company's prospectus may be obtained. Tombstone ads are not intended to be a selling document. Their main purpose is to assist in locating potential buyers who are sufficiently interested in the security being advertised to obtain a statutory prospectus. Tombstone ads may be published once the registration statement has been filed, but typically they are not published until after the effective date of the registration statement.

Financial analysts' meetings, or "road shows"

For potential investors to learn about the company, your underwriter will arrange meetings called "road shows" with financial analysts, brokers, and potential institutional investors. These meetings are generally attended by your company's president and key management such as the chief financial officer, and they could take place in numerous locations throughout the country or the world if you have an international offering.

It is vital that your management team be well-prepared for these meetings. We cannot emphasize this enough. You should not assume the prospectus is able to stand on its own. Anticipate potential questions concerning specifics on your company and its plans and know the answers, because the credibility projected by your management team in its presentation and these leaders' ability to respond to potential investors' and brokers' questions will be major factors in the success of the offering.

The road shows represent a critical part of your company's selling efforts, since it is here your management team promotes interest in the offering with institutional investors. This can be a very grueling process since the effort can span two weeks, with a number of presentations a day in many different geographic locations. In addition, in an active market, it becomes more difficult to pique institutional investors' interest if they are attending several road shows a day.

Undoubtedly, your underwriter will play a significant role in preparing your management team for these presentations.

Additionally, some companies have sought assistance from professional investor relations organizations. Although you might have a good "story" to tell, these advisors can help focus it to an investor's orientation.

Tip

When it comes to road shows, form might matter almost as much as substance. Road shows allow you to tell your corporate story, but they also enable you to showcase the talent, caliber, and integrity of your management team through an organized, orchestrated and smooth presentation. It can be one of the most important elements of a successful offering. Maximize the value of your road show through planning, preparation, and practice! This is not the place to cut corners. Hire an outside public/investor relations or communications firm to coach you if you or your management team has limited speaking and presentation experience.

Negotiating and signing the price amendment and the underwriting agreement

By the time the registration statement has been filed, your company and the underwriter have generally agreed on the securities — both in number of shares and dollar amount — to be sold. However, as previously mentioned, the final price at which to offer the securities to the public, the exact amount of the underwriter's discount, and the net proceeds to the registrant have not yet been determined. The negotiation and final determination of these amounts depend on a number of factors, including past and present performance of your company, current conditions in the securities markets, and indications of interest received during the road show.

For example, in establishing an offering price, the underwriter will look at a multiple of earnings or cash flow based on that experienced by similar companies. These multiples might be applied to the company's most recent results of operations or projected future earnings based on the outlook of the company's growth curve. The underwriter will also examine the current stock market prices and multiples of companies comparable to your company.

Timing also plays as important a part as any other factor in determining the final offering price of the shares. In addition to cyclical market factors, particular industries go through hot and cold periods. Unlike the private sale of stock, where negotiations can be in the form of face-to-face meetings, stock sold through the public market is often priced using market psychology.

Another consideration is the anticipated aftermarket share value. That is, after a period of trading, the stock should settle at an aftermarket share value. The offering price should ideally reflect a discount from this aftermarket share value. In other words, the initial offering price should allow for a small appreciation of the price per share in the aftermarket immediately subsequent to the IPO. An offering at the high end of a range might not provide adequate investor return, resulting in a weak or depressed aftermarket, while pricing at the low end could result in a run-up immediately following the offering (thus, lost opportunity for the company or selling shareholders).

Market perceptions of the risk inherent in a company's stock are sometimes related to the per-share price. That is, a company that offers its shares at $8 could be perceived to be offering a more speculative stock, while a $15 stock price might not be so perceived. At the other end of the spectrum, an IPO price of $25 might be considered overpriced. Additionally, the number of shares offered should be sufficient to allow for broad distribution and liquidity.

Upon completion of negotiations with the underwriter — usually about the time the registration statement is ready to become effective and the road show schedule is complete — the underwriting agreement is signed by authorized representatives of your company and the underwriter. Also at this time, the final amendment to the registration statement is prepared, including (as applicable) the agreed-on offering price, underwriter's discount or commission, and the net proceeds to the company. This amendment is called the price amendment and is filed with the SEC.

To simplify the filing requirements associated with the final pricing amendment, the SEC companies to omit information concerning the public offering price, price-related information, and the underwriting syndicate from a registration statement that is declared effective. In such cases, the information omitted would either be included in the final prospectus and incorporated by reference into the registration statement or included in a post-effective amendment to the registration statement.

If the staff of the SEC's Division of Corporation Finance has no important reservations with respect to the registration statement, your company and underwriter will customarily request that the offering be declared effective immediately — referred to as requesting acceleration. If acceleration is granted, the underwriter may proceed with the sale of securities to the public.

The offering

Holding the closing meeting

The closing date — generally specified in the underwriting agreement — is usually within three to five business days after the effective date of the registration statement. At closing, your company delivers the registered securities to the underwriter and receives payment for the issue. Various documents, including an updated comfort letter prepared by the independent accountant, are also exchanged.

Life as a public company

Your company should begin acting like a public company as early as two years before the IPO. This means getting comfortable with the rhythm of quarterly and annual reporting requirements, as well as the reports' content and costs. It also means proactively managing your company's reputation — communicating regularly with investors, analysts, and the financial media to maintain a positive image and make sure your story is being told accurately. The public's perception of your company has a direct effect on the value of your stock. Do not underestimate it.

Maintaining investor enthusiasm

Once you take your company public, you must expend considerable effort to maintain its market position. If investor enthusiasm for your company is not maintained, trading will decline. Should that happen, and as a consequence your company's shares are thinly traded, you will not realize the benefits sought from the IPO, such as further growth through follow-up offerings or investor liquidity through a future secondary offering. Thus, effective distribution and support of the stock, plus continuing security analyst interest, are necessary after the IPO.

A strategy for aftermarket support can be determined with the assistance of a financial public relations firm. The strategy usually includes choosing an individual within your company to handle shareholder relations. This process helps your company release information that is uniform and accurate.

A public company's performance, as perceived by the market, is reflected in the value of its stock. Management faces the pressure of balancing short-term productivity with long-term goals. Negative developments, such as the release of lower-than-expected earnings, can adversely affect the stock's value. Management will need to make certain that all communications with external parties explain fully the results of the company. This transparency in reporting will in turn create greater market trust.

Earnings are not the only factor that affects the public's perception of your company. Even after your company goes public, it should strive to maintain or improve the characteristics it sought to have:

These characteristics, modified for a post-IPO company, include the following:

- **Is your company demonstrating a sustained or increasing growth rate that is high enough to attract/satisfy investors?** Your company must continue to grow at a rate satisfactory to investors; its share value will be determined to a large extent by the company's earnings potential;
- **Are your company's assets highly visible and of interest to the industry and investing public?** Your company should project a positive image to its investors, tenants, and community. This is important, since the attitude of the public can sway the stock's value; and
- **Is management capable and committed?** Management plays a key role in the way a company performs; therefore, it is essential that management remains innovative, committed, and capable.

Meeting reporting requirements

As a public company, you are now required by the SEC, under the 1934 Act and the Sarbanes-Oxley Act of 2002 (see Appendix A — The SEC and securities regulations for more detail), to file certain periodic reports to keep the investing public informed. This requirement will continue as long as certain tests are met. In fact, you should have discussed your obligations under the various regulations with your attorneys and accountants prior to starting the going-public process to be certain these obligations can be met.

Legal counsel should also be consulted to confirm the SEC requirements pertaining to the form, content, and timing of specific reports. Your financial public relations firm can assist with annual reports to shareholders. The table below presents an overview of the basic SEC reporting requirements for public companies.

Basic SEC reporting requirements

Form 10-K	Annual report to stockholders (conforming to SEC specifications). It discloses, in detail, information about the company's activities, financial condition, and results of operations. It o contains the company's audited annual financial statements and summarized information of the quarters within the two most recent years. Companies are required to file their first 10-K for the fiscal year in which they go effective. However, if the registration statement does not include the annual financial statements for the most recent fiscal year, a Form 10-K for that fiscal year must be filed in the same time frame that is required for public companies as described below.
Form 10-Q	Quarterly report required for each of the first three quarters of the fiscal year. It includes condensed financial data and information on significant events. In addition, SEC rules require that the interim financial information included in the quarterly report be reviewed by an independent accountant prior to filing. For a first-time registrant, the first 10-Q is required to be filed by the later of (i) 45 days after the effective date of the initial registration statement, or (ii) the date on which the Form 10-Q would have been otherwise due if the company was a reporting company as of the last fiscal quarter.
Form 8-K	Report filed for significant events such as an acquisition or disposal of significant business; a change in control; bankruptcy; a change in independent accountants; or resignation of directors because of disagreement with the registrant. Most events must be reported within four business days of the day of the event.
Proxy or information statements	Data furnished to shareholders so they can decide how to assign their proxies (votes). *Due dates vary*.

Accelerated filing

Once the company is required to file quarterly and annual reports, it must do so within a defined time frame that depends on filer designation, such as a large accelerated filer, accelerated filer, or nonaccelerated filer. If a new REIT meets the definition of an accelerated filer, deadlines for submitting Forms 10-K and 10-Q will be shortened beginning in the year the definition is met. The deadlines are summarized below:

Filing status	Form 10-K deadline	Form 10-Q deadline
Nonaccelerated filers	90 days after fiscal year-end	45 days after fiscal quarter-end
Accelerated filers	75 days after fiscal year-end	40 days after fiscal quarter-end
Large accelerated filers	60 days after fiscal year-end	40 days after fiscal quarter-end

The definition of an accelerated filer is set forth in Rule 12b-2 of the Securities Exchange Act of 1934. An issuer is an accelerated filer after it first meets all of the following conditions as of the end of its fiscal year:

(i) The issuer had an aggregate worldwide market value of the voting and nonvoting common equity held by its nonaffiliates (commonly referred to as worldwide public float) of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter;

(ii) The issuer has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for at least 12 calendar months;

(iii) The issuer has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and

(iv) The issuer is not eligible to use the requirements for smaller reporting companies in Regulation S-K for its annual and quarterly reports.

The accelerated filer test is performed only at the end of the fiscal year. Any change in accelerated filer status is applicable beginning with the annual report for the year-end for which the status is being assessed. This is true even though one element of determining accelerated filer status (i.e., the worldwide public float test) uses information that is as of the end of the most recently completed second fiscal quarter. The reason for using a six-month look-back for the worldwide public float test is to give companies and investors sufficient notice/time to prepare for changes in accelerated filer status. In other words, companies and investors will have approximately six months to prepare for the status changes.

When soliciting proxies that relate to the annual meeting of shareholders at which directors/trustees are to be elected, public companies are also required to provide annual reports to shareholders. The reports must include financial information similar to what is in Form 10-K, as well as non financial information.

Generally, given their size, most REIT IPOs meet the criteria for accelerated filer status in their second year. As an accelerated filer, your company will be required to deliver a report that assesses the effectiveness of your internal controls over financial reporting. Section 404 of the Sarbanes-Oxley Act requires your independent registered public accounting firm to deliver an attestation report on the operating effectiveness of your internal controls over financial reporting in conjunction with its opinion on your audited financial statements as of the same date. Substantial work will be required to implement appropriate processes, document the system of internal control over key processes, assess their design, remediate any deficiencies identified, and test their operation. These processes can be costly and challenging. For a newly public company, you and your auditors will generally be required to report on the effectiveness of internal controls over financial reporting in the second 10-K that is filed. See "Internal controls and systems needs" section for more information on meeting these requirements.

To meet the various reporting requirements imposed on them, public companies must maintain an adequate financial staff, supported by legal counsel and knowledgeable independent accountants.

Timely disclosure of material information

A public company should disclose all material information (unless the company has a legally legitimate reason for not doing so), both favorable and unfavorable, as promptly as possible. Information that is generally considered material includes: significant financial transactions; acquisitions or dispositions of assets; dividend changes; the loss of a significant customer (tenant); and top management or control changes.

Disclosure of such information should be made as soon as (1) it is reasonably accurate, and (2) full details are available to your company. This information is usually disseminated by press releases; however, your company may also decide to send announcements directly to your shareholders. Generally, the need to disclose information should be discussed with your legal counsel.

It should be noted that where a release or public announcement discloses material nonpublic information regarding a registrant's results of operations or financial condition of an annual or quarterly period that has ended, the SEC requires that the release be identified and included as an exhibit to a Form 8-K filing.

Safe harbor provisions

The Private Securities Litigation Reform Act of 1995 (Reform Act) provides a "safe harbor" for forward-looking statements, such as forecasts, projections, and other similar disclosures in the MD&A. A safe harbor encourages registrants to disclose forward-looking information and protects them from investor lawsuits if the forward-looking information does not materialize. This protection does not extend to statements that, when issued, were known to be false. A safe harbor applies to any form of written communication (such as press releases and letters to shareholders) or oral communication (including telephone calls and meetings with analysts) that contains forward-looking information.

It should be noted that the safe harbor provision is not available to historical financial statements or to forward-looking statements included in IPO registration statements. However, the statutory safe harbor does not replace or alter the current judicial "bespeaks caution" doctrine on which the safe harbor rules were modeled. The bespeaks-caution doctrine generally provides that, to the extent an offering statement such as a prospectus contains a forward-looking statement with sufficient cautionary language, an action brought about as a result of such a statement could be dismissed on those grounds.

The following discussion relates to the application of the rules subsequent to the offering.

To avail itself of the safe harbor provision, the company must clearly identify the forward-looking information as such and must accompany it with a cautionary statement identifying the risk factors that might prevent the realization of the forward-looking information. In meeting this criterion, the company should note two points:

- The forward-looking statements should be specifically identified. A general statement such as “certain information contained in this annual report is forward-looking...” does not clearly identify the forward-looking statements.
- Every risk factor need not be identified to gain protection under the safe harbor. Boilerplate warnings, however, will not suffice as meaningful cautionary language.

The statutory safe harbor does not require a company to update a forward-looking statement. Though companies are not legally required to update such information, material changed circumstances might nonetheless have to be disclosed as dictated by MD&A disclosure requirements. Further, from a business and investor relations standpoint, companies should consider updating such information.

A new public company should make certain that, when disclosing forward-looking information in annual reports and press releases, it appropriately meets the requirements for using the safe harbor provision. Your legal counsel will be invaluable in providing the necessary guidance. Such guidance is particularly essential when forward-looking information is communicated orally (e.g., in conference calls with analysts).

Restrictions of trading on nonpublic information

Until important information is made public, SEC rules prohibit company insiders from personally trading the company’s securities or passing this information to others. Within the company, material information should be kept confidential. Persons privileged to this information must treat it as confidential until it is released to the public. Violators of this rule have been dealt with harshly with fines or other penalties, including the potential for imprisonment.

Fiduciary duties

Fiduciary laws require that transactions between a company and any of its officers, directors, or large shareholders be fair to the company. These laws apply to both privately and publicly held companies. However, since the officers and directors of a privately held company are usually its only shareholders, the ramifications of fiduciary laws are less than what they might be for a publicly held company.

Fiduciary laws for transactions must be carefully observed after a public offering because of the interests of the new shareholders. Whenever there is a potential conflict of interest between the company and its fiduciaries, management should obtain independent appraisals or bids and independent director approval (or even shareholder approval), depending on the nature and significance of the transaction.

Costs

As mentioned previously, a further consequence of a company being publicly held is the expense it entails. Significant costs and executive time are often incurred when periodic reports are prepared and then filed with the SEC. Board and shareholder meetings and communications could also be expensive.

Because of their responsibilities to the public shareholders, the board of directors and the audit committee are significantly more important in a public company. If the board were previously composed entirely of insiders, a number of outside directors would need to be added (which would likely result in additional costs) to satisfy the NYSE or NASDAQ listing requirements.

Corporate governance

Both the NYSE and NASDAQ maintain corporate governance listing standards that a company needs to address in connection with its initial public offering and listing of equity securities. These standards address such matters as the board's composition, structure, and processes — including nomination of directors, compensation practices, and similar matters — and are responsive, in part, to the Sarbanes-Oxley Act. The standards, however, go beyond the provisions of SOX discussed previously and address such matters as the establishment of a code of business conduct and ethics for employees and directors, establishment of an internal audit function for companies listed on the NYSE, and approval of related-party transactions for companies quoted on NASDAQ. In light of these developments and given the height of interest by institutional investors and the investing public in corporate governance matters, it is important for companies to take a close look at their corporate governance principles and practices when planning the public offering process. For further information on this topic, please refer to www.pwc.com/uscorporategovernance.

Board of trustees

Like other corporate boards of directors, the board of trustees for a public REIT is responsible for overseeing senior management on behalf of the shareholders. It is not the board's role to run the company on a day-to-day basis; that is the role of management.

The board of trustees reviews the company's overall strategic plan, major transactions, and overall direction. It is responsible to the shareholders first and foremost. The board of trustees usually comprises a mix of independent trustees and non-independent trustees (including members of management or significant shareholder groups). Generally, best practice is that the board is composed of a majority of independent trustees.

The composition and caliber of the board are often major selling points in an IPO. Lining up qualified individuals can be time consuming and is best undertaken with great deliberation. Frequently, trustees are identified with consideration not only to filling the role, but also with an eye to other strategic skill sets or business/community connections they might bring to the board/company.

Your external advisors including investment bankers, legal counsel, and external auditors can often be good sources of qualified individuals. Alternatively, you might wish to engage a search firm to identify top-tier talent.

Many public companies have combined the role of CEO and chairman of the board. This practice has fallen out of favor of late, and many companies that previously combined the role
are splitting it or are creating the role of "lead director."

Tip

One of the best sources of objective advice can be an independent or outside director/trustee. All of the major stock exchanges and markets require a registrant to have at least two independent directors/trustees, and post-Sarbanes-Oxley, one director/trustee must have previous financial experience/expertise as either a CPA or prior CFO. You should not wait until the last minute to begin your search for qualified outside board members. A potential board member who is unfamiliar with a company might be reluctant to join the board immediately prior to an IPO since a director/trustee has personal liability for information contained in or omitted from the registration statement. Providing insurance for directors/trustees and officers can help overcome this reluctance, although the premium can be expensive, especially for the periods immediately following an IPO.

Committees of the board of trustees

The board of trustees often discharges some of its duties through a group of smaller committees including the following:

- Audit committee (required)
- Compensation committee (required)
- Governance committee and nominating subcommittee

Role of the audit committee

Since the issuance of the Sarbanes-Oxley Act in 2002, the audit committee has increased in prominence. The audit committee plays a key role among management, independent accountants, internal auditors, and the board of directors. The audit committee's responsibilities include monitoring the financial reporting process; overseeing the internal control system, internal audit, and the independent auditor; and reporting findings to the board. The audit committee is directly responsible for the appointment, compensation, retention, and oversight of independent accountants, who report directly to the audit committee. In addition, the audit committee is charged with discussing the annual audited financial statements with management and the independent auditor, discussing earnings press releases and financial information or earnings guidance provided to analyst and rating agencies, and discussing policies with respect to risk assessment and risk management.

Audit committees have an essential role in ensuring the integrity and transparency of corporate reporting. Investors now expect that published information has been subject to objective, board-level review. Sarbanes-Oxley specifically defines the role and composition of public company audit committees. Among the key requirements of audit committees are that they:

- Be composed entirely of independent directors/trustees (to be considered independent, the individual cannot, other than in his or her capacity as a member of the audit committee, the board of directors/trustees, or any other board committee, accept any consulting, advisory, or other compensating fee from the company or any subsidiary of the company.);
- Have and disclose at least one member who is a "financial expert," defined as having: 1) experience as a principal financial or accounting officer, controller, accountant, or auditor; or 2) experience overseeing or assessing the performance of companies with respect to the evaluation of the financial statements; or 3) other relevant experience (investment bankers, venture capitalists, commercial bankers, financial analysts);
- Be directly responsible for the appointment, compensation, and oversight of the company's independent accountants;
- Have authority to engage independent counsel and advisors as deemed necessary to carry out their duties; and
- Establish procedures for dealing with concerns received from employees and others regarding accounting, internal control, or auditing matters.

Role of the compensation committee

Recently, the role of the compensation committee has received significantly more scrutiny and attention. Generally, the committee should be composed entirely of independent directors. This committee is responsible for the overall compensation structure of the company and is significantly involved in setting the compensation and evaluating the performance of senior executives (including the CEO). This includes all forms of compensation, including direct salary, cash bonus, stock-based compensation, participation in deferred compensation or retirement plans, and any other fringe benefits (company-provided automobile, use of corporate jet, etc.). The compensation committee also reviews the compensation for the CEO and other executive officers, monitors incentive and equity-based compensation plans, and prepares an annual report on executive compensation and submits it to the board of directors.

The area of executive compensation is likely to face increased disclosure through SEC regulatory and congressional legislative action. Companies moving from a private to public format should revisit their compensation and benefit models.

Roles of the governance committee and nominating subcommittee

The governance committee recommends to the board of directors/trustees corporate governance guidelines applicable to the company. In addition, the governance committee leads the board in its annual review of the board's performance and identifies individuals, based on the recommendations of the nominating subcommittee, qualified to become board members consistent with approved criteria. It also makes recommendations to the board on nominees for election at the annual shareholders meeting and on compensation for the directors/trustees.

Internal controls and systems needs

Determining the scope of internal controls

The Sarbanes-Oxley Act of 2002 established new requirements for companies to evaluate the effectiveness of internal controls over financial reporting and for their external auditors to attest to the effectiveness of internal controls over financial reporting. SOX formalized a process occurring within many companies, but it raised the bar on the effort required to assess internal controls and the formality of the documentation to promote operating effectiveness of controls. As a company considers a public offering, it is critical to understand the requirements in detail and the resources required to comply with the standard. For many companies in a private company environment, this is probably one of the most significant cultural adjustments when going public.

The company can gain an understanding of the impact of SOX by determining the scope of internal controls the requirements would affect. The first step is to analyze the significant accounts from the financial statements and inventory the relevant processes that provide input to financial reporting. Once the processes have been identified, an assessment of the key controls within each process will be performed to establish the full portfolio of controls that the company relies on to produce accurate, complete financial statements. It is important to look at the life cycle of controls within each process used to generate the financial statements, understanding that the processes and subprocesses in the initial stages are as important as any reconciliations at the conclusion of each process. Additionally, the scope will not only include the manual controls embedded in the process, but also take into account any automated application controls and the information technology general controls (ITGCs) for their supporting applications. This process will require the time and expertise of both financial accountants and IT professionals within your company and possibly outside advisors.

The company's assessment needs to document test and evaluate its internal processes and controls, as well as controls at any external third parties that the company relies on for financially significant processes. Although the company might not have direct oversight of the execution of these key processes, it is responsible for ensuring that all controls, even the external ones, are executing effectively to support the completeness, accuracy, and validity of financial reporting. A company can obtain comfort over these controls by directly testing the effectiveness; or, if available, it can rely on some form of third-party assurance (see SAS 70) to provide an independent opinion over a set of control objectives for the external controls. These reports are prepared by a third-party auditor and are typically done annually or semi-annually.

Internal controls optimization

Once the company establishes the scope of internal controls, it can benefit significantly from performing an independent assessment of the control environment to "optimize" the controls. This should be performed prior to going public so the company can balance the controls approach prior to falling under the requirements of SOX. In most cases, a company will hire an external advisor to help prepare the company meet the SOX requirements. This SOX readiness provider would be responsible for helping the company to assess the design effectiveness of the controls prior to any specific testing to assess their operating effectiveness. During this design review, the external advisor should be assessing the controls framework to focus the controls on the true key risk areas, to eliminate redundancy, and to migrate toward automated controls where feasible.

The optimization process should start with a top-down approach to assess the higher-level controls within the organization, including entity-level controls. In many cases, these controls can be tested and relied on instead of also testing the detailed controls that operate at a lower level. This top-down approach can reduce the controls populations, assuming the higher-level controls are precise enough to identify any material misstatement.

Concurrent with this analysis, the company should revisit the criteria for “key” controls to make certain that the controls and processes included in scope controls that truly address a material risk to financial reporting. Using established assessment methodologies and libraries of controls, an external advisor can optimize the controls to establish the correct balance of preventative versus detective controls and manual versus automated controls. Applying these two filters can eliminate redundancy and streamline the effort required to assess the effectiveness of controls.

As an example, it is possible to assess a very limited sample for an automated application control to establish a baseline for that control that will not need to be tested each year, versus being required to test full samples every year for a manual control. These strategies for optimization are critical to providing a rationalized control framework that addresses risk while streamlining the compliance requirements and associated effort for the company.

Establishing systems solutions

Depending on the drivers for moving from a private to public company environment, the shift might require the company to revisit its technology infrastructure to support the public reporting requirements. A new public company must establish a stand-alone technology infrastructure. Many pitfalls coincide with implementing a new set of technology solutions—including overscoping the technology, not ensuring appropriate ongoing support, and implementing a solution that does not effectively meet the company’s business needs. For these reasons, when establishing systems solutions, it is critical to take a thoughtful approach that considers a number of the success factors for an effective technology transformation.

A thorough evaluation is required to assess the best fit based on company-specific drivers, including the true set of business requirements, the current technology infrastructure, and the need for internal or external hosting. At a high level, the company should consider the following steps when evaluating the appropriate technology strategy:

- Analyze the business requirements to establish a robust set of criteria for selecting a new systems solution, weighing each requirement individually since all requirements will not be evaluated equally.
- Evaluate the ability to leverage existing internal technology for financial management and reporting functionality.
- Define a go-forward technology strategy based on appetite for an immediate short-term option versus a longer-term solution that would be scalable, but might take longer to implement.
- Streamline the pool of potential solutions based on real estate-specific experience and historical understanding of the applicable vendors.
- Determine the ability of potential outsourced vendors to provide a portion of the technology solution and an effective control environment.
- Assess internal resources and capabilities to host and support solutions, versus reliance on an external provider.

This approach to technology change will help focus the company’s efforts while providing an appropriate strategy to meet the overall needs, whether the company is considering a general ledger, subledger, reporting, or business intelligence technology solution.

Tax structuring for a REIT IPO

General

A REIT is a corporation for tax purposes that meets a series of requirements regarding its income, assets, ownership, and distributions and that elects to be taxed as a REIT. In an IPO transaction, it is typical for a new corporation or trust to be formed shortly before filing a registration statement. In some cases, an existing corporation, trust, or REIT may be used as the IPO vehicle. See Appendix D for a summary of the REIT compliance tests.

Formation transactions

Overview of the UPREIT structure

Publicly traded equity REITs often use a structure referred to as an umbrella partnership REIT, or UPREIT. The UPREIT is a tax-driven structure that allows a property owner to transfer its properties to a partnership (the "operating partnership", or "OP") controlled by the REIT in exchange for operating partnerships units, generally on a tax-deferred basis. A property transfer directly to the REIT, on the other hand, would generally be fully taxable. The attraction of the structure is that the property owner receives units in the OP (OP units) that are economically equivalent to shares of stock in a public REIT, although an OP unit does not carry voting rights in the REIT. The ability to offer OP units provides the REIT with an attractive currency in acquiring properties from owners seeking diversification, liquidity, and tax deferral. Even if the REIT does not plan to acquire assets through the UPREIT structure initially, assets are often acquired by the REIT through an OP so that the structure can be implemented later without requiring the REIT to transfer its properties to the OP at that time.

Typically, the OP is formed by a sponsor of the REIT during the IPO process, and the sponsor and related entities contribute assets, subject to related debt, to the OP. The tax aspects of formation and operation of the OP are described below.

OP units — In an UPREIT, the property owner receives OP units in exchange for its interest in the transferred property. Each unit is entitled to a distribution equal to the dividend that the REIT pays on its stock. In addition, a unit is redeemable at the option of the unitholder. The redemption may be settled in exchange for either a share of REIT stock or cash equal to the current market price of REIT stock. The decision to pay stock or cash is typically at the option of the OP, and often the REIT has the option to acquire the units instead of the OP. This redemption transaction is generally taxable to the unitholder. Subsequent to the adoption of SFAS 160, these transactions are generally accounted for as equity transactions (previously they were accounted for as step-acquisitions). However in some circumstances they can be classified as "Temporary" equity when they are not redeemable at the option of the OP or REIT. Common units are generally issued, although preferred units or a combination of common and preferred units might be issued. Preferred OP units would generally be redeemable in exchange for a corresponding share of REIT preferred stock.

Property owners sometimes seek to maximize the cash portion of the transaction to the extent it can be accomplished in a tax-efficient manner. Generally, to the extent the properties are sold or considered to be sold pursuant to partnership-disguised sale rules, tax gain will be recognized. To maximize the nontaxable component, the property owners might be able to rely on an exception to the disguised sale rules; they could reimburse the contributing partners for capital expenditures related to the contributed properties incurred within the two years preceding the commitment to make the contribution. Refinancing proceeds within the past two years, on the other hand, might trip the disguised sale rules.

Tax protection agreements — To prevent or minimize the risk of a near-term disposition by the OP or other gain recognition events, contributors often negotiate for "lock-out" periods that prohibit the REIT from disposing of the contributed properties within an agreed-upon period. The scope of the OP's commitment can vary from a simple "best efforts" basis to avoid a taxable disposition to an indemnification if the properties are sold before the lock-out period expires. The indemnification payment might be based on the full tax resulting from the premature disposition or a present value of the tax and also might include a gross-up for the tax on the indemnification payment. The length of the lock-out period, the level of commitment by the REIT, and the magnitude of any indemnification are all matters of negotiation, and terms vary according to market conditions. Tax-free dispositions through tax-deferred transactions such as like-kind exchanges or contributions to a joint venture are permitted. Tax protection agreements generally require the OP to maintain certain attributes with respect to a portion of its debt. Analysts and rating agencies could raise concerns if the magnitude of these commitments limits the OP's ability to sell substantial portions of the portfolio or reduces too significantly the OP's flexibility in managing its debt.

REIT relationship to the OP — The public REIT will be the sole general partner of the OP and will generally hold the majority of the limited partnership interests of the OP. The executive officers of the REIT are also executive officers of the OP. Typically all properties are owned by the OP and the REIT generally has no significant assets, liabilities, or operations other than its interest in the OP. All expenses of the REIT are borne by the OP. The REIT will hold a number of units in the OP equal to the number of common shares outstanding. If the REIT issues preferred stock, it will acquire preferred units in the OP with equivalent terms. The REIT will have unilateral control over the OP and will consolidate the OP in its financial statements. If publicly registered debt is offered, the OP will generally issue the debt and be required to register the securities with the SEC (that is, it would become a separate registrant and have separate reporting requirements).

The 'DownREIT' structure

If the REIT does not adopt the UPREIT structure and subsequently wants to acquire properties on a tax-deferred basis for the property owners, it may adopt the DownREIT structure. In a DownREIT, the property owner contributes its assets to a partnership, and the REIT contributes some — but not all — of its properties to the partnership. The property owner receives a number of units entitled to a distribution equal to the dividend paid on REIT stock and a redemption right for REIT stock or an equivalent cash payment. Because all assets of the REIT are not held by the partnership, the unitholder in a DownREIT might not have the same security for the distributions as a unitholder in an UPREIT.

Tax implications for the REIT offering and the financial statements

Qualifying as a REIT produces a substantial benefit in the form of a deduction for dividends paid to shareholders. As a result, the REIT is generally not subject to tax on the income it distributes to shareholders. These benefits come at a cost: a number of restrictions on the REIT's income sources, assets, distributions, and organization. For example, for each taxable year, at least 75 percent of the REIT's gross income must come from "rents from real property," mortgage interest, and certain other items, and at least 95 percent of its gross income must be from items satisfying the 75 percent income test plus dividends, non-real estate interest, and certain other items. On a quarterly basis, at least 75 percent of a REIT's assets must consist of real estate, cash, cash items, and government securities. Of the remaining 25 percent, a REIT cannot invest 5 percent or more of its assets in the securities of any one issuer or hold more than 10 percent of the outstanding securities of any one issuer. Appendix D provides an overview of the requirements.

If the entity fails to qualify as a REIT, it will become subject to corporate income taxes and various penalties and could in extreme cases lose its status as a REIT. The potential consequences make the tax requirements for REIT status a critical consideration for the management, audit committee, auditors, counsel for the REIT, and counsel for the underwriter.

Counsel for the REIT will usually provide a tax opinion to the effect that the REIT's structure and expected manner of operation "will" satisfy the federal income tax requirements for a REIT. A "will" opinion is the highest-level opinion and means that there is little doubt as to the tax effects. The opinion will be based on a representation of various facts by the management of the REIT. Both the REIT's counsel and the underwriter's counsel will perform due diligence on management's representations. If issues arise without clear answers, the REIT can request a private letter ruling (PLR) from the IRS so that counsel can issue a "clean" opinion. Most of the guidance from the IRS on issues in the "modern REIT era" has been in the PLRs. A PLR, however, is binding on the IRS only with respect to the taxpayer to whom it was issued. As a result, a REIT may need to obtain its own ruling even though another REIT has obtained a ruling on a similar issue. A PLR might take four to six months to obtain after it is submitted to the IRS so timing is an important consideration.

From a financial reporting and auditing perspective, the REIT status and potential tax exposures are critical to the reporting on the financial statements, a lack of tax provision and tax liabilities, disclosures of uncertain tax positions under FIN 48, and tests of internal controls under SOX 404. In addition, proper planning and documentation of transactions and records of REIT compliance are critical in the event of an IRS examination or the need to rely on a mitigation provision for a violation through "reasonable cause" to avoid potential disqualification.

Income from and investments in real property

"Rent from real property" and gains from the disposition of real property qualify for both the 75 percent and 95 percent income tests, and investments in real property qualify for the 75 percent asset test. "Rent from real property" is a specially defined term under the REIT provisions and described as follows:

Customary services — Qualifying rental income includes charges for services customarily furnished or rendered in connection with the rental of real property. This test is based on the class of the property and the geographic market. The analysis generally requires a review of each property's operations, the property operating statements, selected or "nonstandard" leases, and interviews with property and asset managers. Providing reserved parking or parking to the public involves special considerations including the use of an independent contractor.

Planning for noncustomary services — Noncustomary services may be provided under a de minimis limitation, by an "independent contractor," or, most often, through a taxable REIT subsidiary (TRS). The de minimis rule allows noncustomary services valued at up to 1 percent of the gross rents from the individual property. The de minimis rule has limited application because of its low threshold and the fact that the services must be valued at a minimum of 150 percent of direct costs. The value of the service will be imputed without regard to whether there is a separate charge. As with most terms used in the REIT context, arrangements with an independent contractor carry particular limitations. The REIT cannot own an interest in the independent contractor, and common ownership of the REIT and independent contractor is restricted. Considerations for services provided through a TRS are described below. Exceeding the 1 percent de minimis limit without using an independent contractor or TRS taints all rents from the entire property for the year.

Qualifying percentage rents — A REIT may lease property with rents based on a percentage of gross revenues, but leases based on net income or net profits do not qualify. Standard lease forms facilitate the review of leases, and lease abstracts prepared for other purposes can be useful in the tax due diligence.

Related party tenants — The REIT is prohibited from leasing property to a tenant in which it holds a 10 percent or greater interest. Broad attribution rules apply to attribute ownership by a 10 percent shareholder of the REIT or a 25 percent partner in a partnership, including the operating partnership of an UPREIT. Violating the ownership limitation at any time during the year taints the rents from the lease for the entire year. As described below, special rules apply to property leased to the TRS.

Personal property limitation — Rent attributable to personal property leased in connection with real property may produce qualifying rental income provided that the value of the personal property is limited to 15 percent of the value of the total leased property. This limitation may arise, for example, in connection with leasing furnished apartments or lodging properties. The personal property limitation is based on the classification of assets for federal income tax purposes. Machinery, equipment, or assets accessory to the operation of a business do not qualify as real property. If the 15% personal property is exceeded, a pro rata portion of rental income will be treated as non-qualifying.

Dealer property — Property held primarily for sale to customers in the ordinary course of a trade or business is often referred to as "dealer property." This property is subject to a penalty tax of 100 percent of the gain on its disposition. Dealer status is based on a facts and circumstances test that has led to significant tax litigation over the years. As a result, a safe harbor provides that the penalty will not be assessed where, among other things, the property is held for at least two years, real property is held for the production of rental income for at least two years, and capital improvements in the two years before sale do not exceed 30 percent of the net selling price. In addition, there are limits on the total sales by the REIT during the year to be eligible for the safe harbor. The REIT should review the requirements thoroughly before relying on the safe harbor. When exposure exists on property that does not meet the safe harbor, the property is often transferred to a TRS in advance of negotiations or a commitment to sell.

Additional considerations for specialty assets

Lodging or healthcare — These properties can be leased to a TRS without violating the related party rent restriction, provided an eligible independent contractor operates or manages the property. The REIT cannot own an interest in the eligible independent contractor, and ownership by shareholders of the REIT is restricted. The eligible independent contractor must be in the active business of operating or managing lodging or healthcare properties for itself or third parties and satisfy the requirements for an "independent contractor" described above.

Data centers — The IRS has issued a private letter ruling concluding structural components related to the provision of electricity, heating ventilation and air conditioning, humidification regulation, security and fire protection, and telecommunication services are real property.

Infrastructure assets — The IRS also has issued favorable guidance on passive components of assets such as a pipeline, an electric transmission and distribution system, a railroad, microwave transmission towers, and cellular telephone towers.

Foreign investments — A REIT can invest in foreign real estate or mortgage loans generally on the same basis as domestic assets.

Loans secured by interests in real property

These loans generally produce interest income that qualifies for both income tests and the 75 percent asset test. A number of limitations are described below.

Mortgage loans — A loan is treated as a qualifying real estate asset to the extent it is secured by real property. Interest on a mortgage loan must be apportioned when the loan is secured by both real property and personal property. Interest that qualifies as mortgage interest income is based on the value of the real property and the maximum principal amount outstanding during the year. The test is generally applied at the time the REIT commits to make or acquire the loan. Typically, this computation allocates all of the interest to the real property. In the case of distressed debt, the formula may allocate a disproportionate amount of interest to other property.

Mezzanine loans — A first mortgage lender often prohibits other liens on the property or other borrowing by the mortgagor. As a result, additional financing often takes the form of a mezzanine loan to an upper-tier entity. Under guidance issued by the IRS, a loan secured by an interest in a disregarded entity or one treated as a partnership that primarily holds real property may qualify as being secured by real property and treated as the equivalent of a mortgage loan. This guidance includes several requirements so the lender is in a similar position to making a loan against real property.

Participating loans — Loans that participate in gross income may produce qualifying interest similar to the rules for percentage rents. Loans based on net income do not generate qualifying interest income. Shared appreciation mortgages are characterized based on the character of the property in the hands of the borrower and might generate dealer income if that is the borrower's business.

Hedging

Income from qualifying hedges to manage risks on a liability incurred or to be incurred to acquire or carry real estate assets may be excluded from the income tests. Similar rules apply to certain hedges to manage risk of foreign currency fluctuation. Some REITs fall into a trap by failing to designate the hedge on the day that it is entered into or by hedging assets rather than liabilities.

Subsidiary entities

Taxable REIT subsidiary, or TRS — A TRS is often used to earn income or hold assets that would cause problems to the REIT, including the following examples:

- Operate office suites
- Provide maid service to apartment residents
- Operate food service or cafeterias in office buildings
- Provide special cleaning services to individual office tenants
- Lease hotel or healthcare properties from the REIT
- Sell dealer property that might not meet the safe harbor
- Operate garage or other parking facilities in an office building

In addition to the special rules for lodging and healthcare properties, the REIT may lease property to the TRS on an arm's-length basis provided that 90 percent of the leased space in the property is leased to unrelated persons.

The TRS is taxable as a regular corporation. The resulting tax leakage might be reduced by capitalizing the TRS with loans from the REIT, leasing property to the REIT, or paying management or other fees to the REIT. Deduction for interest to the REIT is limited if the TRS's debt-to-equity ratio exceeds 1.5:1. Interest deductions are allowed up to at least 50 percent of taxable income determined before depreciation and amortization. The REIT must take the interest or dividends from the TRS into account in its income tests, and the REIT is limited to investing 25 percent of its total assets in loans to its TRSs and in TRS stock.

The allocation of deductions to the TRS in excess of an arm's-length charge subjects the REIT to a 100 percent penalty on the excess. This penalty can be avoided in some circumstances where the REIT pays the TRS a fee of at least 150 percent of its direct costs in providing a service to the REIT's tenants.

Qualified REIT Subsidiary (QRS) — A QRS is a corporation that is wholly owned by the REIT and has not elected to be a TRS. It is disregarded for federal income tax purposes, and its assets and income are attributed to the REIT. A corporation that is wholly owned by an entity recognized as a partnership, such as the OP, cannot qualify as a QRS.

Joint ventures — For income and asset test purposes, a REIT includes its share of gross income from an entity treated as a partnership based on its interest in the capital of the entity. The capital interest could vary significantly from the REIT's interest in profits or losses for either tax purposes or under GAAP.

Asset tests

Quarterly testing — A REIT must satisfy asset diversification requirements on a quarterly basis. A 30-day cure period allows a REIT to remedy an asset test violation. Particular attention should be paid to quarterly asset testing during the periods after raising capital or selling assets when excess cash might be invested temporarily.

New capital — A temporary investment in stock or debt instruments qualifies as a real estate asset and produces income qualifying for the 75 percent income test for a one-year period, provided the investment is attributable to a stock offering or public debt offering with at least a five-year maturity.

Cash management — Cash, cash items, receivables, and US government securities qualify for the 75 percent asset test. Items that qualify as cash equivalents under GAAP might not qualify in this category for REIT purposes. Money market mutual funds, as opposed to money market bank depository accounts, often create issues. Similarly, sweep arrangements should be considered carefully as they may move cash from a qualifying to a non-qualifying account. The income generally does not qualify for the 75 percent income test unless the investments are attributable to the temporary investment of new capital (or are mortgage-backed securities).

Intangibles — The acquisition of rental properties or even a portfolio usually does not include the acquisition of intangible assets for tax purposes. Many of the intangible assets recorded under GAAP are treated as part of the value of the real property value for tax purposes. Intangibles might be acquired, however, with resort or lodging properties in the form of rights to trademarks or trade names. In unique situations, these intangibles may be treated as inherently part of the real estate value for REIT testing. Intangibles could also be acquired in the acquisition of an operating business and its personnel, resulting in going concern value. If an intangible asset is not treated as real estate for REIT purposes, then it would be a nonqualifying asset for the 75 percent asset test.

Distributions

Qualification requirement — Although the entity is required to distribute only 90 percent of its ordinary taxable income, with certain adjustments, to qualify as a REIT, it incurs federal and state income tax on its undistributed taxable income. As a result, REITs generally distribute at least 100 percent of their taxable income.

Timing — Dividends that are declared, have a record date in the fourth quarter, and are paid in January are deemed to be paid by the REIT and received by the shareholders on December 31. In addition, the REIT can elect to apply dividends declared before the extended due date of its return to the prior year. These dividends are taxable to the shareholders when received.

Excise tax — The REIT must distribute at least 85 percent of its ordinary income and 95 percent of net capital gains within the calendar year. A shortfall is subject to a 4 percent excise tax. Dividends are taken into account when paid (or deemed paid) to shareholders without regard to the election to apply them to the prior year.

Deficiency dividend — A deficiency dividend can be used to correct an under distribution of taxable income in a previous year resulting from an IRS audit or discovery of an error. Although the distribution could salvage REIT status or let the REIT avoid a corporate tax on undistributed income, the deficiency dividend comes with a steep price: an interest charge based not on the corporate tax the REIT would pay, but on the amount of the deficiency dividend.

Preferential dividends — In the REIT context, a "preferential dividend" is one that differs in timing or amount for one shareholder versus others in the same class or is other than in accordance with the payment rights of one class compared with another class. Preferential dividends do not qualify for the deduction for dividends paid and might have disastrous effects on the REIT. Dividends on preferred stock are permitted as long as the dividends on all shares are paid in accordance with the legal rights of the various shareholders. In the case of a public REIT, preferential dividend issues may arise, for example, in a dividend reinvestment plan, or "DRIP," or an optional share purchase program where a discount is allowed of more than 5 percent from the market value of the shares. There are also technical issues in using multiday averages for pricing the shares.

Consequences of the operating partnership

The carryover of tax basis in the properties contributed to the OP has several implications on the REIT and its shareholders.

Depreciation and gain allocations and unitholder exposure to "phantom income" — Tax depreciation and future gain or loss on contributed properties are allocated to take into account the difference between the value of the property and its adjusted tax basis. Different allocation methods are available, and the method to be used is a matter of negotiation between the REIT and the contributor. Some methods are more beneficial for the contributor versus the REIT and its shareholders. The depreciation and gain allocations on contributed assets increase the unitholder's exposure to taxable income or gain in excess of the cash distributions that it receives from the OP ("phantom income").

Debt allocations to maintain tax basis — Because contributing partners typically are contributing low-basis properties subject to debt, they often have negative tax capital accounts as of the time of formation. OP unitholders often negotiate for the REIT to commit to maintain debt sufficient to allocate enough debt to them to cover these negative tax capital accounts and prevent gain recognition. "Bottom dollar guarantees" of OP debt are often part of the planning or negotiations to prevent gain recognition through disproportionate allocations of debt to the property contributors. In making commitments to one group of property contributors, the REIT should consider the potential effects on subsequent acquisitions.

Effects on REIT distribution requirement — The method for allocating tax depreciation impacts taxable income allocated to the REIT and has a corresponding effect on the REIT's distribution requirement. The REIT should model the effects of contributions of significant portfolios of properties on its future taxable income and distribution requirement.

Preparing for future secondary offerings and unit conversions — When the REIT completes a secondary offering in the future, it will contribute the proceeds to the OP. At such time, there may be an adjustment to the tax allocations of depreciation and gain or loss from future sales to take into account the difference between the value and the tax basis of all of the OP's assets, applying principles similar to those used when a property owner contributes a property to the OP. The complexity of the allocations increases exponentially and might require sophisticated software rather than spreadsheets. Similarly, unit conversions result in adjustments to basis with respect to the interest transferred to the REIT.

Publicly traded partnership (PTP) status — A PTP is a partnership that is publicly traded or actively traded on the secondary or equivalent market. The redemption right of a unitholder in the UPREIT structure might cause the units to be treated as actively traded. If a partnership is a PTP, it will be taxed as a corporation unless it satisfies an income test: At least 90 percent of the PTP's income must be from qualifying sources. Classification of the OP as a corporation would result in disastrous consequences to the REIT. Not only would the OP's income be subject to corporate tax, but also the REIT would fail the REIT income and asset tests. Fortunately, income that qualifies for the REIT income test, among other sources, also generally qualifies for the PTP income test, with two notable exceptions: Interest income from the conduct of a financial business does not qualify, and the PTP provisions do not provide for a parallel to the TRS. If the OP is a PTP and satisfies the income test to avoid classification as a corporation, an interest in a PTP is treated as a separate activity under the passive activity loss limitations. As a result, passive activity losses from other activities cannot offset taxable income from a PTP.

Organization and other requirements

Closely held requirements — For a REIT to maintain that status, five or fewer individuals cannot collectively own more than 50 percent of the REIT after the first year as a REIT. Consequently, many REITs have provisions in their corporate bylaws generally prohibiting ownership of 9.8 percent or more of the REIT's stock unless an exemption is approved by the board of directors or trustees.

100 shareholders — REITs are required to have at least 100 shareholders for 335 days of a 365-day tax year after the first year. This requirement is generally easy for a public REIT to satisfy, but must also be considered for a captive REIT subsidiary that might be used for state tax planning or as a joint venture vehicle. Preferred shares of $500 to $1,000 per share are often issued to 100+ shareholders to meet this requirement.

"Demand letter" — The REIT must send a letter to its shareholders requesting certain information from them as to their ownership and advising them that if they fail to respond, they are obligated to report the information in their own tax returns. This letter must be sent within 30 days of year-end. Failure to comply could subject the REIT to penalties or, in extreme cases, loss of REIT status.

Status during pre-IPO period

REITs sometimes experience issues with respect to meeting the income, ownership, or quarterly asset tests during the pre-IPO phase. A prospective REIT should monitor REIT testing on a frequent basis and be aware of potential asset testing questions caused from items such as start-up costs or investments in securities. A prospective REIT might fail the 75 percent income test by holding only short-term investments and might not generate any real estate-related gross income. In these cases, the entity could file a short-year return as a regular corporation for a period ending before the IPO and make an automatic change to the required calendar year as its tax year. This strategy — like most planning for a REIT — requires careful consideration.

Mitigation provisions

The scope and complexity of the REIT requirements create ample opportunity for an unintentional violation. Congress has now enacted mitigation provisions that allow an entity to retain its REIT status when a violation results from "reasonable cause" and not willful neglect. This standard requires that the REIT exercise ordinary business care and prudence in attempting to satisfy the requirements at the time the transaction is entered into and with respect to the ongoing effects of the transaction. Reliance on outside experts might demonstrate that the REIT has satisfied this requirement.

A financial penalty generally applies with a mitigation provision. The penalty could be based on the amount of nonqualifying gross income generated, the income generated from an asset violating an asset test, and/or a fixed amount. In addition to the penalty, a REIT could incur substantial expense for legal and accounting services, as well as internal costs in documenting the facts and evaluating qualification under the reasonable cause standard. Reasonable cause is inherently factual and could present significant issues for counsel in providing a clean tax opinion for a capital markets transaction. In some cases, the violation might delay a proposed transaction.

Corporate transactions

Tax on built-in gains recognized within 10 years — To the extent property of C corporation becomes property of a REIT in a tax-free transaction or in a conversion to REIT status, special rules subject the REIT to corporate-level taxation on subsequent recognition of the net built-in gains within a 10-year period. Alternatively, the C corporation could elect to recognize these gains on its final tax return prior to transfer of its assets or conversion to REIT status. To mitigate the impact of the built-in gains tax, REITs can use carryover C corporation net operating losses, time the recognition of built-in losses with built-in gains, or dispose of properties in tax-free transactions such as like-kind exchanges. To the extent a partnership with corporation partners transfers property to the REIT, a portion of the contributed property could be subject to the built-in gains taxation regime.

Requirement to distribute C corporation "earnings and profits" — A REIT must distribute any C corporation earnings and profits in its initial REIT year. This requirement is often accomplished through a special distribution and requires an accurate assessment of the earnings and profits of the C corporation as of the date of the REIT conversion. This distribution takes priority for tax purposes over the distribution of the REIT's current year taxable income.

Tax elections/status

REIT — The REIT election is made by filing a return on Form 1120-REIT. The initial due date is March 15 and may be extended to September 15. The IRS takes the position the election must be made on a timely filed return.

Taxable REIT subsidiary — The TRS election may be made up to 75 days after the date for which it will be effective. Maintaining proof of filing is particularly important as the IRS does not send confirmation of the election.

Entity classification — A limited liability company may be used as a TRS, for example, and would have to elect corporate status to be eligible to make a TRS election. This election may be made up to 75 days after the date for which it will be effective.

Qualified REIT subsidiary — QRS status is automatic if the entity is wholly owned by the REIT, treated as a corporation, and has not made a TRS election. No election is required.

Post-IPO reporting to investors

REIT shareholders — Generally, REIT dividends are considered ordinary dividend income to investors. A REIT may designate its distribution as a capital gain dividend to the extent of its net capital gain for the year. The REIT must designate the portion of the capital gain dividend that is attributable to unrecaptured depreciation on real property. Distributions made by the REIT in excess of the REIT's "earnings and profits," or "E&P," are considered return of capital. Returns of capital reduce basis in the shares, and distributions in excess of basis create capital gain from the disposition of the shares. E&P reflects various adjustments from taxable income, the most common of which for a REIT is the requirement to use a longer depreciation life than allowed for taxable income as well as requiring the straight-line method.

The REIT must send Form 1099 reporting the tax character of its dividends for the calendar year to its shareholders by the following January 31. Reporting to the transfer/dividend paying agent and to the Wall Street brokerage firms accelerates the deadline to as early as January 10. These deadlines place a premium on advance planning to satisfy investor expectations and avoid having to correct the initial reporting to investors. Withholding tax obligations apply with respect to non-US shareholders.

The REIT structure generally blocks state income tax filing requirements and unrelated business taxable income, both of which flow through a partnership.

OP unitholders — Unitholders in the OP will receive a Schedule K-1 reporting their distributive share of the OP's taxable income or loss. The Schedule K-1 must be distributed to unitholders by September 15, and the REIT will have to determine its schedule for earlier delivery and manage the expectations of unitholders. A unitholder is generally subject to tax in states where the OP has activity and must file a return in those states. Any unrelated business taxable income generated by the OP flows through to tax-exempt unitholders. The OP might be required to withhold on either the income allocable to nonresident partners or on distributions to nonresident partners attributable to a state.

State and local taxes

Nonconforming states/local jurisdictions

An increasing number of states impose tax on either a gross receipts or net worth basis. A REIT, QRS, or OP could find itself subject to a state or local tax even though no federal income tax is incurred. State and local taxes are changing more frequently and should be addressed early for their effect on an IPO portfolio or planned acquisition. Examples include the following:

- **Dividends paid deduction** — Several states and localities do not conform to the federal dividends paid deduction, or they impose net worth or gross receipts taxes on REITs. For example, New Hampshire, Ohio, and cities in Ohio, Virginia, and West Virginia are typically problematic jurisdictions. Other states may likewise impose franchise taxes on the REIT or taxes on entities held by the REIT, which should be evaluated on a case-by-case basis.
- **The Texas Gross Margins Tax** — generally imposes a 1 percent tax on Texas gross receipts, subject to limited deductions. For an equity REIT, the applicable deduction is likely 30 percent of its total revenue.
- **Captive REIT** — An increasing number of states disallow the dividends paid deduction for a "captive REIT" — one with a 50+ percent shareholder. This restriction could limit the opportunity to use a captive REIT as a joint venture vehicle or for other state tax planning beneath the OP. There are often exceptions for a captive REIT controlled by a public REIT.
- **Real property transfer taxes** — Many states impose a real property transfer tax on the transfer of real property, typically based on the fair market value of the property transferred. One planning opportunity is to transfer an interest in the legal entity that holds the real property, rather than directly transferring the real property itself — unless the jurisdiction imposes a controlling interest transfer tax.
- **Change in control tax for real property holding entities** — A number of jurisdictions impose a controlling interest transfer tax on the transfer of a greater than 50 percent interest of an entity that owns real property. Examples include Connecticut, the District of Columbia, Delaware, Illinois, Maine, Maryland, Michigan, New Hampshire, New Jersey, New York State, New York City, Pennsylvania, Washington, and potentially certain California localities. When a transfer is contemplated, the form of the transaction should be evaluated to determine whether the controlling interest transfer taxes could be mitigated through application of specific exemptions that might apply, such as the reduced rate in New York City and State for transfers to a REIT or OP.
- **Property tax reassessments** — The transfer of property (or controlling interest) might trigger a property tax reassessment. For example, under Proposition 13, California is generally limited in the amount by which it may increase the value of property assessed. When there is a change in control, however, California may adjust the value of the property to fair market value for purposes of property tax assessment. In some cases, a reduction in assessed values might be obtained following the transfer.
- **Legal form of REIT and state of formation** — For a public REIT, a corporation or business trust is selected most often. A "real estate investment trust" formed under Maryland is a popular vehicle for the public REIT or a QRS. If an alternative entity is considered, the filing fees and tax implications should be taken into account.
- **Additional planning opportunities** — Opportunities to minimize state and/or local taxes vary from jurisdiction to jurisdiction and might include holding property in certain types of legal entities, using intercompany debt, and isolating properties in certain states in a QRS or a private REIT. For example, under Pennsylvania law, a business trust that is a REIT or a QRS may, under certain circumstances, be excluded from the definition of a corporation and therefore not be subject to the Pennsylvania franchise tax.

PwC's strengths to serve the REIT industry

PricewaterhouseCoopers (PwC) is a global, national, and local leader in serving the real estate and real estate finance industries.

A broad organization

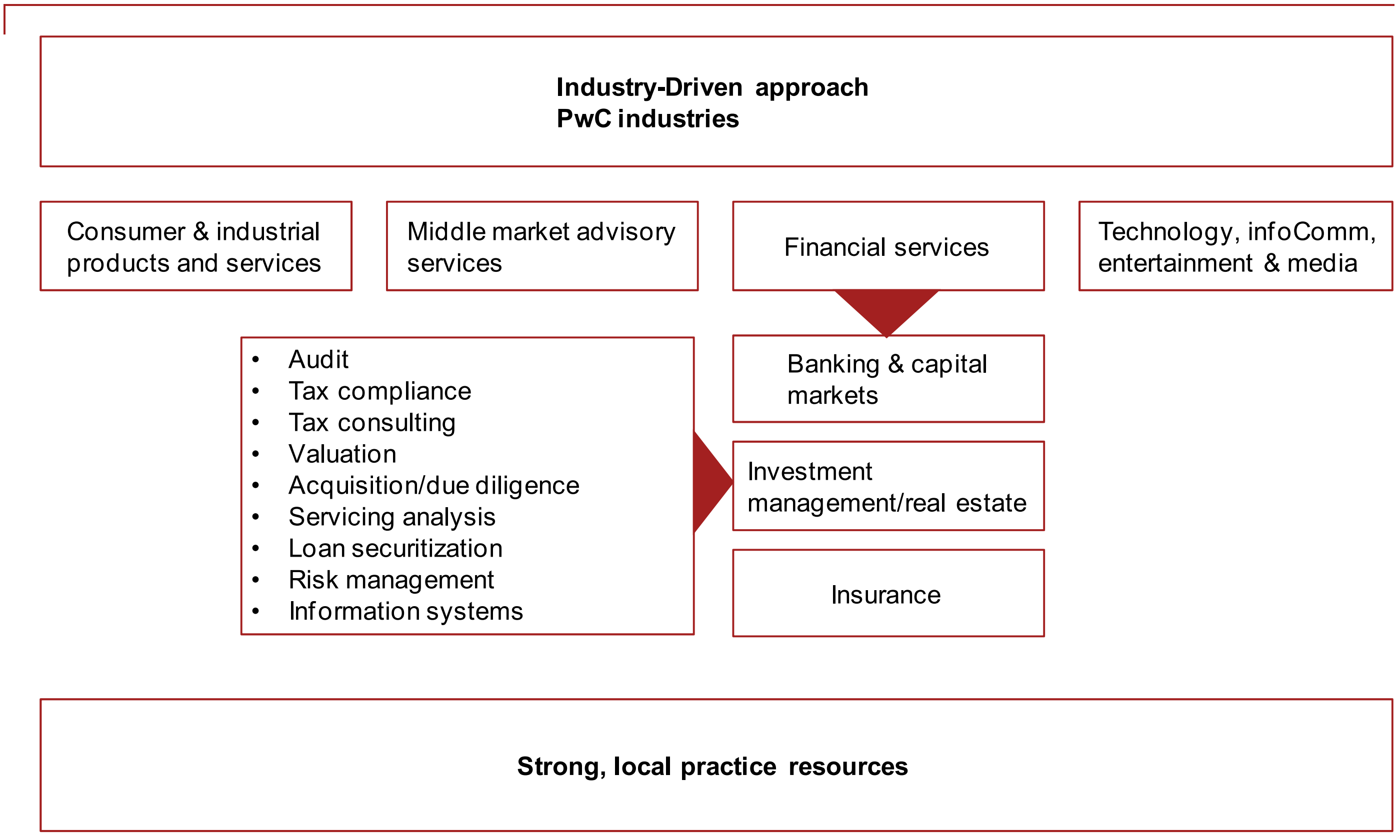
PwC audits 138 of the Fortune 500 companies — big, fast-changing businesses with operations spanning the globe. Our entire organization is built around the need to deliver outstanding service to diversified clients, and we have systems in place to maintain the highest standards of professional quality throughout the world.

PwC employs an industry-driven approach. Our organization's matrix runs across both functional skills (audit, tax, and specialty advisory services) and industry specialization. Accordingly, we bring a deep understanding of commercial real estate ownership and finance as well as the broader financial services industry. The following chart illustrates our organizational structure and the broad range of resources that will be available to support you in your IPO process and in starting life as a public company.

Real estate group

The engagement team serving our REIT clients will consist of local and national members of our firm's real estate industry group. PwC's Real Estate Industry Group is a key element of our Financial Services practice, providing a range of services to organizations with real estate-related interests throughout the United States and the world. Our real estate professionals, located in offices around the world, have a firsthand, in-depth understanding of every aspect of real estate, including key tax, accounting, and finance issues.

The changing nature of real estate and the real estate capital markets in recent years requires an adaptive and cohesive group of professionals capable of effectively dealing with the industry's dynamic circumstances. We know how to put our extensive knowledge and practical experience to work for our clients where it matters, particularly when it comes to such pivotal issues as IPOs, acquisitions and dispositions, other capital market transactions, and strategic planning.



Our integrated approach is carried out by a wide network of real estate consulting, tax, and accounting professionals who can quickly mobilize to form the most qualified team to respond to your unique circumstances. Our professionals represent a cross-section of talented people in valuation, reorganization, transaction advisory, corporate services, accounting, and tax. Moreover, they bring with them experience as real estate managers, planners, developers, credit underwriters, appraisers, advisors, asset managers, and tax attorneys.

Our real estate practice has 52 full-time real estate partners and more than 400 PwC real estate professionals across the United States. They serve more than 1,000 real estate organizations, including REITs, real estate advisors, institutional investors, lenders, developers, builders, operators, syndicators, and managers. These clients include some of the most prestigious and forward-thinking real estate companies — companies whose executives have come to trust PwC to support their business needs and goals.

Services to REITs

Our national REIT practice is second to none. PwC serves as independent accountant and tax advisor to more than 60 public and major private REITs, as well as many of the world's largest financial institutions, property companies, and real estate management firms. PwC is nationally recognized for its commitment and leadership in the REIT industry on three important levels:

- Our in-depth knowledge of real estate GAAP and the myriad SEC regulations
- Our technical knowledge and proficiency in tax regulations, strategies, and issues related to REITs, as well as delivery of tax services
- Our systems and internal controls knowledge of real estate systems and technology platforms

This is evidenced by our leadership in the REIT industry in general, including the NAREIT Best Financial Practices Council, Law and Accounting Conference, CFO Forum, and Institutional Investor Forum. PwC's thought leadership and industry affiliations are further described in Appendix E.

We have a close-knit team of professionals who work on REIT and non-REIT real estate engagements. Our approach for drawing on our national real estate and REIT resources to service local clients is simple: We communicate regularly — internally and with you. Our real estate partners from all lines of service participate in bi-weekly calls to discuss current transaction activity and other issues to share with our clients and engagement teams. Our audit professionals participate in a monthly Real Estate Accounting/Audit Quality conference call, during which accounting/auditing issues are identified and discussed among our most experienced real estate practitioners. This keeps us abreast of developments affecting REITs and our clients so that we can proactively communicate matters of interest to you.

PwC has significant experience in dealing with audit, tax, and regulatory issues associated with REIT formations, acquisitions, dispositions, recapitalizations, capital formation, and related matters. Our tax specialists have assisted clients across the country in analyzing the outcome of creating various REIT, UPREIT, and DownREIT structures and in implementing planning strategies to minimize the tax impact of the transaction while maximizing the return to the property owners.

REIT IPO experience

PwC brings extensive historical REIT IPO experience including:

- AG Mortgage Investment Trust Inc.
- AMB Property Corp.
- Affordable Residential Communities Inc.
- Associated Estates Realty Corporation
- Avalon Properties Inc.
- Beacon Properties Corporation
- Berkshire Income Realty
- Boston Properties Inc.
- Cabot Industrial Trust
- Carey Watermark Investors
- CenterPoint Properties Trust
- Chatham Lodging Trust
- CNL Hotels and Resorts Inc.
- Colonial Properties Trust
- Cornerstone Properties Inc.
- Corporate Office Properties Trust
- Corporate Properties Associates 14 Inc.
- Corporate Properties Associates 15 Inc.
- Corporate Properties Associates 16 Global Inc.
- Corporate Properties Associates 17 Global Inc.
- Developers Diversified Realty Corporation
- Equity Inns Inc.
- Excel Realty Trust
- Extra Space Storage Inc.
- FelCor Lodging Trust Incorporated
- First Industrial Realty Trust Inc.
- First Washington Realty Trust Inc.
- General Growth Properties Inc.
- Gladstone Commercial Corporation
- Glimcher Realty Trust
- Home Properties of New York Inc.
- Innkeepers USA Trust
- iStar Financial
- JP Realty Inc.
- Kimco Realty Corporation
- Macerich Company, The
- Mack-Cali Realty Corporation
- MFA Mortgage Investments
- Morgan Properties Trust
- New Plan Realty Trust Inc.
- Ocwen Asset Investment Corporation
- PMC Commercial Trust
- Post Properties Inc.
- Preferred Apartment Communities
- Prentiss Properties Trust
- Redwood Trust Inc.
- RFS Hotel Investors Inc.
- RLJ Lodging Trust
- Sabra Healthcare Limited Partnership
- Schottenstein Property Group
- Stag Industrial Inc.
- Storage USA Inc.
- Sun Communities Inc.
- Tanger Factory Outlet Centers Inc.
- TriNet Corporate Realty Trust Inc.
- Trizec Properties Inc.
- W.P. Carey LLC and CPA REIT’s
- Winston Hotels
- Wyndham International Inc.

In addition, we are currently working on a number of potential mortgage and property REIT IPOs. In conjunction with this activity, we are holding periodic information calls for the engagement teams. These calls are led by real estate industry specialists in our National Office who are also involved with the current transactions. Such calls are designed to help share market information, common issues, and emerging SEC areas of focus to help you streamline your process to completing the IPO.

Collaborative matter resolution

Consistent, local decision making

With PwC, you will see a dynamic process for to resolve matters. Unlike competitors that position themselves solely as the auditor of a management-prepared conclusion, our process demands collaboration and transparency with your every step of the way. Our real estate engagement partners have full authority and responsibility for your audit and the determination of the appropriate resolution of accounting and auditing issues. Our close-knit group of real estate partners is well-connected to National Office resources. This connection also provides the team members with an understanding of the National Office consulting process, helping them facilitate that process more efficiently and effectively.

With your PwC team, you get the right answer the first time — on time. This may be extremely critical to the completion of your IPO.

Representative list of real estate clients

Real Estate Investment Trusts

- AG Mortgage Investment Trust Inc.
- Associated Estates Realty Corp.
- Bedford Property Investors Inc.
- Berkshire Income Realty Co.
- Boston Properties Inc.
- Brandywine Realty Trust
- Carey Watermark Investors
- Chatham Lodging Trust
- Corporate Office Properties Trust
- Developers Diversified Realty
- Equity Inns Inc.
- Excelsior LaSalle Property Fund
- FelCor Lodging Trust Inc.
- First Industrial Realty Trust
- Getty Realty Corp.
- Gladstone Commercial Corporation
- Glenborough Realty
- Home Properties Inc.
- Host Hotels and Resorts
- Innkeepers USA Trust
- iStar Financial Inc.
- Kimco Realty Corporation
- Mack-Cali Realty Corporation
- Medical Properties Trust
- Morgan Properties Trust
- PMC Commercial Trust
- Preferred Apartment Communities
- Ridge Property Trust I, II, IV
- RLJ Lodging Trust
- Sabra Health Care Limited Partnership
- Stag Industrial, Inc.
- Tanger Factory Outlet Centers, Inc.
- Winthrop Realty Trust
- W.P. Carey & Co. and its affiliated REITs

Opportunity funds/advisors

- AEW Capital Management, L.P.
- Angelo Gordon
- Citigroup Property Investors
- The Carlyle Group
- DB RREEF
- Fidelity Management Trust Co.
- Goldman Sachs - (Whitehall Funds)
- Grosvenor Investment Management (formerly Legg Mason Real Estate Services)
- JE Roberts Co.
- J.P. Morgan Asset Management
- J.P. Morgan Partners
- KTR Capital Partners
- LaSalle Advisors Capital Management
- Lend Lease Real Estate Investments
- Prudential Real Estate Investors
- Ramius Capital Group
- SSR Realty Advisors Inc.
- Starwood Capital Group, LLC

Real estate debt funds/companies

- Cerberus
- Ladder Capital Finance
- Pimco REIT, Inc.
- Prima Funds
- Square Mile
- Starwood Capital Debt Funds
- Western Asset Mortgage Capital Corporation

Real estate operating companies and other real estate-related

- Bank of America
- Bank of Boston
- CDC Capital Inc.
- D.R. Horton Inc.
- Ellington Financial LLC (PTP)
- Forest City Enterprises
- Red Roof Inns
- Schottenstein Property Group

Other financial services clients

Investment companies/asset managers

- AMG
- Fidelity Investments
- Janney Montgomery Scott
- Legg Mason
- Natixis
- Oppenheimer Funds
- PNC Global Investment Servicing, Inc.
- Prudential Investment Management
- Schroders
- SEI
- T. Rowe Price
- Vanguard
- Wellington

Banks/financial institutions

- Bank of America
- Credit Suisse
- Deutsche Bank
- Fannie Mae
- Freddie Mac
- JP Morgan
- Sallie Mae
- State Street Bank & Trust
- Union Banque Privée
- UBS (Global Asset Management)

Insurance companies

- AIG
- AXA Investment Managers
- New York Life Investment Management
- Penn Mutual Life Insurance
- Prudential Financial

Investment banks

- Goldman Sachs
- ING Barings
- Morgan Stanley/Dean Witter
- Nomura Securities International
- Thomas Weisel Partners

How we will support your IPO

Going public is a monumental decision. It forever changes how a company does business. Preparation for a public offering is key. This is where we can help.

The process to complete a public offering can be time consuming and expensive and can take substantial management focus away from the day-to-day operations of a company. The preparation for “being public” can be just as important as the process for “going public.” Your company will need to meet numerous additional requirements as a public company that may require a long lead time, new skill sets, and additional resources. Thinking through the requirements and developing an appropriate plan can reduce unexpected pre-IPO work and post-IPO issues.

Of course, the IPO is not the end of the story. Once listed, a company will be under far greater public scrutiny and will have a range of continuing compliance obligations. Any weakness in systems or failure to comply could cause management public embarrassment and reputational damage. It also could subject the company and its officers and directors to litigation. In the first 12 months post-IPO, the benefits of careful preparation and planning are also realized. PwC helps you understand the processes required to meet new demands on your organization and in certain instances helps you form the underlying infrastructure to operate effectively in the new environment.

Your PwC engagement team will be chosen specifically to meet your unique needs. They will have the support of resources who bring the technical, industry, private and public company, and IPO transaction experience required to keep you ahead of the curve and prepare you for potential issues you could face as a public Company.

Whether acting in the capacity of your auditor, tax service provider, or nonaudit accounting advisor, we will be an active part of your team. Our goal is to be a business advisor that helps make your success possible.

Readiness assessment

- **Evaluate your readiness to go public** By undertaking a structured analysis of a company’s preparedness for going public and being public, we can provide management with a full understanding of the key IPO issues as they apply to the company. From the output of this assessment, a project plan can be developed to address any issues and identify resources to perform the necessary remediation work.
  A typical IPO readiness assessment would address the historical track record and equity story. What additional information is needed for the prospectus, such as more financial statements of acquired and to-be-acquired properties? Are the accounting policies suitable for a listed company? How do they compare to the peer group? What additional disclosures will be required as a listed entity? An evaluation of readiness could also address deal structuring including tax planning; assess corporate structure, board structure, board subcommittees, board and senior management capabilities, and corporate governance arrangements; and consider stock exchange listing eligibility issues.

  We will review your objectives and capital needs; advise you about the advantages and disadvantages of going public; identify the options available; offer guidance on stock exchanges (including SEC requirements); provide insight into costs and cultural changes that will be involved; explain the entire process and pitfalls in detail; and work with you to establish a reasonable timetable. Throughout the assessment process, issues can be identified and dealt with at an early stage, saving time and money. Early planning allows you to react quickly, minimize surprises, and be ready to take advantage of any positive market movements. In our experience, businesses that have undertaken a pre-IPO preparation exercise to identify the key issues are those that are the best prepared for the IPOs process.

- **Prepare an action plan** Our team will work closely with you to “get your house in order” and help you make the transition from a private enterprise to a public company. We will assist you in getting your financial statements in order; advise on necessary management restructuring, including engaging proactive outside directors for the board; assist in the establishment of an IPO advisory team; and provide guidance on professional relationships for an IPO.
- **Review financial controls** We will provide the understanding you need about systems controls and corporate governance to be ready for the reporting demands of a public company, including compliance with Sarbanes-Oxley requirements. We will help you assess your internal controls, highlight areas of potential risk, and provide recommendations for improvement.
- **Conduct a corporate governance gap analysis** This step prepares you for the requirements of managing a public company and assists in enhancing shareholder value. We can evaluate your actual or planned corporate governance practices and policies against securities and listing guidelines, identify potential weaknesses, and recommend remedial action.
- **Do a tax check-up** This process helps you maximize the tax advantages and minimize the tax costs of going public. We review the tax consequences of going public, the potential risks and planning opportunities, and the proactive measures you need to take.
- **Arrange for compliance with REIT tax requirements** We will assist you in developing policies and procedures that provide the appropriate monitoring of compliance requirements.

Going public

PwC can also help in many ways during the IPO process. As auditors, we can provide assurance on the historical financial information, participate in due diligence with the investment banks, and give comfort on financial information included in the registration statement. As auditors or nonaudit service providers drawing on our experience with the IPO process, we will advise you in connection with the drafting of the registration statement, including the critical management discussion and analysis (MD&A) in your prospectus; advise you on the presentation of your financial statements and selection of key accounting policies; and provide advice on tax structure. Our prior experiences will provide you with invaluable insights on how the SEC is viewing public REITs and how other registrants are dealing with common IPO issues. We will help you anticipate and respond to issues raised by the regulators. These insights will help streamline the IPO process and could ultimately impact its timing and success.

In addition, we can advise you on a wide variety of infrastructure issues, including an optimal process for designing key controls and outsourcing issues to meet Sarbanes Oxley 302/404 requirements. We have helped many small and mid-sized companies do just that in connection with their IPOs and have a great deal of experience in this area.

Our REIT practice working group is already focusing on these issues with many other existing REITs as well as many new REIT IPOs, and we will bring these experiences to bear for you. These services can be structured within the independence rules so that none will impact on our ability to serve as your auditors subsequent to the IPO.

IPO transactions can be complex, time consuming and a distraction for management from the day-to-day needs of running the business. Effective project management is key. Our project management specialists can provide advice and recommendations on an appropriate project governance framework and project plans and can assess project deliverables, interdependencies, risks, and resources.

Your primary engagement partner will always be available to address your questions and quickly respond to your issues and deadlines and see them through to a timely, satisfactory conclusion throughout the registration process. By ensuring a close relationship with our National Office specialists, we will provide you with accurate and timely support in your transition to public company status.

Being public

Systems and internal controls

Our professionals can help you establish and document an effective internal control environment, while ensuring the right processes and systems are in place to support the business. Specifically, we can provide the following services for each area:

Internal controls

- Internal controls optimization services to assess the current environment and establish a rationalized controls framework focused on a risk-based approach and the ability to provide controls comfort in an efficient manner;
- Sarbanes-Oxley readiness assessment to validate controls effectiveness in advance of the external auditor review, providing management insights on the controls environment and the ability to remediate possible controls deficiencies;
- Provide access to existing libraries of controls to streamline the process of developing a framework and leveraging industry leading practices; and
- Third Party Assurance to provide comfort over the operations and controls as a third-party service provider for key financial and/or technology support.

Assistance in defining needs and selecting new systems

PwC is proud to be the only major accounting firm with a practice dedicated to real estate systems and process assurance. Our Risk Assurance practice comprises industry and technology-focused professionals who have controls-related experience across most major technology platforms covering both equity and debt portfolios.

Additionally, this team assists our clients in the selection process for the outsourcing of key real estate management and loan servicing functionality, as well as applicable accounting, management, and investor reporting, consolidation, and asset management applications for their business needs. Our team has extensive experience with these projects and uses this knowledge to “fast-track” the process by creating a short list of industry vendors to meet your needs. Once the potential vendors are selected, PwC will work with you to document a list of key requirements that can be used to evaluate each option and determine the best fit. PwC works closely with you throughout this process, acting as a trusted advisor, with management driving the process and owning the final deliverables and action items. As part of this process, we can:

- Assess the effectiveness of internal systems, processes, and personnel to establish the appropriate baseline for public company operations;
- Assist in defining the business requirements for the systems, based on internal stakeholder interviews and leverage of industry leading practices;
- Support management throughout the selection process, including identification of a streamlined set of vendors, preparation of an RFP, and participation in vendor demonstrations and analysis; and
- Provide insights on the ongoing operating model and the potential benefits and risks for the use of a third-party service provider to support the technology.

Governance and leadership

We can assist our clients with the performance of governance diagnostic and benchmark studies; assist management to design corporate governance structures to comply with relevant regulatory requirements; develop approaches for planning and embedding governance, risk management, and compliance into the organization; deliver training on various aspects of corporate governance; and assist management to enhance the board charter, bylaws, committee mandates, and corporate governance and to develop corporate policies and procedures.

Media and investor relations

Private companies frequently have little to no experience in communicating with the wider investor community. They will need to create the appropriate infrastructure to support the IPO process and the regular earnings release schedule. We can provide assistance to help a company understand the challenges involved in the investor relations and media relations processes. For example, this assistance could include benchmarking key performance indicators, defining and presenting non-GAAP metrics, creating supplemental reporting packages (common in REIT industry), and defining reporting timetables.

Human resources

Research suggests that proactively addressing an organization's human resources issues in the context of an initial public offering can increase the likelihood of a successful offering. Compensating executives and making sure the organization has an appropriate depth of talent are examples of two key areas of focus. We can help identify existing technical/regulatory qualifications, skills, and experience that are adequate to meet additional public company requirements; identify pivotal roles and dependencies within the business; and determine if successors for leadership and pivotal roles are identified. We could review existing compensation programs and determine how new compensation "currency" would impact the design mix in the post-IPO environment.

Treasury and risk management

In an lPO environment, the new organization can be exposed to significant risks related to treasury activities. PwC can assist with the development of appropriate "best practice" treasury and cash recommendations linked to the finance function and wider business. As an example, in certain circumstances, we could assist in the design and implementations of policies and procedures, cash flow forecasting, and systems and risk management processes.

An IPO can be a transformational transaction for the organization with unique, broad-reaching impacts. We would be glad to share our perspective with you and discuss our capabilities in each of the areas outlined in the accompanying chart and how we could help.

Next steps to readiness
PwC IPO readiness services

Readiness Assessment

- Assist in assessing the organizations readiness via IPO Readiness Diagnostic
- Assist in assessing the current state of internal controls and remediation plan
- Assist in identifying key gaps and issues
- Provide recommendations on management's development of an action plan to remediate identified issues associated with "going public" and "being public"
- Identify key REIT structuring requirements and potential tax leakage
- Estimate tax transfer costs
- Coordinate UPREIT, REIT, and unitholder tax planning

Going Public

Accounting, Reporting, and Financial Effectiveness

- Provide observations on complex accounting issues and SEC reporting issues
- Provide recommendations on Summary, Selected, MD&A presentations, and complex pro forma presentations
- Advise on addressing and resolving issues raised by the SEC

Tax

- Advise on tax implications of structure changes

Human Resources

- Provide observations on equity compensation programs and FAS 123R

Being Public

Accounting, Reporting, and Financial Effectiveness

- Provide recommendations on SEC reporting requirements, company policies and procedures, and enhanced management reporting including budgeting and forecasting

Governance and Leadership

- Provide recommendations on board of directors/independent audit committee and ethics/compliance program

Internal Controls

- Provide recommendations on company's Sarbanes 404 readiness efforts

Media and Investor Relations

- Provide recommendations on KPIs, analyst conferences, and earnings releases

Treasury and Risk Management

- Provide recommendations on treasury process improvement and risk management policies

Tax

- Provide ongoing tax consulting and compliance services

Human Resources

- Assist with benchmarking and employee retention plans
- Make observations on company's implementation of equity compensation programs

Technology

- Provide recommendations on technology enhancements to support increased reporting and other public company requirements

Project advisory

Provide recommendations on company's prepared project status, risks, and interdependencies; communication framework and issue resolution process; structured change management process

Conclusions

At this point, you have the facts about what it takes to go public — the preparation, compliance, and ongoing commitment. You have a good idea of the time it takes. You have looked at what the process is all about, evaluated the advantages and disadvantages, and weighed the costs. Practically speaking, you have begun to work through a process of strategic planning and analysis. You know what it takes to get your company looking and operating like a public company. You have all the factual information you need to make an informed decision. Ultimately, though, the decision comes down to soul searching — to the examination and evaluation of your reasons for taking your company public and how such a decision will affect your close personal relationships as well as the company. Are you considering going public solely to raise money? To expand the company? For status and prestige? Is going public necessary to attract and retain key people? Are you at the stage in life where you are looking for greater personal liquidity or a planned exit strategy?

The process can work for any of these reasons, but remember, it takes time, careful preparation, and timing.

Appendix A — The SEC and securities regulations

The SEC is the principal regulatory authority over the offering and trading of securities. Its overriding objective is the protection of investors and the maintenance of fair and orderly markets. It reviews and might reject registration statements for new securities issues. It also supervises the day-to-day operation of the securities markets. The responsibility of the SEC is to protect the investing public — not the issuer, the underwriters, or the securities brokers and dealers.

The SEC was created by the Securities Exchange Act of 1934 and is responsible for administering the provisions of that act, as well as the Securities Act of 1933.

The securities act of 1933

The Securities Act of 1933 (1933 Act) requires the registration of securities with the SEC prior to their sale to the public. It is a disclosure statute designed to protect prospective investors from misrepresentation, manipulation, and other fraudulent practices in connection with the public offering of a company's securities.

Disclosure is provided by means of a registration statement. A copy of a prospectus, which forms part of the registration statement, must be furnished to each person who buys securities in an offering or who requests it in writing. A company's 1933 Act registration statement is a public document available for inspection by any person, and can be obtained by accessing the SEC's EDGAR database on its Internet website (http://www.sec.gov). However, in certain situations, portions of the document could be accorded confidential treatment.

Registration statements that fall under the 1933 Act include (but are not limited to) this list:

- **Forms S-1, S-11 (special form for real estate companies)** — These forms are typically used by companies that are first-time registrants of securities to be sold to the public.
- **Forms S-3 and S-4** —These forms are typically used by companies that have been subject to SEC reporting requirements for one year or longer — in other words, existing SEC registrants that are registering additional securities.
- **"F" series forms (e.g., Form F-1)** — These forms are used by foreign entities wishing to register securities in the United States.

All registrants making an offering of securities are subject to the antifraud provisions of the 1933 Act. These provisions impose civil and criminal liabilities for untrue statements or omissions. They apply not only to controlling shareholders, directors, and underwriters, but also to the accountants and lawyers who assist in the preparation of a registration statement and are named therein.

The securities exchange act of 1934

In contrast to the 1933 Act, which is primarily concerned with the initial distribution of securities, the Securities Exchange Act of 1934 (1934 Act, or Exchange Act) is concerned with the ongoing trading of those issued securities and addresses periodic reporting obligations for issuers of publicly held securities. Generally, the 1934 Act registration statements and reports are intended to assist an investor or potential investor in reaching an informed opinion regarding a company's securities.

The principal objective of the 1934 Act is the regular dissemination of significant financial and other information relating to securities traded on the national securities exchanges or marketplaces. This is accomplished by requiring registrants to file annual, quarterly, and other periodic reports. These reporting obligations could be suspended for companies that have (1) less than 300 shareholders or (2) less than 500 shareholders and total assets of less than $10 million after the end of each year for the past three years. For new public companies, this immediate suspension is not available for the year in which the IPO registration statement becomes effective.

The 1934 Act also includes other protective regulations, including rules that prohibit insider trading and securities market manipulations (which give a false or misleading appearance of active trading). There are also requirements for corporate insiders (directors and officers of registered corporations and principal owners of their equity securities) to file statements of their equity securities holdings and monthly reports of changes in such holdings. The market generally shows a keen interest in insider trading activity.

The Sarbanes-Oxley act of 2002

The Sarbanes-Oxley Act of 2002 (SOX) was signed into law on July 30, 2002, and represents the most significant reform in securities laws since they were first enacted. Written in response to high-profile corporate scandals, SOX was meant to restore confidence in public financial reporting by prescribing fundamental changes in how audit committees, management, and auditors interact and carry out their responsibilities.

The Public Company Accounting Oversight Board (PCAOB) was established by SOX to oversee the audit of public companies subject to US securities laws. The duties of the PCAOB, as established by the act, include establishing audit, quality control, and independence standards; registering public accounting firms; inspecting public accounting firms; and conducting investigations and disciplinary proceedings. The PCAOB, subject to the oversight of the SEC, replaced the accounting profession's self-regulating framework for public company audits.

Presented below are some of the key elements of Sarbanes-Oxley that impact issuers:

Management certifications and report on internal control

Section 302 — This section requires an issuer's principal executive and financial officers each to certify the financial and other information contained in the issuer's quarterly and annual reports. The rules also require these officers to certify that: they are responsible for establishing, maintaining, and regularly evaluating the effectiveness of the issuer's internal controls; they have made certain disclosures to the issuer's auditors and the audit committee of the board of directors about the issuer's internal controls; and they have included information in the issuer's quarterly and annual reports about their evaluation and whether there have been significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation. This section also requires issuers to maintain and regularly evaluate the effectiveness of disclosure controls and procedures designed to certify that the information required in reports filed is recorded, processed, summarized, and reported on a timely basis.

Section 906 — This section contains a certification requirement that is separate and distinct from the certification requirement mandated by Section 302. Section 906 provides that each periodic report containing financial statements filed by an issuer with the commission pursuant to Section 13(a) or 15(d) of the Exchange Act must be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or the equivalent thereof) certifying that the report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act and that the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer. Section 906 expressly creates new criminal penalties for a knowingly or willfully false certification with fines up to $5 million and 20 years in prison.

Section 404 — This section requires issuers, other than registered investment companies, to include in their annual report, a report of management on the company's internal control over financial reporting. The internal control report must include: a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company; management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year; a statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting; and a statement that the registered public accounting firm that audited the company's financial statements included in the annual report has issued an attestation report on the effectiveness of the company's internal control over financial reporting. Under the rules, a company is required to file the registered public accounting firm's attestation report as part of the annual report. In the Dodd-Frank Reform bill, Congress permanently exempted from Section 404, nonaccelerated filers.

Audit committees

Section 301 — Its requirements relate to: the independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent; auditor: procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee.

Section 407 — This section requires a company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee and, if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this and explain why.

Independent auditors

Section 201 — This section prohibits a registered public accounting firm from providing any non-audit service to an issuer contemporaneously with its audit that includes:

(1) Bookkeeping or other services related to the accounting records or financial statements of the audit client; (2) Financial information systems design and implementation services; (3) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) Actuarial services; (5) Internal audit outsourcing services; (6) Management functions or human resources; (7) Broker or dealer, investment adviser, or investment banking services; (8) Legal services and expert services unrelated to the audit; and (9) Any other service that the board determines, by regulation, is impermissible. The board may, on a case-by-case basis, exempt from these prohibitions any person, issuer, public accounting firm, or transaction, subject to review by the commission. The bill allows an accounting firm to "engage in any non-audit service, including tax services," that is not listed above, only if the activity is preapproved by the audit committee of the issuer. The audit committee must disclose to investors in periodic reports its decision to preapprove nonaudit services. Statutory insurance company regulatory audits are treated as an audit service, and thus do not require preapproval. The preapproval requirement is waived with respect to the provision of nonaudit services for an issuer if the aggregate amount of all such non-audit services provided to the issuer constitutes less than 5 percent of the total revenues paid by the issuer to its auditor (calculated on the basis of revenues paid by the issuer during the fiscal year when the non-audit services are performed); if such services were not recognized by the issuer at the time of the engagement to be non-audit services; and if such services are promptly brought to the attention of the audit committee and approved prior to completion of the audit. The authority to preapprove services can be delegated to one or more members of the audit committee, but any decision by the delegate must be presented to the full audit committee.

Section 204—The accounting firm must report to the audit committee all "critical accounting policies and practices to be used, all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management, ramifications of the use of such alternative disclosures and treatments, and the treatment "preferred" by the firm.

Other

Section 304—If as a result of misconduct an issuer is required to prepare a restatement because of "material non-compliance" with financial reporting requirements of the federal securities laws, the chief executive officer and the chief financial officer shall "reimburse the issuer for any bonus or other incentive-based or equity-based compensation received" during the 12 months following the issuance or filing of the noncompliant document and "any profits realized from the sale of securities of the issuer" during that period. In any action brought by the SEC for violation of the securities laws, federal courts are authorized to "grant any equitable relief that may be appropriate or necessary for the benefit of investors."

Section 402—Generally, it will be unlawful for an issuer to extend credit to any director or executive officer.

Mortgage REITs and the investment company Act — In September 2011, the SEC issued a concept release, *companies engaged in the business of acquiring mortgages and mortgage-related instruments* — Through this release, the SEC is seeking public comment on interpretations of a provision in the Investment Company Act – Section 3(c)(5)(C) – that may be used by some companies engaged in the business of acquiring mortgages and mortgage-related instruments such as some REITs. A concept release is a Commission-approved document that poses an idea or ideas to the public to get their views. At the time of this writing, it is unclear what if any long term impact any rule making in this area (the first in nearly 50 years) will have on REITs whose investment operations are concentrated in residential or commercial mortgage backed securities.

State securities legislation

In addition to federal regulations, individual states have their own securities laws known as "Blue Sky" laws. These vary in content, and some disallow offerings that are not "fair, just, or equitable." In some states, the prospectus and registration statement filed with the SEC fulfill the state registration requirements; in other states, additional information is required. Accordingly, when offering securities, a company must carefully consider state regulations. The need to obtain clearance in key states is important since failure to do so can impede the initial distribution of your stock.

Securities markets

The two major securities markets in the United States are the New York Stock Exchange (NYSE) and the NASDAQ Stock Market (NASDAQ). In addition, there are numerous regional exchanges.

New York Stock Exchange — The NYSE is also known as the Big Board. The NYSE is an "exchange," where shares are auctioned on a trading floor by specialists responsible for all of that stock's activity. All orders go through the specialist, who matches orders for buyers and sellers. The NYSE lists more than 2,800 companies.

The NASDAQ Stock Market — Consists of the NASDAQ National Market and the NASDAQ Small Cap Market and includes listings for more than 3,500 companies. NASDAQ trading is done electronically through computer transactions and telephone conversations (in other words, there is no physical location). NASDAQ stocks are traded by "market makers," who, often using their own money, work together to make a market for a given stock. The NASDAQ tends to provide a more liquid market since the combined capital of a number of market makers usually exceeds the funds available to a specialist on an exchange.

Other markets

Additionally, there are other over-the-counter (OTC) services for smaller securities, which, based on their size, may or may not be subject to SEC reporting requirements. These include pink sheets and the OTC Bulletin Board.

Listing criteria for the major markets

The listing criteria for the major exchanges may be found on their websites:

www.nasdaq.com

www.nyse.com

Appendix B — REIT/MLP glossary

ADJUSTED FUNDS FROM OPERATIONS (AFFO): "AFFO" refers to the performance number derived from FFO defined by NAREIT after management has made certain adjustments to it. AFFO is usually calculated by subtracting/eliminating from FFO certain nonrecurring or noncash items such as impairments or "straight-lining" of rents. This calculation could vary significantly from company to company.

CASH AVAILABLE FOR DISTRIBUTION: Cash (or funds) available for distribution (CAD or FAD) is a measure of a REIT's ability to generate cash and to distribute dividends to its shareholders. In addition to subtracting from FFO normalized "revenue-maintaining capital expenditures," the REIT may eliminate effects of other noncash items such as impairments or "straight-lining" of rents.

DOWNREIT (DownREIT): If a REIT does not adopt the UPREIT structure and subsequently wants to acquire properties on a tax-deferred basis to the property owners, it may adopt the "DownREIT" structure. In a DownREIT, the property owner contributes its assets to a partnership, the property owner receives a number of units that are entitled to a distribution equal to the dividend paid on REIT stock and a redemption right for REIT stock or an equivalent cash payment. Most of the REIT's real estate investments will be held directly by it or through other partnerships that have no relationship to the DownREIT partnership. Because all assets of the REIT are not held by the partnership, the unitholder in a DownREIT might not have the same security for the distributions as a unitholder in an UPREIT.

EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION, AND AMORTIZATION (EBITDA): EBITDA is often used as a performance metric and used in coverage calculations for debt.

EQUITY REIT: A REIT that owns, or has an "equity" interest in, rental real estate (rather than making loans secured by real estate collateral).

FORM S-11 (S-11): Form S-11 is used for registering securities under the Securities Act of 1933 issued by (i) real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, or (ii) by other issuers whose business is primarily investing, either directly or indirectly, in real estate (including master limited partnerships or limited liability companies). It is not for use by an issuer that is an investment company registered or required to register under the Investment Company Act of 1940. Form S-11 contains certain requirements unique to real estate ownership and operations.

FUNDS AVAILABLE FOR DISTRIBUTION (FAD): See CASH AVAILABLE FOR DISTRIBUTION.

FUNDS FROM OPERATIONS (FFO): As defined by NAREIT, FFO means net income (computed in accordance with generally accepted accounting principles), excluding gains (or losses) from sales of property, plus depreciation and amortization from real estate assets, and after similar adjustments for unconsolidated partnerships and joint ventures.

REGULATION G (Reg G): Represents the SEC rules governing disclosure of non-GAAP financial measures, including FFO/CAD/FAD/EBITDA, etc. Applies to all public disclosures including press releases and SEC filings. In general, Reg G imposes the following three conditions on companies with respect to disclosure of non-GAAP measures: (i) the non-GAAP financial information must not be misleading or contain a material misstatement or omission, (ii) the disclosure must include the most directly comparable GAAP financial measure, and (iii) the disclosure must provide a quantitative reconciliation (generally a tabular presentation) between non-GAAP financial information and the most directly comparable GAAP financial measure. Registrants must also comply with Item 10(e) of Regulation S-K with respect to the use of non-GAAP financial measurements in filings with the SEC.

INDUSTRY GUIDE 5 (GUIDE 5): Although this is titled "Preparation of Registration Statements Relating to Interest in Real Estate Limited Partnerships," the SEC has broadly required sponsored products (including blind pool REITs) without significant operating history to provide certain information under "prior performance" relating to other real estate investment programs of the sponsor.

MAGIC PAGE: A typical REIT IPO on Form S-11 contains a required section called "Distribution Policy." This section describes the company's planned distributions out of operations. Generally, the presentation starts with pro forma net income (as affected for acquisitions/dispositions and the effects of the offering) and makes adjustments to arrive at FFO and further adjustments to arrive at CAD. Because equity REIT IPOs have traditionally been marketed largely off expected dividend yield, these distributions are typically based on NOI and because of depreciation are more sufficient than required to maintain REIT status. Accordingly, for many REITs, dividends will represent a return-of-capital for tax purposes. Both the investors and underwriters focus heavily on this section during the marketing process. The SEC also has a long history of comments on what can and cannot be included in this section. Further, as these pages generally include one or more non-GAAP measures, any presentation must be Regulation G compliant.

MASTER LIMITED PARTNERSHIP (MLP): A master limited partnership can be registered under Form S-11. Frequently, such entities will be deemed to be publicly traded partnerships, or PTPs, for tax purposes and subject to special tax rules.

MORTGAGE REIT: A REIT that makes or owns loans/securities and other obligations that are secured by real estate collateral.

NET OPERATING INCOME (NOI): NOI is a non-GAAP financial measure equal to property operating revenues less property operating expenses.

OPERATING PARTNERSHIP UNIT (OPU): Operating partnership units are issued in tax-deferred transactions by the operating partnership with REIT sponsors or other third parties in exchange for property net of debt obligations. Although the forms and rights can vary from REIT to REIT, in the most common structure, the holder of OPUs may request redemption by the operating partnership. In lieu of cash settlement by the operating partnership, the REIT, as general partner of the UPREIT, may, at its option, choose to acquire these units outside the operating partnership in exchange for its common stock, usually on a one-for-one basis. Upon redemption of units in the OP, the REIT's percentage ownership in the OP will increase.

PUBLICLY TRADED PARTNERSHIP (PTP): A publicly traded partnership is a partnership that is publicly traded or actively traded on the secondary market or for which the unitholder has a right of redemption that provides equivalent liquidity. PTPs are taxed as partnerships if 90 percent of their gross income is from passive sources, including passive rents, interest, and dividends. If the PTP fails this income test, it is taxed as a corporation.

QUALIFIED REIT SUBSIDIARY (QRS): A qualified REIT subsidiary (QRS) is a corporation wholly owned by a REIT that is disregarded for federal tax purposes. Some states follow federal treatment, and others subject QRSs to corporate income and/or franchise taxes.

REAL ESTATE INVESTMENT TRUST (REIT): A corporation or an unincorporated association that invests in real estate assets and ordinarily would be taxed as a corporation. However, REITs meeting the requirements of sections 856 through 860 of the Internal Revenue Code are permitted a deduction for dividends paid, and the amounts thus distributed (including capital gains) are taxable only to the beneficial owner. The deduction benefit can be obtained only if the entity complies with all the applicable IRS regulations. Failure to meet these requirements can result in significant taxes and/or loss of REIT status.

REVENUE-MAINTAINING CAPITAL EXPENDITURES: Revenue-maintaining capital expenditures, a non-GAAP financial measure, are a common component of CAD calculations and represent the normalized portion of capital expenditures required to "maintain" current property operating levels for CAD. Revenue-maintaining capital expenditures can vary by property type and normalized recurring expenditures that are capitalized by the REIT and then amortized, but which are necessary to maintain a REIT's properties and its revenue stream (for example, new carpeting/appliances in apartment units, normal capital expenses to maintain a property, and leasing expenses and tenant improvements allowances).

ROLL-UP TRANSACTION (also more generally referred to as a "put-together transaction"): A transaction in which more than one entity is combined concurrent with an initial public offering of a real estate company. It is commonly completed as an UPREIT transaction to defer tax consequences to the existing owners.

RULE 3-05 FINANCIAL STATEMENTS: See "The going-public process" for more discussion of this rule.

RULE 3-09 FINANCIAL STATEMENTS: Financial statements that are required to be filed by the registrant on significant investments that are accounted for under the equity method.

RULE 3-14 FINANCIAL STATEMENTS: See "The going-public process" for more discussion of this rule.

SEC Financial Statement SCHEDULES: Potentially, there are a number of additional schedules required pursuant to SEC Regulation S-X Article 5. These requirements could in some cases be met by the inclusion of relevant information in the footnotes to the financial statements or through inclusion of the separately audited financial schedules. Common REIT-related schedules include: (i) Schedule II Valuation and Qualifying Accounts (including accounts receivable reserves and other reserves), (ii) Schedule III - Real Estate and Accumulated Depreciation, and (iii) Schedule IV Mortgage Loans on Real Estate (as lender).

STRAIGHT-LINE RENTS: Current GAAP that requires lessors to reflect minimum lease payments due over the noncancellable lease term based on the average rent to be received. The minimum lease term begins upon the lessee taking possession of the space (irrespective of any rent holiday) and could also include certain extension periods (if there are direct or indirect penalties to the lessee that make the exercise of the extension reasonably assured). Generally, rent under GAAP will be higher than contract rent in the earlier years of the lease and lower in later years as a result of escalating contract rents or free rent periods.

TAXABLE REIT SUBSIDIARY (TRS): A taxable REIT subsidiary is a corporation that elects TRS status to perform business activities that are generally prohibited by a REIT entity. TRSs are taxed as corporations for both federal and state tax purposes.

UMBRELLA PARTNERSHIP REIT (UPREIT): The UPREIT structure became popular in the early 1990s as a tax-efficient method of taking a portfolio of real estate properties public without triggering immediate tax consequences to the existing owners. In a typical UPREIT transaction, real estate properties (and related debt) are transferred into an operating partnership, and the operating partnership subsequently issues a majority interest in the operating partnership to a newly formed public real estate investment trust (REIT). Typically, the operating partnership (OP) is formed by a sponsor, and the sponsor and/or related entities contribute assets and related debt to the operating partnership in exchange for limited partnership interests in the OP. The public REIT will generally be the sole general partner in the OP and also hold the majority of the limited partnership interests of the OP. The REIT generally has no other assets/liabilities/operations than its interest in the OP. All major operations are conducted at or below the operating partnership.

Appendix C – General glossary

1933 ACT: See **SECURITIES ACT OF 1933.**

1934 ACT: See **SECURITIES EXCHANGE ACT OF 1934.**

ACCELERATED FILER: Reporting company that has a public float of at least $75 million but less than $700 million, as of the last business day of the issuer's most recently completed second quarter, it has been subject to the Exchange Act's reporting requirements for Section 13(a) or 15(d) for at least 12 calendar months, and previously has filed at least one annual report, pursuant to Section 13(a) or 15(d) of the Exchange Act, and the issuer is not eligible to use the requirements for smaller reporting companies in Regulation seek for its annual and quarterly reports.

ACCELERATION REQUEST: A request to the SEC to waive the statutory 20-day waiting period and declare the registration statement effective at an earlier date.

ACCOUNTING PRINCIPLES BOARD OPINIONS: Opinions issued by the Accounting Principles Board that established accounting and reporting standards. This board was the predecessor of the FASB.

ACCREDITED INVESTOR: Potential investors who meet certain minimum net worth and income tests (as determined by the SEC) as they relate to certain exempt offerings. See also SOPHISTICATED INVESTOR, and consult with your legal counsel for further clarification.

AGREEMENT AMONG UNDERWRITERS: An agreement among the members of the underwriting group/syndicate that specifies the managing underwriter and the terms of the underwriting, among other things.

ALL HANDS MEETING: Meeting thats occur during preparation for an IPO that is attended by company representatives, company counsel, the independent accountants, the underwriter, and underwriter's counsel.

ALL-OR-NONE: A specific type of a best efforts underwriting. If the underwriter is not able to sell all of the shares being offered, none of the shares will be offered, and the offering will be canceled.

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS (AICPA): The organization that governs and disciplines the conduct of CPAs and establishes standards for the profession.

ANALYST: An individual, usually employed by an investment banking firm, who studies and analyzes an industry and the publicly held companies operating within the industry to provide investment advice.

ANTIDILUTIVE SECURITIES: Securities whose assumed exercise would create an increase in earnings per share or a reduction in net loss per share. These securities are generally excluded from the computation of diluted earnings per share.

BEST EFFORTS OFFERING: An underwriting agreement where the underwriters use their best efforts to sell the stock. However, the underwriters have no obligation to purchase stock not purchased by investors.

BID AND ASK: The quoted prices of securities traded in the over-the-counter market. The bid price is the highest price a buyer is willing to offer, while the ask price is the lowest price a seller is willing to accept. The difference between the bid and ask prices is known as the "spread."

BLUE SKY LAWS: Refers to the securities laws of various states. While the SEC regulations are national in application, various states have securities laws that affect public offerings.

BLUE SKY MEMORANDUM: A memorandum setting forth the various securities law provisions and restrictions applicable to each of the states in which the offering is to be made. The memorandum is usually prepared by legal counsel.

BOOK VALUE PER SHARE: The equity value of a share of stock, computed by dividing a company's net worth (assets minus liabilities) by the number of shares outstanding.

BOOK VALUE STOCK PLANS: Plans in which restricted stock (or options) is sold to employees based on book value and the company buys back the stock (or options or shares received upon exercise of the options) at a later date, usually at its then net book value.

BROKER: A commonly used term applied to individuals or firms that trade securities. Brokers execute trades of securities between buyers and sellers in return for a fee or commission. Brokers do not own the securities they trade and, accordingly, do not share in the risks or rewards of ownership.

CAPITALIZATION: The total of a company's outstanding securities. For purposes of display in a registration statement, capitalization includes short-term debt, long-term debt, and equity securities.

CAPITALIZATION TABLE: A table presenting the capital structure of the company, both prior to the offering and assuming that all securities offered are sold.

CARVED-OUT ENTITY: A subsidiary, division, or lesser business component separated from another entity. This carved-out entity could become a separate registrant through an IPO.

CHEAP STOCK: Common stock, stock options, warrants, or other potentially dilutive instruments issued to employees, consultants, directors, promoters, or others providing services to an issuer at a price lower than the public offering price.

CLOSELY HELD COMPANY: A company where the equity interests are held by a few individuals or group of individuals.

CLOSING: The final meeting of the going-public process, in which the company delivers its registered securities to the underwriter and receives payment for the issue. The closing is usually five to seven days after the effective date of the registration statement.

CO-MANAGER: In an underwriting, if there is a second (or third) managing underwriter representing the syndicate, that securities firm will be known as a "co-manager."

COMFORT LETTER: A letter written by independent accountants to the underwriter as part of the underwriter's due diligence reviews. The letter discusses the results of agreed-upon procedures applied to the company's financial data, as requested by the underwriter. Comfort letters generally provide "negative assurance" to the underwriter and are not included in the registration statement.

COMMENT LETTER: A letter written by the SEC's review staff that asks the Company clarifying questions, requests modification to the registration statement or the inclusion of additional information.

CONFORMED COPY: A registration statement or other document displaying signatures that are printed or typed rather than signed manually. All EDGAR documents are conformed copies. However, each signatory to that electronic filing also must manually sign a signature page acknowledging the signature that appears in typed form within the electronic filing. The manual signature is executed before or at the time the electronic filing is made.

CONSENT: A document giving consent for the use of an independent accountant's or other expert's report and name in the registration statement. A conformed document is filed with the registration statement, while a manually signed copy is kept by the registrant.

CONTROL STOCK: Limited transferability stock owned by individuals who control the company.

CONVERTIBLE SECURITIES: Corporate securities (usually preferred stock or bonds) that are exchangeable into a fixed number of shares of common stock at a stipulated price.

COOLING-OFF PERIOD: See **WAITING PERIOD.**

DEALER: A commonly used term applied to those individuals or firms that trade securities. Dealers trade securities for others and for their own account. Dealers may own the traded securities and thus are subject to the risks and rewards of ownership. Also, the term refers, for tax purposes, to a person who holds property primarily for sale to customers in the ordinary course of his trade or business as opposed to for investment purposes or for the production of rental income.

DERIVATIVES: Financial instruments whose value is based on another security, commodity, or index.

DILUTION: A reduction in a shareholder's relative ownership percentage of a company or the company's earnings per share as a result of the company's issuance of more shares. Dilution in an IPO results from a disparity between the IPO price and the net book value of tangible assets for existing shares and is usually reflected in the registration statement in tabular format, referred to as a dilution table.

DILUTIVE SECURITIES: Securities whose issuance or exercise would decrease earnings per share.

DIRECTORS'/OFFICERS' QUESTIONNAIRES: Questionnaires circulated by the company's and underwriter's counsel during the registration process. The questionnaires gather and confirm various data that must be disclosed in the registration statement.

DISSOLUTION: The process of liquidating a partnership or a corporation.

DIVISION OF CORPORATION FINANCE: A division of the SEC that, among other things, reviews registration statements and other reports filed with the SEC.

DUE DILIGENCE: A reasonable investigation conducted by the company's officers and directors, underwriter, and lawyers to provide a reasonable ground for belief that, as of the effective date, the registration statement contains no significant untrue or misleading information and that no material information has been omitted.

EARN-OUT ARRANGEMENTS: Arrangements in a business acquisition in which sellers receive additional future consideration for their security interests, usually based on future earnings.

EARNINGS PER SHARE (EPS): A company's net income, generally divided by the number of its common shares outstanding, and adjusted for certain dilutive securities such as stock options, warrants, and convertible debt.

EFFECTIVE DATE: The date the SEC allows the registration statement to become effective and the sale of securities may commence.

ELECTRONIC DATA GATHERING, ANALYSIS, AND RETRIEVAL (EDGAR) SYSTEM: The SEC's electronic system for filing registration statements and periodic reports under the 1933 and 1934 Acts.

EMPLOYEE STOCK OWNERSHIP PLAN (ESOP): A plan instituted by a company that gives stock to its employees. The primary purpose of such a plan is to attract and retain officers and employees.

EQUITY METHOD: Method of accounting in which the investor records an investment in the stock of an investee at cost and adjusts the carrying amount of the investment to recognize the investor's share of the earnings or losses of the investee after the date of acquisition (generally applies to investments where ownership is between 20 percent and 50 percent of the outstanding equity of the investee).

ESCROW ACCOUNT: An account in which the offering proceeds are kept prior to closing, usually in a best efforts underwriting.

EXEMPT OFFERING: A securities offering that does not require a registration statement to be filed with the SEC. Exempt offerings include Regulations A and D and intrastate offerings.

EXPERTS: Independent accountants, engineers, or others whose proficiency in a specific area qualifies them as specialists in their fields.

F-SERIES FORMS: Forms used by foreign companies to comply with the 1933 and 1934 Acts. Examples include (1) Forms F-1 through F-10, registration statements similar to Forms S-1 through S-4, and

(2) Form 20-F, an annual report similar to Form 10-K.

FAMILY LIMITED PARTNERSHIPS: A partnership set up to transfer wealth to family members while maintaining control over the income-producing property. The donor would generally be the general partner while the heirs would be the limited partners. The general partner maintains control over the assets with respect to voting, investment decisions, and liquidation, while the limited partners will not participate in these decisions. Establishment of family limited partnerships can be used as a tax strategy to distribute assets to family members without triggering a taxable event.

FIDUCIARY LAWS: Laws that require transactions between a company and its officers, directors, or large shareholders to be fair to the company. These laws apply to privately held as well as publicly held companies.

FINAL PROSPECTUS: A document that must be circulated to all purchasers of stock disclosing material facts about the company's operations, its financial status, and the details of the offering. It is often preceded by a preliminary prospectus, also known as a red herring.

FINANCIAL ACCOUNTING STANDARDS BOARD (FASB) : A private body that establishes financial accounting and reporting standards in the United States.

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA): Responsible for governing business among brokers, dealers, and the investing public.

FINANCIAL PRINTER: A printer that specializes in the printing of financial documents, including registration statements, prospectuses, and proxy statements. These printers are also capable of converting documents to an EDGAR format and electronically submitting the document to the SEC.

FINANCIAL REPORTING RELEASES (FRRs): Releases designed to communicate the SEC's positions on accounting principles and auditing practices.

FIRM COMMITMENT UNDERWRITING: A type of offering in which the underwriter agrees to purchase all of the shares being offered regardless of whether investors purchase the shares. Any shares not sold to the public are paid for and held by the underwriter for its own account.

FOREIGN CORRUPT PRACTICES ACT (FCPA): An amendment to the 1934 Act that requires reporting companies to keep adequate accounting records, maintain adequate internal accounting control systems, and not make certain payments to specified foreign officials and politicians.

FORM 8-K: A form required to be filed with the SEC when certain significant reportable events occur (e.g., major acquisitions or legal proceedings).

FORM 10-K: An annual report required to be filed with the SEC pursuant to the 1934 Act. Form 10-K includes annual financial statements, related schedules, and various textual information.

FORM 10-Q: A quarterly report required to be filed with the SEC pursuant to the 1934 Act; consists primarily of the company's quarterly financial statements and other related disclosures.

FORM S-11: The form used for registering securities under the Securities Act issued (i) by REITs, or (ii) by other issuers whose business is primarily investing, either directly or indirectly, in real estate.

FORM S-3: A short-form registration statement available to companies that have been subject to the 1934 Act reporting requirements for at least 12 months, have timely filed all reports required during the twelve months, and that meet certain market value or debt-rating tests. This registration statement also permits incorporation by reference, but does not require delivery, of the latest annual report to investors.

FORM S-4: The registration form primarily used to register shares offered in connection with business combinations (e.g., mergers, consolidations or exchange offers for securities of another entity).

GOING PUBLIC: The process of a privately owned company selling its ownership shares to the investing public. See INITIAL PUBLIC OFFERING.

GRANTOR RETAINED ANNUITY TRUST (GRAT): An irrevocable trust that provides an effective way to reduce gift tax on property while providing an income annuity to the grantor. At the termination of the trust, the trust principal is paid to the beneficiary of the trust. A GRAT allows the grantor to retain control while retaining income from the property granted. A GRAT works particularly well with appreciated property/stock.

GREEN SHOE OPTION/OVERALLOTMENT OPTION: An option contained in the underwriting agreement that allows the underwriter to purchase and sell additional shares if the market's demand for the shares is greater than originally expected.

GROSS PROCEEDS: The total dollar amount raised through an initial public offering, before deduction of discounts or commissions for the underwriter and expenses for legal, auditing, printing, filing, and Blue Sky laws.

IN REGISTRATION: The status of a company that has filed a registration statement with the SEC prior to the date the SEC declares the registration statement effective.

INCORPORATION BY REFERENCE: Certain materials previously filed with the SEC that may, under certain conditions, be referred to rather than included in subsequently filed documents.

INDUSTRY GUIDES: Guides followed by the SEC staff requiring the disclosure of policies and practices by certain industries.

INITIAL PUBLIC OFFERING (IPO): The offering or sale of a company's securities to the investing public for the first time (i.e., converting a company from private to public ownership).

INSIDER TRADING: The sale or purchase of a company's securities by directors, officers, and others. See INSIDERS.

INSIDERS: Individuals who might have access to nonpublic information (e.g., officers, directors, and major shareholders).

INSTITUTIONAL INVESTORS: Nonindividual shareholders. Institutional investors include pension funds, mutual funds, and trusts.

INTERIM FINANCIAL STATEMENTS: See **STUB-PERIOD FINANCIAL INFORMATION.**

INTRASTATE OFFERING: A securities offering limited to investors residing in the state in which the issuer is doing a significant portion of its business. Such offerings are usually exempt from registration with the SEC.

INVESTMENT BANKER: A person or (usually) a firm that, among other things, underwrites securities, functions as a broker/dealer, and performs corporate finance and merger and acquisition advisory services. Investment bankers are usually full-service firms that perform a range of services, as opposed to an underwriter or broker/dealer, which provides one specific service.

IPO BACKLOG: The number of companies that have filed initial registration statements with the SEC but whose registration statements are not yet effective. Also, an estimate of the gross offering amount of those companies.

ISSUE: A block of securities sold to investors by a company through an offering.

ISSUER: A company offering its securities for sale.

JOINT VENTURE: An arrangement whereby two or more parties (the venturers) jointly control a specific business undertaking and contribute resources toward its accomplishment.

LEGEND STOCK: See **RESTRICTED STOCK.**

LETTER OF INTENT: A nonbinding letter from the underwriter to the company that sets forth the general terms and conditions of the securities offering.

LETTERED STOCK: See **RESTRICTED STOCK.**

LEVERAGED BUYOUT: An acquisition of a company financed largely by debt.

LIMITED OFFERING: An offering of securities exempt from registration because of exemptions for the size of an offering and the number of purchasers.

LISTING APPLICATION: A document, similar in nature to a registration statement, formally requesting that an issuer's securities be listed on a national securities exchange.

LOCK-UP PERIOD: Usually appears as a provision in the underwriting agreement. Represents the period after an IPO during which (at the underwriter's request) insiders are prohibited from selling their shares. This period can range from a few months to several years.

MAKING A MARKET: The process by which a securities dealer supports the trading activity of a particular security. The process could include the dealer purchasing and selling the security to balance the market. Such dealers are referred to as "market makers."

MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A): A textual discussion and analysis of a registrant's liquidity, capital resources, and results of operations that must be prepared by management and included in registration statements and most 1934 Act reports.

MANAGING UNDERWRITER: In a syndicate of underwriters, the managing or lead underwriter functions as the primary decision maker.

MARKET MAKER: An underwriting firm that stands ready to buy and sell a company's stock and thus make a market where shareholders or prospective shareholders can dispose of or purchase shares.

MERGER: A business combination where one entity becomes a part of another entity.

NONCONTROLLING INTEREST DISCOUNT: For tax purposes, a noncontrolling interest discount represents a discounted amount from the fair market value of property or securities transferred to noncontrolling interests because of lack of voting power/control.

NATIONAL ASSOCIATION OF SECURITIES DEALERS AUTOMATED QUOTATION SYSTEM (NASDAQ): The NASDAQ is the electronic trading system in the over-the-counter (OTC) market. Unlike the New York Stock Exchange (NYSE), the NASDAQ is not physically located in one location.

NEW ISSUE: An initial public offering, or an issue of securities by a corporation (also known as a primary offering).

NEW YORK STOCK EXCHANGE (NYSE): One of the major stock exchanges.

"NO ACTION" LETTER: A letter issued by the SEC stipulating that it does not object to a course of action proposed by a registrant. "No action" letters are generally issued after a request has been made by a registrant.

NONACCREDITED INVESTOR: Investors who do not meet the accredited investor criteria. See **ACCREDITED INVESTOR.**

OFFERING CIRCULAR: Sometimes referred to as a private offering memorandum. A document used in certain securities offerings that are exempt from SEC registration requirements.

OPTIONS: A security giving its owner the right to purchase or sell a company's shares at a fixed date and agreed-upon price.

OVER-THE-COUNTER MARKET (OTC): A market for the exchange of stocks not traded on a listed exchange that is maintained by dealers. See also **NATIONAL ASSOCIATION OF SECURITIES DEALERS.**

OVERALLOTMENT OPTION: The sale of shares by the underwriter in excess of those shares initially available. See also **GREEN SHOE OPTION.**

OWNERSHIP CHANGE: A term defined in the Internal Revenue Code. Generally, it is defined as a change in ownership of a corporation during a three-year period of greater than 50 percent that results in limitations on the ability of the corporation to utilize pre-ownership change net operating losses or net built-in losses.

PERFORMANCE SHARE PLANS: Incentive compensation plans, whereby the number of shares to be issued to employees is determined by a formula based on the achievement of predetermined performance criteria (e.g., increases in earnings per share, increases in return on equity, or growth in sales).

PERFORMANCE UNITS PLANS: Provide for the award of units to employees, where each unit entitles an employee to receive in cash or stock a certain amount if certain performance criteria (e.g., sales growth, increases in earnings per share, or return on equity) are attained during the period specified by the award.

PHANTOM STOCK PLANS: Incentive compensation plans whereby hypothetical (phantom) shares are granted to employees, which entitles the employees to receive amounts based on the increase in the market price of the stock from the date of grant. Some phantom stock plans also provide for dividend equivalents (i.e., employees will receive amounts equal to dividends declared on the stock). Also known as stock appreciation rights (SARS).

POST-EFFECTIVE AMENDMENT: A registration statement amendment filed subsequent to the effective date of registration.

PREFILING CONFERENCE: A conference with the SEC. Usually attended by a company's principal financial officer with representatives from the company's independent accounting firm to discuss unique accounting issues prior to the SEC's registration review process.

PRELIMINARY PROSPECTUS: A document that provides information concerning a forthcoming issue of stock. Also known as a red herring.

PRICE AMENDMENT: Usually the final amendment to a registration statement. Includes the offering price and final pro forma financial information.

PRICE-EARNINGS RATIO: A measurement of common stock value computed as the price per share divided by earnings per share.

PRICE RANGE: A proposed price-per-share range is often printed on the cover page of a preliminary prospectus. Example: "It is estimated that the offering price will be $8 to $10 per share."

PRIMARY OFFERING: An offering in which all of the proceeds from the sale of previously unissued stock are received directly by the company.

PRIVATE PLACEMENT: An offering that is exempt from the requirements of registration and is limited in distribution.

PRO FORMA: Financial statements or financial tables prepared as though certain transactions had already occurred. For example, a registration statement might include a pro forma balance sheet that reflects the anticipated results of the offering.

PROSPECTUS: The primary selling document in an offering distributed to potential investors. The prospectus provides information about the company and the offering. See also **PRELIMINARY PROSPECTUS** and **FINAL PROSPECTUS.**

PROXY: A document prepared for a shareholder to authorize another person to act on his/her behalf at a shareholders' meeting.

PROXY SOLICITATION: The request to be authorized to vote on someone else's behalf. A proxy statement must be provided to shareholders prior to soliciting their proxies.

PROXY STATEMENT: An SEC-required statement of information to be furnished to shareholders by those individuals soliciting shareholder proxies.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB): An organization established by the Sarbanes-Oxley Act to oversee the audit of public companies that are subject to US securities laws. The duties of the PCAOB, as established by the act, include establishing audit, quality control, and independence standards; registering public accounting firms; inspecting public accounting firms; and conducting investigations and disciplinary proceedings. The PCAOB, subject to the oversight of the Securities and Exchange Commission, replaced the accounting profession's self-regulating framework.

PUBLIC FLOAT: The aggregate market value of voting common stock held by nonaffiliates.

QUALIFIED INSTITUTIONAL BUYER (QIB): A non individual shareholder that owns and invest on a discretionary basis at least $100 million in securities that are not affiliates with the institution, with certain exemptions for broker-dealers, banks, and savings and loan associations.

QUIET PERIOD: The period that begins on the date an offering commences (usually once the company and its underwriter reach a preliminary understanding) and generally ends 90 days following the effective date of the registration statement. Referred to as the quiet period because of the SEC's restrictions on publicity about the company and/or its offering.

RED HERRING: The preliminary prospectus circulated during the waiting period to potential investors. Commonly referred to as a red herring because the disclaimer, at one time, was required to be printed in red ink.

REGISTRANT: An entity that must file reports with the SEC.

REGISTRAR: An agent, usually a bank, that physically issues, transfers, and cancels stock certificates as stock transactions occur.

REGISTRATION PERIOD: The time from which a registration statement is filed with the SEC to the day the SEC allows the registration statement to be declared effective.

REGISTRATION STATEMENT: The primary document required to be filed with the SEC in connection with the registration of securities.

REGULATION A: Provisions of the Securities Act of 1933 that contain the rules governing certain public offerings of no more than $5,000,000 which are exempt from registration.

REGULATION D: Provisions of the 1993 Act that contain the rules for certain private placement offerings.

REGULATION S-K: Contains the disclosure requirements for the nonfinancial statement portion of filings with the SEC.

REGULATION S-T: Governs the preparation and submission of documents filed via the SEC's EDGAR system.

REGULATION S-X: Specifies the financial statements to be included in filings with the SEC and provides rules and guidance on their form and content.

RESTRICTED STOCK: Securities, usually issued in private placements, that have limited transferability. Also called legend stock or lettered stock.

ROAD SHOW: A presentation to potential investors, brokers, and dealers by the company's management and underwriters in order to facilitate a securities offering.

RULE 144A: An SEC exemption permitting the sale of certain restricted securities without registration.

RULE 147: See **INTRASTATE OFFERING**.

S CORPORATIONS: Corporations that have 35 or fewer shareholders and meet certain other requirements of the Internal Revenue Code. An S corporation is taxed by the federal government and some states in a manner similar, but not identical, to a partnership.

SAFE HARBOR RULE: SEC provisions that protect issuers from legal action if specified requirements have been satisfied or, in certain cases, if a good-faith effort has been made to comply with specified requirements.

SARBANES-OXLEY ACT: The Sarbanes-Oxley Act of 2002 was signed into law on July 30, 2002, and represents the most significant reform in securities laws since they were first enacted. Written in response to high-profile corporate scandals, Sarbanes-Oxley has the purpose to restore confidence in public financial reporting by prescribing fundamental changes in how audit committees, management, and auditors interact and carry out their responsibilities. See "Appendix A: The SEC and securities regulations" for more information.

SECONDARY OFFERING: An offering by the company's shareholders to sell some or all of their stock to the public. The proceeds of a secondary offering are received by the selling shareholders, not by the company.

SECURITIES ACT OF 1933 (1933 ACT): Under the 1933 Act, a registration statement containing required disclosures must be filed with the SEC before securities can be offered for sale in interstate commerce or through the mail. The 1933 Act also contains antifraud provisions that apply to offerings of securities.

SECURITIES EXCHANGE ACT OF 1934 (1934 ACT, or Exchange Act): The 1934 Act requires companies registered under the 1933 Act to file periodic reports (e.g., Forms 10-K and 10-Q) with the SEC and to disclose certain information to shareholders. Companies traded over the counter with 500 or more shareholders and total assets of more than $10 million and companies that elect to be listed on a national stock exchange must file a registration statement to register under the 1934 Act.

SECURITIES AND EXCHANGE COMMISSION (SEC): The SEC is the federal agency responsible for regulating sales and trading of securities through its administration of the federal securities laws, including the 1933 and 1934 Acts.

SHELF REGISTRATION: Generally, a registration statement is considered effective only as long as there is a *bona fide* public offering. However, in certain circumstances the SEC will permit deliberately delayed or extended offerings. These are referred to as shelf registrations.

SHORT-SWING PROFIT RECAPTURE: A requirement, included in the 1934 Act, whereby officers, directors, and persons deemed to have beneficial ownership of 10 percent or more of a class of a company's equity securities are required to turn over to the company any profits realized from sale of the company's stock held for less than six months.

SOPHISTICATED INVESTOR: Potential investors who are capable of evaluating the merits of the investment venture as related to certain exempt offerings. See also **ACCREDITED INVESTOR**. Consult with your legal counsel for further clarification.

STABILIZATION: The process by which underwriters attempt to stabilize prices through the purchase of securities for their own account when the market price falls below the initial public offering price.

STAFF ACCOUNTING BULLETINS (SABs): SABs represent accounting interpretations and practices followed by the SEC staff in administering the disclosure requirements of federal securities laws.

STOCK OPTION PLANS: Plans whereby employees are granted options to purchase stock of the company at a stated price within a specified period. Stock option plans may be:

a. Incentive stock option plans (ISOs), which are accorded favorable tax treatment (i.e., the employee has no tax at grant date or exercise date, and shares are eligible for capital gains treatment on ultimate sale); however, there are a number of statutory restrictions including a limit on the number of ISOs that can be exercised in one year and the period that the stock must be held before it can be sold; or
b. Nonqualified stock option plans, which are plans that are not ISOs. These plans do trigger a tax upon exercise. The issuing employer, however, can obtain a tax deduction in the period the option is exercised, whereas it would not have a deduction when an ISO is exercised.

STOP ORDER: An SEC order suspending effectiveness of an issue's registration and preventing the issue from being sold resulting from deficiencies in the registration statement.

STUB-PERIOD FINANCIAL INFORMATION: Condensed financial statement information reporting results for the period subsequent to the last audited financial statements and prior to the effective date of the registration statement.

SUBSEQUENT OFFERING: An offering of shares by a company after its initial public offering.

SYNDICATE: A group of investment bankers who act together to underwrite and distribute an offering, with the intention of achieving wider distribution and spreading the associated risk.

TENDER OFFER: A formal offer, usually by another company, to purchase a company's shares to gain control. Tender offers can be bilateral (friendly) or unilateral (unfriendly).

TOMBSTONE AD: An advertisement, usually in a business periodical, announcing the offering and its dollar amount, identifying certain members of the underwriting syndicate, and indicating where a copy of the prospectus can be obtained.

TRANSFER AGENT: An agent that keeps records of a company's shareholders and handles the transfer of shares from one individual to another.

TREASURY STOCK METHOD: Method by which options, warrants, and their equivalents are included in earnings-per-share computations. It assumes that the options and/or warrants are exercised at the beginning of the year (or issue date if later) and the proceeds are used to repurchase outstanding shares of common stock.

TRUSTS: Fiduciary relationship in which a person, called a trustee, holds title to property for the benefit of another person, known as the beneficiary.

UNDERWRITER: Usually a firm that acts as an intermediary between the company and the investing public in connection with the sale of the company's securities.

UNDERWRITER WARRANTS: Compensation to the underwriter in the form of warrants to purchase common stock.

UNDERWRITER'S DISCOUNT: The commission paid to the underwriter out of the gross proceeds of an offering.

UNDERWRITING AGREEMENT: Contract between the company and the underwriter that sets forth the terms and conditions of a securities offering, including the type of underwriting, the underwriter's compensation, the offering price, and number of shares. The underwriting agreement is typically signed on the effective date of the registration statement.

UNIT: A combination of two securities sold for one price. A unit usually consists of common stock and warrants of common stock and debt. See also "operating partnership unit" in Appendix B.

VENTURE CAPITAL: Risk financing generally provided to companies unable to obtain other forms of financing. The financing can take the form of common stock, convertible preferred stock, or convertible debentures.

WAITING PERIOD: The period between the date a registration statement is initially filed with the SEC and the date the statement becomes effective.

WARRANT: A security entitling its owner to purchase shares in a company under specified terms.

Appendix D — Overview of REIT tax compliance tests

	Asset tests (quarterly)
5%	Single issuer test: For securities that do not qualify for treatment in the 75% asset test described below, the REIT cannot invest in securities of a single issuer, excluding a taxable REIT subsidiary (TRS), that represent more than 5% of the value of the REIT's assets.
10%	A REIT may not own more than 10% of the vote or value of the securities of any one issuer. Qualified wholly owned subsidiaries, securities qualifying under the 75% asset test, and taxable REIT subsidiaries are exempt from this limitation.
75%	At least 75% of the value of the REIT's total assets must be composed of the following: • Interests in real estate • Leasehold interests • Mortgages secured by real estate • Shares in other REITs • Stock or debt instruments attributable to qualifying "temporary investment" of new capital • Cash, "cash items," receivables from accrued income, and US government securities

	Revenue tests (annually)
75%	At least 75% of the REIT's total revenue must be derived from sources including the following: • Rents from real estate • Mortgage interest • Dividends from and gains on the sale of shares in other REITs • Income from qualifying "temporary investments" attributable to new capital • Income from qualifying foreclosure property • Mortgage commitment fees • Gains on the sale of real property and mortgage loans (other than dealer profits described below)
95%	At least 95% of the REIT's total revenue must be derived from sources including the following: • All income from investments included in the 75% revenue test above • Interest • Dividends • Gains from sales of securities (other than dealer profits described on the following page)

	Distribution requirements (annually)
90%	A REIT must distribute at least 90% of ordinary taxable income after depreciation and with adjustments for specified "noncash income."
100%	A REIT must distribute at least 100% of total taxable income (after depreciation) to pay no corporate-level federal income tax.

	Other requirements/factors
5 or fewer	No more than 50% in value of the REIT's shares may be owned directly or indirectly by five or fewer "individuals" (natural persons plus special entities).
Dealer tax	Profits from dealer transactions are subject to a 100% penalty tax on a gross basis, that is, without offset for losses. Dealer transactions are sales to customers in the ordinary course of business.
Hedging	Income, including gain on sale, on the hedges of liabilities (but not assets) may be excluded from both the 75% and 95% revenue tests, provided the hedge is identified on a timely basis. Cash flows received from all other derivative instruments might cause nonqualifying revenue.
Sting tax	Gain on sale of assets recognized within 10 years of acquisition from a regular C corporation is subject to REIT-level tax.

Appendix E—Investment Company Act of 1940 (“1940 Act”) Real Estate Exemption Under Section 3(c)(5)(c)

	General
55%-80%	In order to qualify for exemption from the Investment Company Act of 1940, the REIT must maintain Qualified Investments in real estate and mortgages secured by real estate representing at least 55% of its total assets. An additional 25% must be “real estate related” with combined total of at least 80% in the two categories. In addition, certain other strategies using holding companies should be discussed with counsel.
	Qualifying real estate assets
At least 55%	• 100% of the “controlling class” of a Commercial Mortgage Backed Security (“CMBS”) or Residential Mortgage Backed Securities (“RMBS”). The “controlling class” is the most subordinate class of the issuance, having the right to hire and remove the special servicer and provide instructions with respect to the foreclosure/workout of defaulted mortgage loans. • 100% of the “controlling class” of a CMBS or RMBS issuance and 100% of sequentially contiguous non-investment grade classes of the same issuance so long as each such class is entitled to exercise all the rights of the initial controlling class, including foreclosure rights, if it becomes the controlling class. Investment grade classes cannot be Qualifying Real Estate Assets. • CMBS or RMBS pools in which the outstanding principal balance of loans secured by mortgages which the special servicer, and thus the holder, does not have the unilateral right to foreclose (such loans being referred to as “Real Estate Related Notes”) constitutes 15% or less of the outstanding principal balance of the entire pool. Only the portion of the pool not representing Real Estate Related Notes is treated as Qualifying Real Estate Assets. • Real estate assets. • Mortgage loans. • Agency or privately issued whole pool certificates. • Investment in real-estate related whole loans so long as the loans are fully secured, directly or indirectly, by an interest in real estate. The loan to value ration of the loan must be equal to or less than 100%.
	Real estate related assets
Together with qualifying real estate assets, at least 80%	• The loans in a CMBS or RMBS pool that are Real Estate Related Notes when the outstanding principal balance of such loans is 15% or less of the outstanding principal balance of the entire pool. • The entire CMBS or RMBS pool if the outstanding principal balance of Real Estate Related Notes in the pool is more than 15% of the outstanding principal balance of the pool. • Non-controlling debt and equity securities issued by companies engaged in the real estate business such as REITs. • Agency or privately issued partial CMBS or RMBS pool certificates. • Real estate whole loans with a loan to value ratio in excess of 100%. • Real estate mezzanine loans secured by equity interests. • Private Label RMBS and private label CMBS that do not represent the entire beneficial interest in the related pool of mortgage loans. • B-notes (i.e., junior participations in a first mortgage loan on a single property or group of related properties). • Investment grade classes of CMBS or RMBS pools. • Mezzanine loans secured, directly or indirectly, by an interest in real estate.
	Other assets
other assets (not more than 20%)	• Bank loans • CDOs • Consumer and non-consumer ABS • High yield corporate bonds • Distressed debt securities • Corporate mezzanine financing (1) • Private equity investments

Appendix F — PwC professional affiliations and publications

Real estate industry involvement

Professional Affiliations

In addition to serving our real estate clients, our real estate professionals maintain an outgoing commitment to the real estate industry group and contribute in many ways to professional organizations and industry groups and associations. We are actively involved in virtually all of the major industry groups and associations, including:

- American Real Estate Society
- American Real Estate & Urban Economics Association
- American Society of Real Estate Counselors
- Appraisal Institute
- Association of Foreign Investors in Real Estate
- Building Owners and Managers Association
- International Counselors of Real Estate
- International Council of Shopping Centers
- Mortgage Bankers Association
- National Association of Corporate Real Estate
- National Association of Industrial and Office Parks
- National Association of Real Estate Appraisers
- National Association of Companies
- National Association of Real Estate Investment Trusts
- National Association of Real Estate Investment Fiduciaries
- National Realty Committee
- Pension Real Estate Association
- Society of Industrial and Office Realtors
- Urban Land Institute

Real estate thought leadership

PwC's real estate professionals take great pride in being recognized as "thought leaders" in the industry, and as major contributors to national real estate organizations such as the Urban Land Institute (ULI), the National Realty Committee, NCREIF, PREA and NAREIT, as well as to key rule-making bodies such as the FASB, SEC, HUD and the Department of Treasury. Other recent noteworthy industry-related activities include:

Global real estate now

A magazine published by the PricewaterhouseCoopers Global Real Estate Group, which offers insightful articles on emerging issues and trends in the industry, as well as interviews with principles of our firm's major real estate clients.

Real estate value cycles

A semi-annual publication is based on our proprietary Real Estate cycle model, and makes extensive use of graphs and explanatory analysis and comments to provide clear and concise information on the position of office, warehouse, retail, apartment and hotel sectors in the 59 major US markets.

PwC real estate investor survey

Each quarterly issue contains current, prior-quarter, and year-ago rates, cash flow assumptions, and other criteria used to analyze real estate investments in retail, office, industry, multifamily, net lease, hotel and development land markets.

Emerging trends in real estate

Produced in conjunction with ULI, the Urban Land Institute, Emerging Trends in Real Estate is the Industry's most prominent and longest running forecast. This informative report written by and for real estate professionals chronicles the ups and downs of the real estate market and offers insights into what challenges the year ahead may pose.

Emerging trends in real estate europe

Based on personal interviews with and surveys from more than 200 of the most influential leaders in the real estate industry group, this forecast (produced in collaboration with ULI) of the European real estate marketplace gives real estate professionals a heads-up on where to invest, what to develop, which markets are hot, and how the economy and trends in capital flows will affect real estate.

Global real estate tax summary

An on-line summary of the tax aspects of real estate investments in 68 countries.

Tax and legal aspects of real estate investments in more than 60 countries

This CD-Rom provides information on the tax and legal aspects of property investments in more than 60 countries. This CD-Rom is prepared by the Global Real Estate Group of PricewaterhouseCoopers and Landwell, a correspondent law firm of PricewaterhouseCoopers.

10minutes publications

10Minutes is the firm's new flagship thought leadership series. Each issue of 10Minutes explores a timely business topic that CEOs, CFOs, audit committees, board members and other senior executives need to understand and act on. New issues of 10Minutes are released generally every month. To date we have published issues on such topics as:

- Business Continuity Management
- Managing Risk and Performance
- Bolstering Corporate Liquidity
- Sustainable Cost Reduction
- Fair Value Financial Reporting
- The Emerging Influence of IFRS
- Current Developments for Directors
- US Stimulus Package
- Mergers and Acquisitions
- Driving Change
- PwC's Global CEO Survey
- Tax Reform
- Data and Identity Theft
- Rethinking Pivotal Talent
- Health Reform Under Obama
- Making Divestitures Successful
- Climate Change
- Finance & Accounting Shared Services
- Bolstering Corporate Liability
- Transitioning to IFRS
- Maximizing Internal Audit
- Post-crisis Boardrooms

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