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Roadmap for an IPO
A guide to going public

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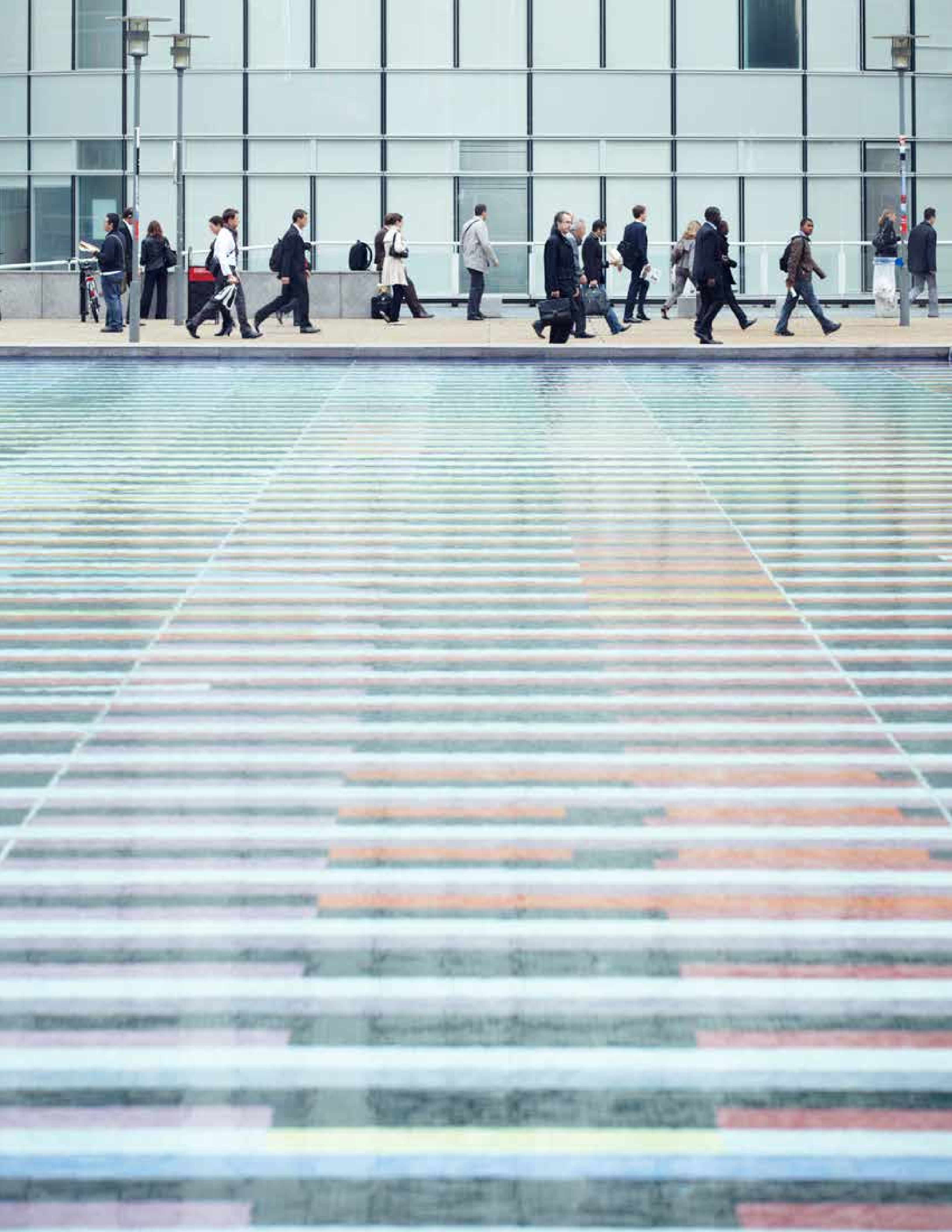


Introduction

Going public is a monumental decision for any company. It forever changes how a company goes about doing business. A public company has access to more, and often deeper, sources of capital than a private company. The actual process of going public can be time-consuming and presents certain unique challenges that a company should be prepared to undertake.

An initial public offering is a transformational event for an organization. The preparation for "being public" is just as important as the preparation for "going public." A company will need to meet additional requirements and continuing obligations as a public company that may require new skill sets, additional resources and changes to the business. Thinking through these requirements in advance and developing an appropriate plan is the key to a successful entry into life as a public company and will reduce unexpected post-IPO issues.

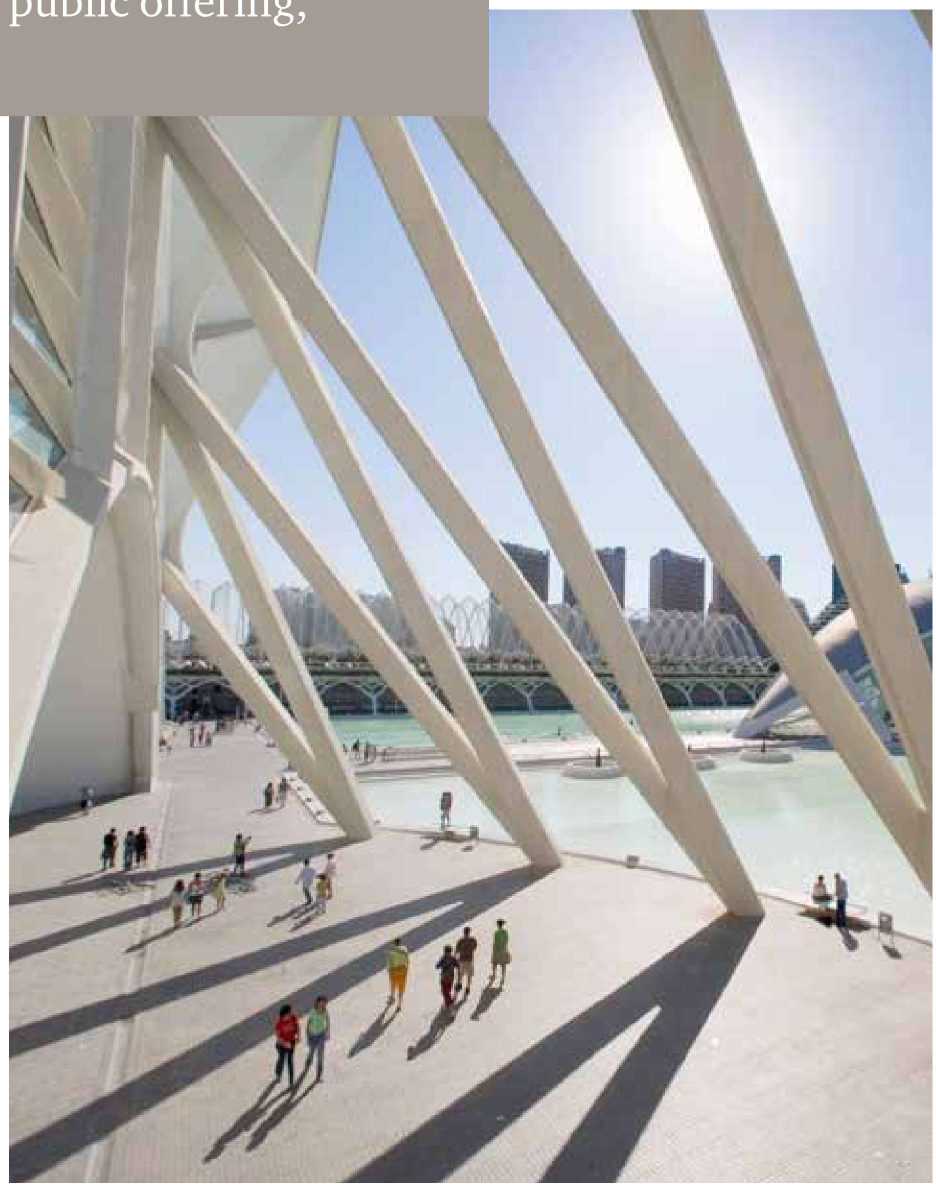
As the number of companies looking to access the equity markets continues to grow, we are publishing this fifth edition of *Roadmap for an IPO,* which address the US IPO process and the impact of going public.

This publication contains information that a company will need when it debates whether to go public or to pursue alternate means to finance growth. The purpose of the guide is to help companies make informed decisions by addressing factors such as the advantages, disadvantages, costs, timing, and alternatives to going public. It outlines the process of going public and discusses the registration and ongoing reporting requirements of a public company. Finally, the guide summarizes the most significant accounting, compensation, and tax-related considerations of going public.

We hope you find this guide a helpful and an easy-to-use reference for planning and executing a successful IPO as you determine the best path for sustaining your company's growth now and into the future.

01 The going-public decision

What does "going public" mean? It is the process of offering securities — generally common stock — of a privately owned company for sale to the general public. The first time these securities are offered is referred to as an initial public offering, or IPO.



What is a 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 the sale of shares held by the present owners.

Why am I going public?

The most important question a CEO should ask is, "Why do I want to go public?" Some of reasons include:

- To access capital markets to raise money for the expansion of operations
- To acquire other companies with publicly traded stock as the currency
- To attract and retain talented employees
- To diversify and reduce investor holdings
- To provide liquidity for shareholders
- To enhance the company's reputation

Other reasons may be private and personal. It is important to keep specific goals in mind throughout the going-public process.

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 its business begins to exceed the company's ability to raise additional capital through other channels at attractive terms. But simply needing capital does not always mean that going public is the right, or even possible, answer. There are a number of questions that a company should ask itself before deciding to go public.

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. Investment bankers want the offering that they underwrite to be successful. Therefore, they look for companies that can fulfill several tried and true criteria to boost the chances for a successful offering and good performance in the aftermarket. Here are some of the most important factors:

- An attractive product or service, preferably one with a competitive
- An experienced management team

TIP

During the IPO process, companies often underestimate the requirements to complete the transaction in addition to the ongoing obligations and scrutiny of life as a public company. An early assessment of a company preparing to go public could uncover unforeseen issues, including:

- *Financial reporting*
- *Tax*
- *Governance*
- *Internal controls*
- *Compliance*
- *Human resources*
- *Structuring (legal)*

TIP

Companies need to objectively assess their readiness for life as a public company. Going public requires management to be prepared to meet shareholder and market expectations from day one. Companies will need to address ongoing compliance and regulatory requirements, operational effectiveness, risk management, periodic reporting, and investor relations.

- A positive trend of historical financial results
- Favorable financial prospects
- A well-thought-out, focused business plan
- Strong financial, operational, and compliance controls

Though some companies may not currently meet all of these criteria, investors may perceive these companies as having enormous potential for growth due to the other favorable characteristics they possess (e.g., a product or service that is highly visible, unique, or of interest to the public and capable and committed management).

Has your company reached the point at which prospects for maintaining a strong sales and earnings growth trend in the future are reasonably good?

Many companies that have successfully gone public have illustrated market support for their product or service that would sustain an increasing annual growth rate over a period of time.

Are your company's products or services highly visible and of interest to the consuming and investing public?

The established company can answer this question with historical sales data, while the early-stage company must use market research projections and demonstrated product superiority. An early-stage company may qualify as an IPO candidate due to the uniqueness of its product or service.

Is your company prepared to file timely financial statements with the Securities and Exchange Commission ("SEC")?

Public companies need to file financial statements on a quarterly and annual basis with the SEC, with prescribed data requirements and required adherence to rigorous SEC accounting and disclosure guidelines. These financial statements are due relatively soon after each period end, so there is increased time pressure on reporting compared to that of a privately held company.

Has your company established the necessary financial statement integrity through the implementation of an effective system of internal control to support management's reporting obligations as a public company?

The passage of the Sarbanes-Oxley Act of 2002 raised the bar on the amount of advance preparation and planning necessary for a successful IPO in the U.S. capital markets. This legislation, among other things, requires CEOs and CFOs to explicitly evaluate and report to the public the effectiveness of internal control over financial reporting. The company's external auditor is required to annually attest to the effectiveness of the company's internal control over financial reporting. In this publication, we use the term "Sarbanes-Oxley" to refer to either the legislation or its provisions.

Is leadership capable and committed?

In any public offering, the quality of the leadership team is a key factor. It is vital to ensure that the board of directors as well as management has the right blend of experience and skills to establish the optimal corporate governance structure and ensure that the board committees are operating effectively.

To gain credibility with the investing public, the organization must have experienced leadership that functions well as a team. Ownership by management demonstrates to investors that it has a 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 analyst and other investor-facing meetings, and providing financial reports required by both the SEC and shareholders on a timely basis. It must also be prepared to upgrade the company's system of management controls and financial reporting well in advance of the offering to ensure compliance with full disclosure requirements and shorter financial reporting deadlines, both of which 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 corporate growth. Also, raising equity capital in the public markets can entail substantial costs, such as underwriting and other advisors' fees and expenses. (See the discussion on costs in "Pros, Cons, and Expenses of Going Public," p. 9.) However, the answer to whether the benefits outweigh the cost cannot be realistically known until several years after an IPO.

Choosing a stock market

Each stock market has specific entry requirements, such as earnings history, shareholders' equity, market capitalization, number of expected shareholders, and corporate governance. A company seeking to go public must choose the market that is right for its stock. A company's banking advisors can furnish in-depth information on the investor base in each market and the market's likely appetite for the company's shares. A company and its advisors should approach the stock market early in the capital raising process to ensure the smoothest possible transaction. As the economy continues to become more global, companies considering overseas or dual listings will also need to evaluate the impact of IFRS on the offering process.

TIP

Beginning early to position your company to go public will save fees and, most importantly, time. The sooner you are ready to enter the market, the more flexibility you will have to be prepared to move on an opportune market and the greater proceeds and market valuation that favorable market conditions provide. By engaging external advisors early in the IPO process, companies get an objective and professional mechanism for assessing the state of readiness for life as a public company.

Is the market right?

The demand for initial public offerings can vary dramatically, depending on overall market strength, the market's opinion of IPOs, industry economic conditions, technological changes, and many other factors. Stock market volatility is one of the most unpredictable aspects of going public and it makes timing the IPO key in achieving the best possible result. Although it is impossible to accurately forecast the market's mood, a company must consider the importance of timing and be prepared to alter its timetable. When a bull market is booming, the market window for new corporate offerings tends to open and these new offerings enjoy bursts of popularity. In a declining market, however, the market window tends to close and IPO activity slows down and may even come to a stop. A company must consider the importance of timing and be prepared to alter its timetable. In general, from the initial meeting of all of the team members until the first filing, it can take at least three months (under the best circumstances), although the timeframe from the first filing to the effective date can be significantly longer.

At any time, an IPO window may be open for companies within certain favored industries and sometimes the window may be open for companies in all industries. Missing an IPO window by as little as a few weeks can result in a postponed or withdrawn IPO or a lower market valuation. Accordingly, in addition to reviewing how companies in a specific industry are faring, a company should also look at valuations in the overall market.

Hot markets accept many offerings, but companies do not want to be the deal that is just one day too late. Recognizing the urgency of the registration process is critical. Even in a slower market environment, there is what is referred to as an "industry pop" or "industry flurry." "Industry pops" are tricky since some IPOs may be perceived as a "me too" company and not as strong as the leader, and when interest wanes, the window of opportunity closes quickly. However, "industry pops" give the public investor good current information on comparable companies in order to make valid pricing decisions.

Market conditions will also impact the valuation of a company and the eventual pricing of its stock.

Other sources of capital

If a company is heavily encumbered by debt and/or is seeking to expand rapidly, it may want to consider other alternatives such as commercial bank loans, exempt offerings, and private placements of equity or debt.

Pros, cons, and expenses of going public

All in favor…

- **Increased cash and long-term capital—**Funds are obtained to support growth, increase working capital, invest in plant and equipment, expand research and development, and retire debt, among other goals.
- **Increased market value—**The value of public companies tends to be higher than that of comparable private companies due in part to increased liquidity, available information, and a readily ascertainable value.
- **Mergers/Acquisitions—**These activities may be achieved with stock consideration and thus conserve cash.
- **Growth strategies—**Shareholders may achieve improved liquidity and greater shareholder value. 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.
- **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, may be more attractive to officers and other key personnel than generous salary arrangements due to the significant upside potential.
- **Increased prestige/reputation—**The visibility for shareholders and their company is usually enhanced. For example, a regional company may more easily expand nationally following a stock offering due to the increased visibility.

All opposed…

- **Increased expenses—**Many factors play a role in determining the cost of an IPO, but in all cases the costs of going public are significant. These costs will generally include underwriting fees (generally 5-7 percent of the gross proceeds), fees related to legal and accounting advisors, and printing costs. In addition, there are other fees such as the SEC filing fee, the exchange listing fee (NASDAQ or NYSE), and any Blue Sky filing fees.

Most expenses directly related to the offering in a complete IPO are reflected as an offset to the proceeds received and a reduction of additional paid-in-capital. IPO start-up costs are therefore not expensed in the statement of operations. However, if the IPO is not completed, such costs are generally expensed.

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. Advisors can provide the expertise that will enable you to make an informed, intelligent, and objective decision.

- **Ongoing expenses—**Public companies are required to report and certify financial information on a quarterly and annual basis. There will be ongoing expenses related to these changes such as the expense of independent auditors. Administrative and investor relations costs include those related to quarterly reports, proxy materials, annual reports, transfer agents, and public relations. A public company will now be paying premiums for directors' and officers' liability insurance as well. Furthermore, compliance-related costs could also increase primarily in relation to the Sarbanes-Oxley 404 certification requirements.
- **Loss of control—**If more than 50 percent of a company's shares are sold to just a few outside individuals, the original owners could lose control of the company. If, however, the shares held by the public are widely distributed, management and the board of directors may maintain effective control, even though they own less than 50 percent of the shares. Many companies structure their offerings so that after an initial offering, the founder(s) still has control, and after subsequent offerings the entire management team maintains control.
- **Loss of privacy—**The registration statement and subsequent reporting require disclosure of many facets of a company's business, operations, and finances that may never before have been known outside the company. Some sensitive areas of disclosure that will be available to competitors, customers, and employees include: 1) extensive financial information (e.g., financial position, sales, cost of sales, gross profit, net income, business segment data, related-party transactions, borrowings, cash flows, major customers, and assessment of internal controls); 2) the compensation of officers and directors, including cash compensation, stock option plans, and deferred compensation plans; and 3) the security holdings of officers, directors, and major shareholders (insiders).
- **Pressure for 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 sales, profits, market share, and product 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 goals. The inability to meet analysts' expectations of short-term earnings can dramatically hurt the marketplace's long-term valuation of a company.
- **Restrictions on insider sales—**Stock sales by insiders are usually limited. Most underwriters require that a company's existing shareholders enter into contractual agreements to refrain from selling their stock during a specified time following the IPO, typically 180 days. This is called the "lock-up" period.

- **Investor relations**—Investors' inquiries, investment-community presentations, and printing and distributing 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 a company private can be difficult and costly.
- **Vulnerability to hostile takeovers**—Having publicly traded shares reduces the company's ability to control its ownership and exposes it to unsolicited acquisition threats.
- **Litigation risk**—Being public increases a company's exposure to shareholder lawsuits, particularly since Sarbanes-Oxley was passed.

IPO alternatives

IPO Alternative	What is it?	Advantages	Disadvantages
Exempt offerings (144A offerings)	Transactions where securities are sold on a restrictive basis to sophisticated investors with very limited SEC filing and reporting requirements	• Can be completed more quickly, as there is no SEC review process • Funds are raised immediately, but the public company reporting obligations are deferred (in cases where these securities are exchanged for registered securities later)	• May result in lower pricing than an IPO due to less liquidity for investors • Potential investor base is limited to qualified institutional buyers • Cost could increase resulting from preparation of offering memorandum plus subsequent registration statement
Reverse Merger / Special Purpose Acquisition Companies (SPACs)	A transaction in which a privately held company merges with a publicly held company.	• Lower cost and time requirements than an IPO • No dependence on market "window" • Underwriters are not required, but they can still add valuable support	• No capital is raised • Difficulty in finding the appropriate merger vehicle • Exposure to public company risks for a potentially "non-IPO ready" company
Private sale	Sale of equity directly to a private buyer(s) outside of an exchange	• Can usually complete a larger percentage sale of equity initially • Lower cost and time requirements (no SEC review) • Underwriters are not required, but they can still add valuable support	• May result in lower pricing than an IPO • Potential loss of future tax benefits • Smaller pool of potential buyers

02 Preparing for a successful offering

A successful IPO requires careful planning. This requires two main tactics. First, a company must prepare its management team and business units to begin acting like and functioning as a public company, both internally and externally. Second, a company must identify the key players in its going-public team, from the experts it will hire to the staff members who will help prepare the registration and other sales documents.

Preparation is the secret to success

While the planning process for an IPO can start the day a company is incorporated or as late as three months before a public offering, we recommend that an orderly plan be executed over a one- to two-year period. This window gives a private company time to think, act, and perform as a public company.

Build an effective management team

As a company prepares for its IPO, it must expand its management capabilities. The investment community wants to be sure that the management running a company is not a "one-man band." This may require adding individuals with public company experience in marketing, operations, development, and finance. Many companies also want to put a CFO in place who has previously been through the IPO process. The team needs to be cohesive and share a long-term vision for the company to obtain maximum financial return and valuation.

Develop budgets and measure performance

Throughout the IPO process, underwriters will ask for financial projections and will compare a company's historical performance to its past budgets. Accordingly, a company should establish a financial planning and analysis team, which should put a budget and forecasting process in place. The company should get into the habit of preparing realistic budgets, updated forecasts, and be able to articulate why variances have occurred. For the early-stage company, projections and market share are the most important measures of performance.

After a company goes public, budgets and projections will become an important tool for research analysts. Furthermore, this information and a public company's ability to meet its own earnings estimates and "The Street's" earnings estimates can have a significant impact on its stock performance. Therefore, accurate budgeting and forecasting is critical for a successful IPO, as the market gives very little margin of error in that area and punishes the stock for any significant underachievement.

Appoint independent members to your board of directors

One of the best sources of objective advice can come from an independent or outside director. All of the major stock exchanges and markets require a registrant to have a majority of independent directors. A company should not wait until the last minute to begin its search for qualified outside board members. A potential board member who is unfamiliar with a company may be reluctant to join the board immediately prior to an IPO, since a director has personal liability for information contained in or omitted from the registration statement.

Create an audit committee

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

- Are composed entirely of independent directors (To be considered independent, the individual may not—other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—accept any consulting, advisory, or other compensation fee from the company or any subsidiary of the company.)
- Have and disclose at least one member who is a "financial expert," defined as: 1) having experience as a principal financial or accounting officer, controller, accountant, or auditor; or 2) having experience overseeing or assessing the performance of companies with respect to the evaluation of the financial statements; or 3) having other relevant experience (investment bankers, venture capitalists, commercial bankers, financial analysts)
- Are directly responsible for the appointment, compensation, and oversight of the company's independent auditors
- 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

Evaluate corporate governance principles and practices

Both the NYSE and NASDAQ have defined and published corporate governance listing standards that need to be addressed in connection with an IPO and listing of a company's equity securities. These listing standards address matters such as board composition, structure, and process, including the nomination of directors, compensation practices, and similar matters, and are responsive, in part, to Sarbanes-Oxley. The standards, however, go beyond the provisions of Sarbanes-Oxley discussed previously and address such matters as the establishment of a code of business conduct and ethics for employees and directors, the establishment of an internal audit function for companies listed on the NYSE, and approval of related-party transactions for companies quoted on NASDAQ. Given the level 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.

TIP

Begin positioning your company early! Have audited annual financial statements, reviewed quarterly financial information, 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.

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 the company's stock and those who influence that buying decision (e.g., 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 a company gets started, the better. It is important that building a public image start well before the beginning of the "quiet period" (see "The going-public process," p. 34).

Creating or enhancing a company's image may require hiring a public relations firm well in advance of the public offering. This firm can help a company get their "story" out prior to the offering and maintain positive external communications and shareholder relations after it has gone public.

Other ways a company can enhance its public image include adding analysts and business press editors to its mailing lists, participating in trade shows and conferences that are attended by analysts, and publicizing key employee appointments.

TIP

If you wait until "crunch" time to have multiple-year audits, you may face two nasty surprises: first, the high costs of the reconstructed financial statements, and second, figures that show the company may be performing at a level below expectations.

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

These relationships will serve to establish a company's credibility. Factors to consider when selecting such firms for an IPO process are discussed in later in this chapter ("The investment banker," p. 16).

Establish incentive compensation plans

Developing a long-term incentive compensation plan is critical to keeping management and employees motivated. Today, many companies establish such plans for the benefit of its management team and employees shortly after formation. As discussed in "Current regulatory and disclosure issues," (p. 25) plans to grant equity securities (including options and warrants) within one year of an IPO should be carefully evaluated.

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. It is easier and more cost efficient to perform audits of financial statements in the normal course of business, rather than shortly before going public. The

TIP

Establish a strong project management function to ensure initial and robust issue identification, establish a plan, monitor progress, understand interdependencies between workstreams, and encourage communication within the project team.

existence of audited financial statements gives company increased credibility. Issues can arise for separate financial statements of subsidiary business that may have been previously audited in accordance with AICPA standards and not those required by the Public Company Accounting Oversight Board (PCAOB). A company will want to ensure that it discusses this issue early on with their auditor. Although this may not require a significant amount of work on the company's part, the auditor will have to go through the procedures of confirming that they can issue a PCAOB opinion. In particular, auditors will need to ensure that they were in compliance with the independence rules, which under PCAOB regulations can differ from those in an AICPA audit.

As a company gains financial sophistication, it should also begin preparing quarterly financial statements. Though it is not required by legislation, investment bankers may want to include unaudited financial information for the prior four or eight quarters in order to reflect growth and trends. Preparing these statements in a timely manner can add to an investment banker's positive evaluation of a company. If such quarterly financial information is presented, underwriters typically require that it be reviewed by the company's independent auditors under the SAS 100 auditing standard.

As noted in "Current regulatory and disclosure issues," (p. 22) the company's financial statements included in an IPO registration statement will have to conform to positions and practices prescribed by the SEC staff as well as US GAAP standards applicable to public companies, which may be different than the financial statements a company previously prepared. In addition, starting to prepare interim financial statements can help expedite the registration process, as they may be required, depending on when the IPO registration statement becomes effective.

Draft management's discussion and analysis

A stumbling block that many companies face is their inability to describe the affect of underlying factors on the company's performance. A registration statement and all future financial statement filings with the SEC will require the inclusion of Management's Discussion and Analysis (MD&A) related to a company's financial statements. This is a quantitative and qualitative discussion of a company's performance. The company will need to describe in-depth such items as changes in sales volumes and cost structures, liquidity and capital resources, sources and uses of cash flows, vendor relationships, employee compensation, unusual nonrecurring charges, significant environmental exposures, and other risks and uncertainties.

As a company completes its year-end and quarterly financial statements, it should take time to write its MD&A. It can be very 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&As will expedite a company's registration process and be a major step toward operating like a public company.

TIP

Staff up early, as there will be a lot of demands on the company's key resources at peak times, at which point it may be too late to bring in temporary assistance. Strike the right balance between internal and external resources to ensure appropriate knowledge retention after the registration is complete, while enabling management to focus on running the business.

Identifying your going-public team—the players

The decision to go public can be one of the most important ones in a company's history—and one of the most challenging. A company needs expert direction and assistance to stage a successful IPO. The company will have the opportunity to select many of the participants in the IPO process, such as the auditors, lawyers, underwriters, and accounting advisors. However, the SEC will also play a significant part in the IPO process. Keeping in mind the impact that the SEC can have on the company's registration process is an important factor when choosing the advisors that will assist in the IPO process.

The 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 may arise from material misstatements or omissions in a registration statement. If the SEC finds mistakes or requests clarification during the registration process, it can delay an IPO.

It is a company's duty to potential shareholders to constantly monitor the drafting of the registration statement. Companies should ensure that they completely understand all of its components and the assumptions behind those components. The outside professionals companies hire to advise on your IPO are experienced business advisors. They help companies make the final decisions; they do not make them for companies.

The SEC's Division of Corporation Finance reviews the registration statement and ultimately allows or denies an issue to "go effective," that is, sell shares. Registrants generally are assigned to the SEC's Division of Corporation Finance's review branches on the basis of standard industrial classification 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," (p. 34).

The SEC concerns itself with the thoroughness and clarity of the registration statement and the prospectus to ensure that these documents adequately inform potential investors. Keep in mind that the SEC only regulates the vehicle used to offer a security. It evaluates neither the company nor the quality of the security.

Company personnel

The level of a company's participation in the process of preparing the registration document frequently depends on the expertise of the company's personnel, although outside counsel will typically 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.

A company should not underestimate the level of commitment a public offering will require of its staff. The process requires a great deal of a company's attention and will likely distract staff from the day-to-day operations of the business. It is important to recognize that this is common in an IPO and, in some instances, may necessitate hiring additional staff. A team's commitment to the offering will be the difference between a successful IPO and a failed attempt.

Securities counsel

As with any selection of individuals to provide professional services, there must be the right chemistry between a management team and the company's securities counsel. A company's attorney will become the quarterback of its registration process.

A company's counsel must be professionally competent and have the ability to put into plain English technically challenging concepts and descriptions of complicated transactions. He or she must have the ability to evaluate large amounts of information and turn around documents quickly. It is imperative companies find attorneys who are experienced with the IPO process and with the industry—one the company is comfortable with and is confident will protect its interests when dealing with the underwriters and the SEC staff.

The investment banker

Companies 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 a company's offering to take advantage of their expertise. The value added by an underwriter should be the assurance that an IPO will be properly managed and successfully marketed and supported, both before and after going public.

A principal, or managing underwriter, works with a company 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 stock once an IPO goes effective, and provides after-market support. The share allotment each underwriter is committed to buy will be stipulated in the prospectus.

Good managing underwriters and investment bankers have a highly developed sense of what sells (or doesn't sell) and for how much. They also have an instinct for timing an issue, 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 it will be attractive to the company but also reap a reasonable return for the investor
- The ability to help client companies with future offerings
- A research department with the scope to enable it to analyze the client company, its competitors, the market, and the economy as a whole

Generally speaking, underwriters come in three sizes: "major bracket" or "wire-house" firms with well-known names, a middle-tier company comprising mostly regional firms, and local firms. Not surprisingly, the size and scope of a company and of its offering will, in part, determine the size of the underwriter it enlists for its IPO.

A good working relationship with an underwriter is critical, regardless of the size of the firm a company selects. Companies should trust their underwriters to provide all of the information they will need to execute an IPO successfully.

Of course, the professional relationship between a company and its underwriter is mutually beneficial. An underwriter earns money from an offering in a variety of ways. They include:

- The discount or commission. This averages around seven percent but could be up to ten percent for more difficult or smaller offerings and down to five percent for larger or simpler offerings in a competitive market.
- The right to underwrite future offerings of the company's securities
- Non-accountable expense allowance. This standard practice allows underwriters to bill a company an amount that may not exceed three percent of gross proceeds.
- Other compensation, such as warrants to purchase stock
- Overallotments as discussed below

While these items may seem to allow quite a few charges by an underwriter, maximum underwriters' compensation, both direct and indirect, are 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.

Generally, the underwriter's agreement can come in two basic forms. The first is a "firm commitment," in which 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. The second form is "under a best-efforts commitment," in which the underwriter uses his or her best efforts to sell the stock but is under no obligation to purchase the stock should part of the issue remain unsold.

There are variations on these two basic agreements. They include an "all-or-none" commitment, which is a modification of the "best-efforts" agreement. In this commitment, 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 portion of the issue (typically two-thirds) for the "best efforts" to remain in effect on the remainder of the issue.

The underwriter's counsel

Also involved in the IPO process are the underwriter's counsel, who are generally responsible for drafting the underwriting agreement. They also review the entire registration statement and any related agreements and contracts that are filed as exhibits thereto. Their principal objective in reviewing the registration statement is to ascertain on behalf of the underwriter that the registration statement is complete and not misleading. In addition, the underwriter's counsel usually prepares the "Blue Sky" filing, which is necessary to have the registration approved by state regulators. Another task performed by the underwriter's counsel is negotiating the content of "comfort" letters (the definition can be found in the Independent Auditors section of this chapter).

Independent auditors

As strategic and technical advisors, a company's independent auditors will play a key role throughout the registration process. Therefore, at the start of the IPO process, a company will need to ensure that it has selected an audit firm that is registered with the Public Company Accounting Oversight Board (PCAOB). The selection of an auditing firm should also be based on its:

- Experience with public company financial reporting
- Expertise in generally accepted accounting principles (GAAP) and the auditing standards of the PCAOB
- Reputation and experience with IPOs and other capital markets transactions
- Ability to continue to service the company appropriately through its growth and global expansion

TIP

By appointing key advisors early, management is freed up to focus on the marketing phase of the IPO, where they can add the most value. Management will also be able to anticipate issues and avoid untimely delays, preserving the value of the IPO and enhancing the market's confidence in management, while at the same time protecting the company's brand equity.

Other factors to consider are the size of the firm's local and global resources and its experience in the company's industry. Some of the specific services the independent auditor will provide include:

- Strategic advice in the planning stage of the process to establish a realistic plan to enter the capital markets
- Requisite technical expertise in US GAAP and SEC requirements so it can advise a company on preparing the registration statement and obtaining SEC clearance
- Guidance on the identification of potentially sensitive or problematic accounting issues (e.g., cheap stock considerations), financial disclosure issues, and the overall transparency of financial reporting
- Audits of the financial statements (The process of auditing multiple years of financial statements and related disclosure requirements for public offerings can be extensive. An established relationship with an auditor who knows a company's business well, coupled with thorough preparation on the company's part, should enable it to complete the process faster and more effectively, which can be crucial to the success of the offering.)
- A comfort letter to assist the underwriter in its due diligence efforts (This letter details certain procedures that the company's external auditor performed at the request of the underwriter, along with other representations the auditor made concerning the financial statements or other information contained in the prospectus.)
- A review of the prospectus and assistance in responding to the SEC comment letter process

The importance of engaging qualified, independent auditors long before the IPO cannot be overstated, particularly if a company has never had its financial statements audited before. 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.

Typically, large accounting firms are structured as full-service professional firms, offering services in various lines of business (e.g., audit, tax, consulting, and human resource advisory). A company's independent auditors, as well as individuals from these other lines of business, can play a valuable role as advisors in a variety of areas before, during, and after the going public process. Some of these roles include evaluating whether going public is the best alternative for a company, evaluating incentive compensation plans, addressing a company's accounting system needs and capabilities, reviewing the terms and conditions of acquisitions, and tax planning. A company may also consider consulting an accounting firm that can provide IPO and financial reporting advisory services as described in the following section.

Advisory accountant

Companies often seek transaction support and advisory services from a second accounting firm that is not restricted by independence standards.

An advisory accountant can offer advice and assistance to organizations with limited experience in IPOs and executing capital markets transactions by providing an objective view of the critical issues involved in accessing a particular capital market. Some of the principal ways in which an advisory accountant can assist a company going through a capital-raising transaction include:

- **Advice on project management**—Companies must define the transaction requirements and the roles and responsibilities of management and their advisors at the outset. Failure to do so early can jeopardize control and the effective management of the transaction.
- **Strategic advice**—Companies must evaluate alternative approaches and establish a realistic plan to enter the capital markets.
- **Section 404**—Companies should obtain assistance from their advisory accountants regarding the design, documentation, and testing of internal control over financial reporting as management evaluates its compliance with the requirements of Section 404 of Sarbanes-Oxley.
- **Issue resolution**—The advisory accountant can advise and assist with complex financial reporting and deal execution matters.
- **Technical advisory**—The advisory accountant can and should have extensive experience with complex capital markets transactions.
- **Post-transaction services**—A knowledgeable advisory accountant can provide advisory assistance with:
    - Implementing the new financial reporting protocols necessary to meet public company reporting requirements, along with ongoing technical advice on these requirements
    - Corporate governance
    - The adoption of new accounting, reporting, and disclosure standards
    - Training accounting and finance staff
    - Ongoing compliance with Section 404 of Sarbanes-Oxley

The financial printer

Another important 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” documents and make the required filing with the SEC via EDGAR. (With respect to EDGAR, it is important that companies file Form ID with the SEC well in advance of the offering to receive their access and identification codes.) Because this is specialized printing involving rapid turnaround, only a few printers can adequately handle it. Underwriters, attorneys, and accountants will be able to recommend qualified financial printers. Companies must also select a firm to design and print the company's stock certificates.

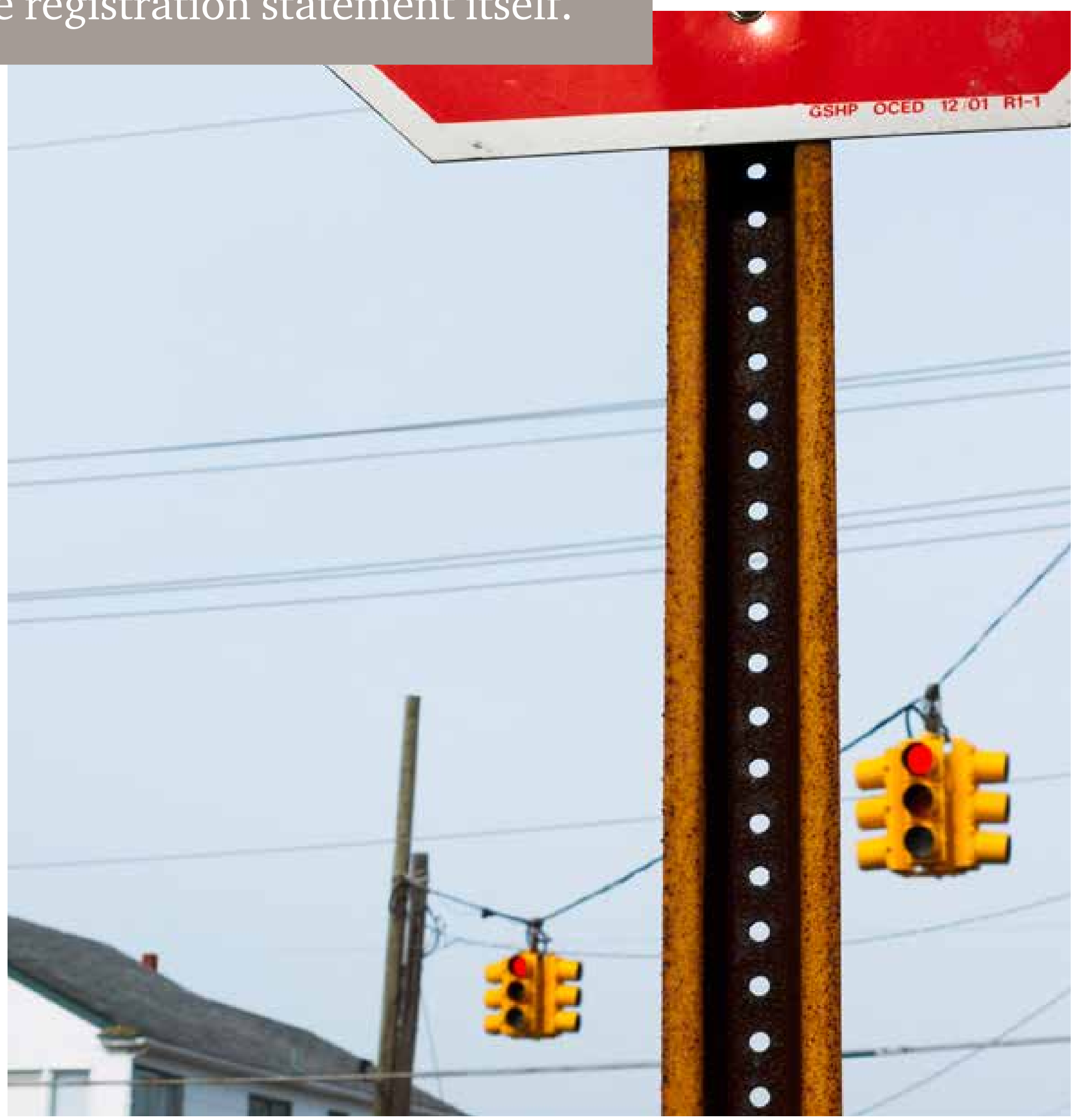
Other professional advisors

A public relations firm experienced in SEC registrations can help guide companies through the restrictions of the "quiet period" and make the most of the opportunities that do exist, help prepare materials for analyst presentations, and coach management in their presentation skills. In addition, management teams are hiring speech consultants to help them prepare for the road show.

Companies will also need to appoint a stock transfer agent to provide those administrative and operational services associated with trading stock. The transfer agent issues, cancels, and transfers stock certificates, pays dividends, handles other corporate actions, and distributes shareholder reports.

03 Current regulatory and disclosure issues

There are many regulatory and disclosure issues to address with an IPO, including matters related to the Sarbanes-Oxley Act of 2002, current accounting disclosures, taxation matters, and the actual preparation of the registration statement itself.



Sarbanes-Oxley Act of 2002

While certain provisions of Sarbanes-Oxley currently apply to private companies, including increased penalties and liabilities for certain crimes, public companies are also required to be compliant with each provision of this legislation. It is important to note that there are numerous overlaps between the requirements of Sarbanes-Oxley and the listing requirements of some exchanges. However, the timing of these overlapping provisions may differ. Management should start planning as early as possible to not only understand the various compliance time frames, but also to take advantage of the timing to strategically plan implementation. Waiting until the registration statement is being prepared and marketed to address compliance with Sarbanes-Oxley can make for a very challenging process.

Many companies have found that they require significant process changes to effectively implement a strong internal control framework, so waiting too long to address Sarbanes-Oxley can create a huge burden on staff who should be focused on preparing the filing statements and coordinating with banks and underwriters. Accordingly, private companies contemplating an IPO should consider the following:

Internal controls—Sarbanes-Oxley requires a registrant's management (CEO and CFO) to provide certain certifications in periodic filings with the SEC regarding the company's evaluation of the effectiveness of its internal control over financial reporting (section 404). However, a newly public company (defined as one that was not required to file an annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 [the "1934 Act"] for the previous fiscal year and did not file an annual report for the prior fiscal year) is not required to comply with either the management or auditor reporting requirements relating to internal control over financial reporting until its second annual report. However, companies need to consider the discussion of their 404 plan and timeline in their marketing documents. Furthermore, sections 302 and 906 of Sarbanes-Oxley are required in the initial filing. Section 302 and 906 require that the CEO and the CFO of a public company certify that the company's financial statements are accurate, comply with the requirements of the exchange acts, and information reported is fairly presented.

Management should integrate consideration of internal controls into the financial processes as early as possible to allow time to implement and adequately assess the effectiveness of those controls.

Audit committee—Sarbanes-Oxley requires public companies to have an independent audit committee with at least one member qualified as a financial expert. Accordingly, companies should understand the requirements and skills required and evaluate the composition of the audit committee to allow sufficient time to seek qualified individuals.

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.

Board of directors—Sarbanes-Oxley requires that a majority of the members of a board of directors be from outside the company. At least one board member must have a financial background either as a CPA or CFO. One member must chair the audit committee, and outside directors must meet in executive session. However, a company that qualifies as a controlled company is exempt from the requirements of having an independent board of directors. Attracting and retaining board members has become more difficult and more expensive due to the perceived higher level of risk and shift from equity to cash compensation.

Auditor relationship—Sarbanes-Oxley prohibits a company's external auditor from providing certain non-audit services, including but not limited to internal audit, legal, and valuation services. However, there are a number of non-audit services that an auditor may provide, such as tax services and general advisory services. These permissible non-audit services must be pre-approved by the audit committee. Accordingly, companies should evaluate their existing relationship with their outside audit firm to clarify permissible and non-permissible services and to establish clear independence related to existing or future services.

Code of ethics—Sarbanes-Oxley requires a code of ethics for senior financial officers or clarification on why one has not been implemented. The corporate governance listing requirements of many exchanges also require a code of ethics. It is important to understand the overlapping nature of these requirements so appropriate processes can be developed and put in place.

Loans to company executives—Sarbanes-Oxley prohibits public companies from extending or maintaining credit in the form of a personal loan to or for any director or executive officer. Accordingly, appropriate actions should be taken to ensure these types of arrangements can be extinguished prior to the initial public offering.

Common Accounting and Reporting Issues

Below are some of the most common accounting and reporting issues that a company will face as part of the IPO process as well as related areas that are often the focus of SEC reviews.

Stock-based compensation

Cheap stock continues to be a focus area for the SEC. Generally, the SEC challenges the fair value of stock options granted in the period preceding the IPO, while a company is private, with the presumption that the exercise prices were below the market value of the stock at the time of the grant. The difference between the exercise price and the market value must be considered when computing stock-based compensation and the related expense should be amortized to income over the vesting periods of the options. Since stock options are one of the major components of compensation for many start-up companies, this compensation expense can be significant, thus having a material effect on reported financial results. Whether this will negatively impact the IPO valuation is dependent on the current market view of this expense.

Companies preparing for an IPO need to carefully review their option pricing history. Where option exercise 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.

Typical SEC focus

Regarding stock-based compensation, the SEC also focuses on:

- The significant factors, assumptions, and methodologies used to determine the fair value of the underlying common stock
- Whether a contemporaneous valuation by an unrelated valuation specialist was performed
- The valuation range determined by various methodologies and the combination or weighting of those methods
- The significant factors contributing to the difference between the fair value as of the date of each grant and the estimated IPO price range
- Explanations of why or whether marketability discounts, illiquidity discounts, and common stock discounts (due to preferential rights of preferred stock) were used
- Determination of comparable companies used

Liability versus equity classification

The SEC has a history of scrutinizing the classification of liabilities and equity in financial statements. This has resulted in the issuance of a standard that clarifies this classification. Certain financial instruments that were previously classified as "mezzanine" in the balance sheet may now be required to be classified as a liability. Particular attention should be paid to warrants and preferred stock. One area that could provide for complex transition issues between private and public companies is in the area of mandatorily redeemable shares.

The definition of mandatorily redeemable securities has historically been found only in SEC rules. However, recent guidance issued by the Financial Accounting Standards Board ("FASB") provided a new definition of the term "mandatorily redeemable" and requires that any securities meeting that definition be reported as liabilities in financial statements. FASB's definition of mandatorily redeemable differs from that of the SEC's. Accordingly, a mandatorily redeemable security that does not require liability classification under FASB's rules guidance may require separate classification and accounting under the SEC's rules. The rules can be complex and the rules can vary significantly based on the preferred stock redemption provisions.

Typical SEC focus

Regarding liability versus equity classification, the SEC also focuses on:

- For any awards that must be classified as liabilities, the focus is on the assumptions used to determine the fair value of the instrument, including the underlying of the instrument (e.g., the fair value calculation of a preferred stock warrant and the underlying price of the preferred stock itself)
- The changes in the valuation of the instruments over time
- The variation of the valuation of the instrument from the valuation of the common stock valuation

Beneficial conversion features of preferred stock and debt

Similar to cheap stock issues, the SEC continues to focus on the conversion price embedded in convertible preferred stock and debt securities issued within one year of an IPO. Occasionally, a company will issue convertible securities within a short period before an IPO with a conversion price below the expected IPO price. The SEC staff believes this issue to be a valuation issue similar to the issue of cheap stock, and it has approached it in a similar manner.

In some cases, the SEC staff has required the IPO price be used as the market price of its common stock in measuring the beneficial conversion feature (BCF). Convertible securities issued within one year prior to the filing of an initial registration statement with a conversion price below the initial offering price are presumed to contain an embedded BCF. To overcome this presumption, a registrant should provide sufficient, objective, and verifiable evidence to support its assertion that the accounting conversion price represented fair value at the issuance (commitment) date. If the SEC determines that there is a BCF, the "in the money" portion would be reduced from the net income available to common shareholders, lowering earnings per share.

With the introduction of guidance on determining fair values, significant focus has been placed on the appropriateness of the fair value assigned to the underlying stock in connection with such transactions. Judgment is required when determining the fair values for securities that are not actively traded. As a result, third-party valuation specialists are often employed to determine the fair values of such securities.

Typical SEC focus

See the factors described in the introduction to the chapter, *Stock-based compensation.*

Employee notes receivable

Historically, private companies have issued shares to employees in exchange for notes receivable, primarily to start holding periods for tax purposes. Employee notes have also been issued for other reasons, such as relocations and house purchases. There are some key factors that companies need to consider regarding employee notes.

For notes issued for stock, the recourse or nonrecourse nature of the notes, both in legal substance and in form, needs to be evaluated to determine whether the transaction is substantive. Companies also need to consider Section 402 of Sarbanes-Oxley, which prohibits publicly traded companies from providing personal loans to directors and executive officers. This prohibition on executive loans at public companies has also led to an overall decrease in the frequency of loans being issued to employees in private companies.

Companies with existing loans or considering entering into new loans to employees should work with appropriate legal counsel to determine which loan arrangements are prohibited and take appropriate corrective actions prior to the public offering. This corrective action may require executives to repay loans prior to the IPO and the original contractual maturity, so advance planning is essential.

Typical SEC focus

For employee notes receivable, SEC staff will question the classification of the receivable if it is not presented as contra equity (as discussed in SAB Topic 4E) if the receivable was the result of a stock transaction, unless such receivable was repaid prior to the issuance of the financial statements.

Revenue recognition

Revenue recognition continues to receive a great deal of attention from the standard-setting bodies and the SEC as companies create many new and complex transactions. Some areas that can be particularly complicated are:

- Software revenue recognition
- Revenue arrangements with multiple deliverables
- Barter transactions
- Bill and hold

- Sales to resellers
- Consignment sales
- Up-front fees

Typical SEC focus

Regarding revenue recognition, the SEC specifically focuses on:

- Proper disclosure of the process used to evaluate the various factors that affect the Vendor Specific Objective Evidence (VSOE) rates used in connection with software revenue transactions and accepted Third-Party Evidence (TPE) rates for arrangements with multiple deliverables
- Disclosure of significant components of deferred revenue and the associated periods over which such balances will be recognized
- Accounting for milestone arrangements

Business combinations

Recently issued guidance on business combinations require that the purchase price allocation in a purchase business combination begin with an analysis to identify all of the tangible and intangible assets acquired. Intangible assets, such as patents, copyrights, brand names, customer lists, and above/below market contracts may be identified, and the fair value of each asset must be estimated. The total purchase cost is allocated based on the relative fair values of the individual assets.

Underlying assumptions and data used to develop the valuations should be adequately tested and challenged by companies and their auditors.

Typical SEC focus

Regarding business combinations, the SEC specifically focuses on:

- Appropriateness of the fair values utilized to record assets and liabilities acquired
- Accounting for changes in a valuation allowance for acquired deferred tax assets and the resolution of uncertain tax positions
- Disclosures associated with contingent consideration and the related accounting after the adoption of the recently issued guidance on business combinations

Consolidation issues

New guidance on consolidation significantly changes the consolidation rules for variable interest entities and establishes consolidation principles closer to the traditional control-based approach rather than previous guidance that focused more on the quantitative assessment of economic risks and rewards. Affected arrangements include the consolidation of common structures, such as joint ventures, equity method investments, collaboration arrangements, co-manufacturing, and power purchase arrangements. The adoption of this new guidance may require significant changes to a company's accounting policies, financial statement disclosures, data gathering processes, and internal controls. However, the impact of the guidance is not limited to the financial reporting process and is expected to affect other areas, including debt covenant compliance, financial metrics, compensation, controls and systems, and stakeholder communications, to name a few.

Typical SEC focus

Regarding consolidation issues, the SEC specifically focuses on:

- The considerations of whether a variable interest entity exists, including factors considered in determining the primary beneficiary and consideration of whether a service provider has a variable interest
- Extensive disclosure requirements considering a company's involvement with variable interest entities and any significant changes in risk exposure due to that involvement as well as the impact of such entities on the company's financial statements

Segmental reporting

The SEC has questioned registrants on the determination of business segments and adequacy of segment reporting disclosure. Their concern is frequently whether there is an inappropriate aggregation of multiple segments or if there is an inadequate explanation of the basis for aggregating information.

Typical SEC focus

Regarding segmental reporting, the SEC specifically focuses on:

- Consideration of the proper identification of the chief operating decision maker (CODM), which may not always be a single individual
- Exclusion of components of a business as a segment when the CODM receives reports of that component's operating results on a regular basis

- The appropriateness of the aggregation of segments (The SEC has noted that aggregation represents a "high hurdle" that is only suitable in certain limited situations.)
- Identification of the products or services driving revenue for each reportable segment
- Disclosure of total revenues attributable to external customers
- Disclosures for each country in which the registrant generates material revenues
- Adequate disclosures regarding material reconciling items between segment results and the consolidated results of operations
- Consistency with the manner in which the business section and MD&A are written

Compensation disclosure and analysis (CD&A)

The CD&A addresses the objectives and implementation of executive compensation programs, focusing on the most important factors underlying the company's compensation policies and decisions. It addresses why each compensation program element was chosen, how award levels were determined, and how each element fits into the company's overall compensation objectives.

Recent changes to proxy requirements also include a new disclosure of how risk is related to compensation and whether or not these risks may have a material effect on the company. The focus is on how the corporation's compensation structures and practices drive an executive's risk-taking and the compensation committee's management of risk regarding its compensation program.

The changes are meant to increase disclosure of the relationship between a company's overall compensation policies and how these policies create incentives that can affect its risk and the management of that risk. Public companies are required to discuss and analyze in the CD&A the risk attributes of its broader compensation policies for employees (including non-executive officers). This new disclosure will only be required if the risks from a company's compensation policies have a material impact on the company.

Typical SEC focus

Regarding CD&A, there are a few things that companies going public should keep in mind:

- If registrants have an adequate basis for omitting incentive plan performance targets (this is a high hurdle), they should provide the alternate disclosure regarding the relative likelihood that those performance targets will be met.
- Descriptions of incentive plan performance targets should be specific.

- Regardless of the terminology used, "benchmarking" executive compensation should be accompanied by an identification of the other companies that were used for benchmarking purposes.
- In disclosing executive compensation decisions, registrants should provide a clear description of the respective roles and responsibilities of the CEO, compensation consultants, and the compensation committee in the decision-making process.

Separate financial information

In addition to a registrant's annual and interim consolidated financial statements, the SEC may require separate, audited financial statements for certain specified entities, such as significant businesses acquired or to be acquired (Rule 3-05), certain equity method investments (Rule 3-09), and guarantors of public debt securities (Rule 3-10). Obtaining audited financial statements of these companies can be a difficult and costly task and could potentially delay an IPO timetable. Furthermore, separate financial statements for any non-US entities may require a US GAAP reconciliation if the financial statements are not prepared in accordance with IFRS as issued by the IASB.

Typical SEC focus

The separate financial statements must comply with Regulation S-X, although a non-public entity would not need to include public company disclosures, such as segment information, pensions, earnings per share, etc.

IPO of subsidiary businesses (carve out)

Frequently a company may choose to divest of a portion of a subsidiary, or legal entity, through an IPO, or 100 percent of a subsidiary business through a public sale of the business. This requires separate carve-out financial statements of the subsidiary business, as if it were a stand-alone separate entity.

This financial information can be challenging to produce due to the need to carve out the subsidiary's financial statements from the larger, consolidated accounts of the parent company. Companies should give special consideration when deciding which assets and liabilities are to be included as part of the business and how to allocate certain shared corporate costs. Each carve-out situation is unique and requires separate consideration and a significant amount of judgment. There are limited specific accounting rules or guidance that govern the composition of the carve-out entity. A spin-off is the non-sale divestiture of a carve-out entity to the parent company's shareholders in which the carve-out entity generally becomes an independent company.

Typical SEC focus

Regarding carve outs, the SEC specifically focuses on:

- Expense allocations and pushdown of corporate headquarters accounts
- Debt and capital presentation
- Interest on capital structure, if appropriate
- Presentation of income taxes
- Pro forma future stand-alone costs
- Intercompany balances and activity

Non-GAAP financial measures

These are a measure of a registrant's historic or future financial performance, financial position, or cash flows that exclude amounts or make adjustments that have the effect of excluding amounts that are included in comparable calculations presented in accordance with GAAP. Examples of common non-GAAP measures can include adjusted EBITDA, free cash flows, or quality of earning adjustments.

Typical SEC focus

Regarding non-GAAP financial measures, the SEC specifically focuses on:

- Disclosure of the most directly comparable GAAP financial measure along with reconciliation between the non-GAAP measure and the comparable GAAP measure
- Presentation of the GAAP measure with equal or greater prominence than the non-GAAP measure and the disclosure of why the non-GAAP measure is useful to investors
- The demonstration of the usefulness of the non-GAAP measure to investors

Stock-splits

During an IPO, a company will often declare a stock-split that does not become effective until just prior to the effectiveness of a registration statement. In many cases, the intent of the stock-split is to establish an offering price that is within a preferred range. In such cases, it is appropriate to give retrospective effect to the stock-split in the historical financial statements. The auditors will then issue a preamble report on the financial statements. A preamble report is comprised of the standard report preceded by a preamble indicating that the split has not occurred, but that when it does, the auditor would be in a position to furnish the report presented. In the subsequently amended registration statement after the split has been consummated, the preamble is deleted and the auditor's report is dual dated with respect to the split.

Earnings per share

For each period that an income statement is presented, a company generally will disclose earnings per share (EPS). This disclosure may include a reconciliation of the basic and diluted per-share computations for income from continuing operations and the impact of all securities that affect EPS. This calculation can become burdensome for companies with complex capital structures, as they are required to disclose the effect of preferred dividends and dividends in arrears, as well as securities that could potentially dilute EPS.

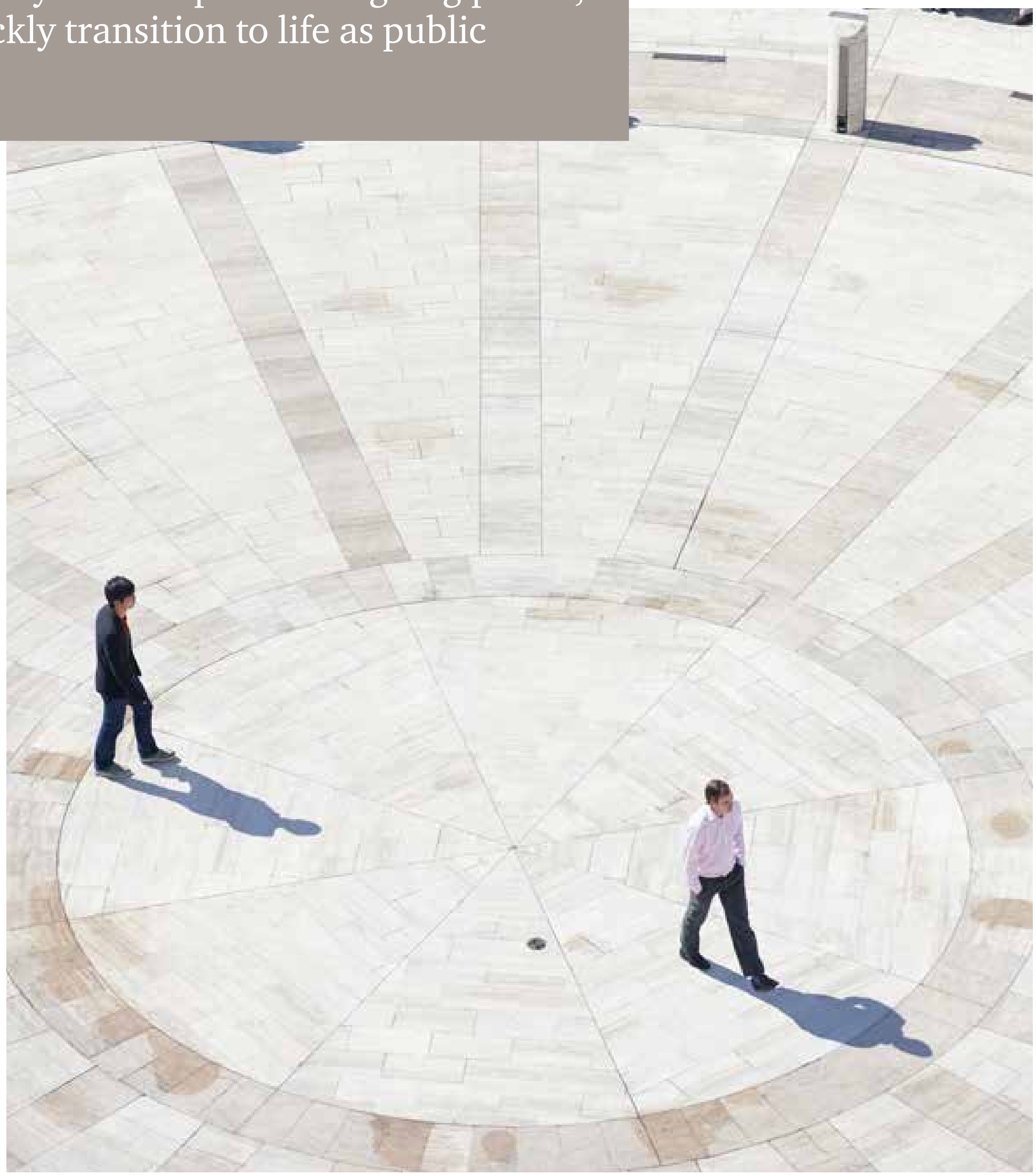
Typical SEC focus

Regarding EPS, the SEC specifically focuses on:

- Nominal issuance/penny warrants
- Pro forma EPS on face of historical financial statements due to automatic conversion of preferred stock upon IPO

04 The going-public process

The most successful IPOs are launched by those businesses that operate as public companies well in advance of the actual IPO. These businesses have a relatively smooth process of going public, and they quickly transition to life as public companies.



Typical execution timeline

Businesses often begin their preparations for becoming public companies well before they launch the IPO process. A typical IPO execution process can take about 6-12 months. Advance preparation is a key success factor that allows for a smooth and efficient execution process.

The following graph outlines a typical execution timeline involving key participants in an IPO for the period leading up to and after an offering.

	6-12 Months Before	Before Effective Date 20 Days	Before Effective Date 1-10 Days	Offering Day	After Effective Date 5-7 Days	0-30 Days (optional)
Company	Quiet period begins; Hold and all hands meeting; Execute a letter of intent; Select printer and transfer agent; Clean up financial statements and ensure their compliance with Regulation S-X	Cooling off period begins; Executives perform road show		Execute underwriting agreement; Issue press release	Provide certificates; Collect proceeds	Provide additional certificates; Collect additional proceeds
Company counsel	Perform housekeeping of company records; Draft S-1; File w/ the SEC; File FINRA listing application	Clear SEC comments	Pricing amendment filed; Acceleration requested; File final registration statement		Deliver documents/ opinions	Update closing documents
Independent auditor	Complete audit of annual financial statements and review of interim financial statements; Review registration statement	Audit/review updated financial statements, if necessary; Respond to SEC comment letter	Deliver draft comfort letter	Deliver final comfort letter	Deliver bring down comfort letter	Second bring down comfort letter
Advisory Accountant	Advise the Company of the financial statements, technical accounting issues and registration statement including any pro forma financial information	Advise the Company on the updated registration statement				Advise the Company on their ongoing reporting and compliance requirements as a public entity

	6-12 Months Before	Before Effective Date 20 Days	Before Effective Date 1-10 Days	Offering Day	After Effective Date 5-7 Days	0-30 Days (optional)
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 ad	Execute underwriting agreement; Run tombstone ad	Provide net proceeds	Exercise overallotment option; Make determination about issuing research report
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 ad	Execute underwriting agreement; Run tombstone ad	Provide net proceeds	Exercise overallotment option; Make determination about issuing research report
Investment banker's counsel	Begin due diligence; Prepare FINRA Regulation filing; Undertake "Blue Sky" filings	Clear FINRA Regulation comments	Continue due diligence		Assist in closing	Assist in second closing
Financial printer		Print preliminary registration statement/ prospectus (red herring); Produce SEC & FINRA Regulation filing packages		Print final registration statement/ prospectus		
SEC	Review preliminary registration statement; Issue comment letter			Declare offering effective		
FINRA regulation	Review preliminary registration statement; Issue comment letter	Resolve comments		Declare no objections		

Once a company reaches a preliminary understanding with its underwriters, the IPO process starts in full force, and a “quiet period” begins during which a company is subject to SEC guidelines regarding the publication of information outside the prospectus. The opportunity to enhance awareness of a company, its name, products, and geographic markets will be limited, since any publicity that creates a favorable attitude toward the 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. Companies will need to juggle four tasks in parallel time lines and keep business running as usual. These four tasks are:

- The preparation of the preliminary prospectus
- The investigation of the company’s affairs for underwriter due diligence
- The monitoring of market conditions for pricing purposes
- The preparation of marketing materials for the road show

As previously mentioned, a company can generally expect it to take anywhere from three to five months from the time the company decides to go public until the time it receives the proceeds from an offering. The actual length of this period depends on, among other things, the readiness of the company to go public, the availability of the information that must be disclosed in the registration statement, and market conditions.

Days 1-60

Holding 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 auditors, accounting advisors, underwriters, the company’s attorneys, and the underwriters’ attorneys. The purpose of this initial organizational meeting is to discuss the nature of the offering and the 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 all-hands meetings should take place to discuss any problems, review drafts of the registration statement, and determine whether the registration process is on schedule.

TIP

As excited as you may be about your IPO, do not promote during the quiet period. Allow the quiet period to be just that—quiet. Loud noises attract attention you might not want, particularly from the SEC. 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 spell real trouble.

TIP

Of course, you are not the only source of information. Keep in mind that the press, which is by definition independent, will time its articles according to its interests, which may not be in the best interest of your offering. Excessive attention during the quiet period can only hurt, 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.

TIP

As distracting as your IPO may be, keep a keen eye on your business. IPOs are easily so absorbing that you can lose track of your day-to-day business concerns. Be cognizant of this distraction potential, and plan for it to ensure your business doesn't come out of the IPO process weaker than it went into it. Good project management will be essential to effectively managing the project and outcome with minimum distraction from day-to-day business. For example, it may be useful to use project management tools and appoint an IPO team captain to manage the process.

Registration statement form

The choice of which SEC form to be used for registration purposes is a legal determination that should be made by a company in consultation with its counsel and underwriter.

Form S-1 is the basic registration form for IPOs. In 2008, the SEC introduced new rules that eliminated the ability of smaller business filers to use Forms SB-1 and SB-2. Instead, smaller reporting companies now must file using Form S-1, in which the financial and information requirements are less stringent. The basic financial statement requirements of Form S-1 for smaller reporting companies and all other companies are:

Requirements	Form S-1	Form S-1 (smaller reporting companies only)
Income statement	3 years	2 years
Balance sheet	2 years	2 years
Statement of shareholders equity	3 years	2 years
Earnings per share	3 years (corresponding to income statement)	2 years (corresponding to income statement only), except for 5-year dates and quarters
Management's discussion and analysis	Required	Required
Selected financial data	Required - 5 years of historical selected financial data	Not required
Separate financial statements for significant acquisitions	Required	Required
Pro forma financial information	Required	Required
Supplemental financial information schedules and industry specific disclosures	Required	Required

Management's discussion and analysis for a smaller reporting company is similar to that of other companies. However, the discussion of the results of operations would generally mirror the financial statement included in Form S-1. Smaller reporting companies are not required to include a tabular disclosure of contractual obligations.

TIP

Management knows the business the best, so it should take an active role providing direction in the drafting process. Resist the temptation to allow the underwriters or attorneys to perform significant amounts of drafting, as this could result in a registration statement that deviates from management's view.

Additional information on pro forma financial information requirements may be found in the Financial Information section under Pro forma financial information.

The requirements are for the periods indicated or from the inception of the business, if later.

Preparing the registration statement

Preparing and filing the registration statement is a relatively complicated, time-consuming, technical process requiring substantial planning and coordination. It involves providing the information specified by the SEC form and complying with the applicable SEC rules in the most efficient manner possible. It requires a great deal of effort by the management team, lawyers, and independent accountants to position a company as accurately and positively as possible, while also disclosing any negative risk factors.

It is during the preparation process that a scheduled timetable for going public can take longer than expected, causing a delay in the anticipated filing date. It is therefore imperative that the entire team be thoroughly familiar with the registration statement requirements, be cognizant of the deadlines set, periodically assess the status of specific sections of the registration statement, and ensure that reviews of each section are timely.

The registration statement (Form S-1) consists of two principal parts. Part I contains the essential facts regarding the business operations, financial condition, and management of the company that are required to be included in the prospectus, including the company's financial statements. Part II contains additional information that is not required to be included in the prospectus.

The Form S-1 filing

Information that is required by the Form S-1 includes the following:

Part I – Information Required in the Prospectus

Prospectus summary—This appears at the beginning of the prospectus and is basically a short summary describing the company, its business, the type of securities being offered, the amount of estimated proceeds, the intended use of the proceeds, and principal risk factors. It may also include certain summary 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 web site addresses in this section. The summary should not merely repeat the text of the prospectus, but should provide a brief overview of the key aspects of the offering.

Risks associated with the business—Risk factors are those that are specific to the company and not to any other company or any offering. Risk factors that make an offering speculative or risky must be disclosed. These factors may include those that appear in the following list:

- 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 customers, suppliers, or key members of management
- Information regarding significant contracts or licenses
- Impact of current or proposed legislation (e.g., communications, health care)
- Technology changes

Use of proceeds—A company must disclose and discuss 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 actual disposition of the proceeds after the offering is completed. Because the actual use of proceeds may change between the filing date and the effective date as the company's plans change, it may be necessary to revise this section of the registration statement on the effective date. Typical uses might include debt reduction, acquisitions, capital purchases, research and development expenditures, and marketing expenses.

Dividend policy and restrictions—A 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, it is not uncommon for many new public companies not to pay dividends, but rather retain earnings to finance operations and the company's expansion. Restrictions might be based on debt, contractual agreements, or the regulatory environment in which a company operates.

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—When there is a disparity between the IPO price and the net book value per share of tangible assets, dilution results. The affects of any material dilution on 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 relationship between a company and any of its underwriters.

Information about the company's business—A company must make extensive disclosures about its business. Among these are the items cited in the list below:

- A company's business plan, particularly if it has less than three years' operating results
- A description of principal segments, products, services, and markets for the company's products and services
- A description of its properties
- Information relating to foreign operations, if any
- Amount of research and development expenditures
- Regulations affecting the industry and company
- Pending or threatened legal proceedings
- Revenues, profits, assets, products and services, product development, major customers, order backlog, inventory, patents, suppliers, and the competitive position of each major industry and geographic segment of the company

Financial information—The SEC has specific and sometimes complex rules regarding the content and age of the financial statements that must be presented in a registration statement, and a company's accountants can be invaluable in helping it comply with these rules. In a Form S-1 registration statement, a company must generally present the items listed below:

- Audited balance sheets as of the end of the two most recent fiscal years
- Audited statements of income, cash flows, and changes in shareholders' equity for each of the past three fiscal years (Smaller companies may present such information for two years only.)
- Selected financial information (summarized from the balance sheets and income statements) for the past five fiscal years (Smaller companies are not required to present selected financial information.)
- Interim financial statements are required if the fiscal year-end financial statements are more than 134 days old, except for third-quarter financial statements, which are timely through the 45th day after the most recently fiscal year end. After the 45th day, audited financial statements for the fiscal year must be included. Interim financial statements can be presented in a condensed format and generally are not audited. However, a review of the interim financial statements is typically performed by independent accountants

It should also be noted that:

- The latest audited financial statements cannot be more than one year and 45 days old at the date the registration statement becomes effective.
- Separate financial statements of businesses acquired or to be acquired should be listed. The financial statement requirements range from one to three years depending on whether certain criteria are met.
- Insofar as practicable, the separate financial statements of significant equity investees of a registrant (except smaller reporting company registrants) shall be as of the same dates and the same periods as the audited consolidated financial statements. These financial statements only need to be audited for periods in which the equity investment is deemed to be significant (as defined by the SEC rules).
- Companies should report separate, standalone (unconsolidated) financial information in instances in which restrictions prevent its subsidiaries from freely transferring funds to the registrant.

Pro forma—Pro forma financial information includes financial statements or financial tables prepared as though certain transactions have already occurred. While 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 use of proceeds from the IPO to repay outstanding debt obligations also necessitates the provision of pro forma financial information. There could be other events or transactions for which pro forma financial information may be required if the pro forma financial information would be material to investors, including situations in which:

- The registrant's financial statements are not indicative of the ongoing entity (e.g., 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 date of an IPO
- Other changes in capitalization occur at or prior to the closing date of an IPO
- An issuer was formerly a subchapter S corporation, a partnership, or similar company

The basic guidelines for pro forma adjustments are as follows:

— Balance Sheet: Pro forma presentation should be based on the latest historical balance sheet included in the filing. A pro forma balance sheet is not required if the transaction is already reflected in a historical balance sheet.

— Income Statement: Pro forma presentation should be based on the latest fiscal year and interim period included in the filing.

— Footnote disclosure on pro forma adjustments for the income statement and balance sheet may also be required.

	Assumed date of transaction	Adjustments are directly attributable to transaction	Adjustments are factually supported	Adjustments are expected to have on-going Impact
Balance sheet	Balance sheet date	Yes	Yes	No
Income statement	Beginning of earliest pro forma period presented	Yes	Yes	Yes

Information about the company's officers, directors, and principal shareholders—Form S-1 requires a company to identify and describe the business experience of its executive officers and directors; 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, its promoters.

Executive compensation—The SEC requires extensive disclosures that are intended to ensure that investors and other parties receive clear, comprehensive and transparent disclosures regarding executive and director compensation and related matters.

The executive compensation disclosures include:

- Expanded disclosure related to named executive officers including the principal executive officer (CEO) and principal financial officer (CFO)
- A compensation discussion and analysis (CD&A) section, which requires a disclosure of the roles of management and the compensation committee in making underlying compensation decisions and the methodologies and rationales used in establishing the type and amount of executive compensation
- A summary compensation table, accompanied by six supplemental tables, to disclose compensation components relating to salary, bonus, stock awards, option awards, non-equity incentive plan compensation, pensions, non-qualified deferred compensation, and all other compensation (including perquisites)

- Disclosure related to amounts payable to executive officers upon termination of employment, and, separately, upon a termination of employment following a change in corporate control
- Enhanced related-person disclosures, including disclosure of the policies for the review, approval, or ratification of transactions with related persons

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. It inevitably results in comments (particularly the lack of forward-looking information required by each of the major sections of MD&A). It is therefore imperative that this section be carefully drafted. It must be written as objectively as possible, pointing out both favorable and unfavorable developments, and it should be written from the point of view of the company's management. An MD&A statement includes:

- **Results of operations—**This is a comparison of the income statement amounts for each period presented and an explanation of the reasons for any material changes that should be incorporated. The MD&A should also discuss the 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 and any changes in significant balance sheet items also should be analyzed and discussed.
- **Liquidity—**Any known trends or any known demands, commitments, events, or uncertainties that will result in or that 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, internal and external sources of liquidity should be identified and described, and any material unused sources of liquid assets should be briefly 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. Any known material trends, favorable or unfavorable, in the company's capital resources should be divulged.
- **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 other persons that have or are reasonably likely to have a current or future material effect on financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, or capital resources.

- **Critical accounting policies and estimates—**This section should provide greater insight into the quality and variability of the company's financial condition and operating performance resulting from key accounting policies, assumptions, and estimates. It should supplement, not duplicate, the description of significant accounting policies in the notes to the financial statements and include quantitative and qualitative disclosures, a sensitivity analysis, and critical estimates by segment if necessary. This section continues to be an area of significant focus of comment from the SEC.
- **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

— Certain relationships and related transactions

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 last three years, undertaking 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 the underwriting agreement), and various 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 non-financial statement portion of filings with the SEC (otherwise referred to as the "forepart" of the document).
- Financial Reporting Releases (FRRs) 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.

- Staff Accounting Bulletins (SABs) are the interpretations and practices followed by the SEC staff. Although they are 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 the 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.
- Regulation S-T governs the preparation and submission of documents filed via the SEC's Electronic Data, Gathering, Analysis, and Retrieval (EDGAR) system.

Beginning in 1996, virtually all documents processed by the SEC, including filings by first-time issuers, must be submitted electronically via EDGAR. Copies of documents filed with the SEC using EDGAR may be obtained at the SEC's Web site: www.sec.gov. The general and specific instructions to the relevant form (S-1, etc.) are also helpful.

Performing due-diligence procedures

Throughout the registration statement preparation process, the entire IPO team will perform necessary procedures 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. These procedures are referred to as due diligence and are performed primarily in response to the Securities Act of 1933 ("1933 Act"), which 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 this section of the 1933 Act.

Due diligence procedures entail a company's attorneys and underwriters reviewing a company and its management, including, but not limited to, visiting facility sites; 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 in which it operates.

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

"Keeping current" procedures are performed by the independent auditors 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.

TIP

There are numerous opportunities for schedule slippage during the IPO process. Some of it may be unavoidable, but strive to maintain your timetable as much as possible. For each unscheduled delay, your management team must balance their potential costs (new required interim financial information, a missed market window, or a less enthusiastic underwriter) against the costs of hasty decisions (expenses or problems with the SEC).

Due diligence also encompasses reading the entire registration statement by all parties involved in its preparation to ensure that there are no material misstatements, omissions, or inconsistencies.

In addition, as part of their due diligence procedures, underwriters request comfort letters from a company's independent auditors with respect to information that appears in the registration statement outside of the financial statements and on events subsequent to the accountants' report date. It is common for underwriters to request comfort on as much information as possible. Auditing standards allow auditors to provide comfort on information that is derived from accounting records that are subject to the company's internal control over financial reporting. Generally, the more information the underwriters seek comfort on, the more expensive the process becomes. In light of this, and to avoid any misunderstandings and undue time delays, it is important that a company, the auditors, and underwriters agree, in the early stages of the registration process, on the information about which the auditors will be giving comfort.

Generally, two comfort letters are issued to the underwriters, one at the time the underwriting agreement is signed (generally the pricing date), and one (an updated letter or "bring-down letter") 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 a company's principal officers and counsel, 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 in that they may ask any questions concerning the company and its business, products, competitive position, recent developments in finance, marketing, operations, and future prospects.

Days 61-90—filing the registration statement with the SEC

Pre-filing conference with the SEC

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

TIP

If your company has any new or unusual accounting and/or disclosure issues, you may 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 them. These issues may be more easily handled earlier in the process rather than later, in 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. A company will want to ensure that this draft is somewhat final, so as to avoid unnecessary reprinting/amending costs at the printer. However, it is common for several lengthy 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 a period of five years.

Once filed with the SEC, registration statements are processed and reviewed by the staff of the SEC's Division of Corporation Finance, generally consisting of an attorney, an accountant, and/or a financial analyst. Once filed, the SEC has 30 days to perform the initial review and provide comments on the registration statement. The group may also consult with other staff members familiar with a particular industry (such as mining or petroleum engineers). The staff reviews the documents to determine whether there is full and fair disclosure, particularly to determine whether or not the document contains 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.

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 may also refer to published annual and interim reports, the company's website, newspaper articles, and the Internet for information regarding the company and its 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 dealing with accounting and auditing issues.

The Division of Corporate Finance currently uses a risk-based selective review process whereby they review the filing to decide whether they want to review further. If a document is selected for review, the review can be a full legal and accounting review, a full accounting review, or a targeted review. Upon becoming a registrant, Sarbanes-Oxley requires that a company be reviewed no less than once every three years.

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.

Registration statements should be complete at the time the document is filed, and the age requirements of the financial statements should be met. At times, the staff has received a number of incomplete registration statements in an attempt to “get in line” for the review process. The staff generally will not review incomplete registration statements. If a registrant believes there are extenuating circumstances and the staff should review an incomplete filing, the matter should be approved by the staff prior to submission.

The waiting period

Once the registration statement has been filed, the “waiting period” or “cooling-off” period begins and continues up to the effective date of the registration. During this period, there are restrictions on the activities the company and the underwriter can undertake. During the waiting period, the underwriters may accept “indications of interest” from potential purchasers, but no actual sales can be made until after the effective date.

Days 91-100

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

After review of the registration statement, the staff typically issues a letter that sets forth questions, possible deficiencies, and suggested 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. While differences of opinion sometimes exist as to the propriety of a particular comment or request, most of the comments and suggestions made by the staff are 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. After effectiveness of the filing, the comment letters and the company’s response thereto are publicly available via EDGAR.

In addition, significant developments often occur during the period subsequent to filing the initial registration statement and prior to final SEC approval, and these 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 a company and its future. In other words, any interim developments that materially affect a company and its prospects must be disclosed via amendments to the initial registration statement.

A company 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. Thereafter, a company can expect to receive several subsequent comment letters from the staff addressing follow-up questions on responses to original comments or additional comments on new or amended information included in the registration statement.

In addition to filing the registration statement with the SEC, filings must also be made in the states in which the company intends to offer the securities, as well as with the 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 a company must be careful not to generate undue publicity about itself 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, made up of various brokerage companies that will distribute the stock. While in the past companies have 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 SEC. 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; typically they are not published until after the effective date of the registration statement.

Financial analyst meetings or "road shows"

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

It is vital that the management team be well prepared for these meetings. This cannot be emphasized enough. The company should not assume that the prospectus is able to "stand on its own"—a company should anticipate potential questions concerning specifics about its business and know the answers. The credibility projected by a management team in its presentation and its ability to respond to potential investors' and brokers' questions will be a major influence in the success of the offering.

The "road shows" represent a critical part of a company's selling efforts, since it is here that a management team promotes interest in the offering with the institutional investors. This can be a very grueling process since the span of time can last up to two weeks with a number of presentations a day. In addition, a company cannot discount the fact that in an active market it becomes more difficult to pique institutional investors' interest if they are going through three to five "dog and pony" shows a day.

TIP

When it comes to road shows, form may 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, 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!

Undoubtedly, underwriters will play a significant role in preparing a management team for these presentations. Additionally, some companies have sought assistance from professional investor relations organizations. Although a company may have a good "story" to tell, these advisors can help tailor it to investors.

Negotiating and signing the price amendment and the underwriting agreement

By the time the registration statement has been filed, a company and its underwriter have generally agreed on the securities—both in number of shares and dollar amount—to be sold. However, 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 the past and present performance of a company, current conditions in the securities markets, and indications of interest received during the road show.

For example, in establishing an offering price, the underwriters will look at a multiple of earnings or cash flow based upon that experienced by similar companies. These multiples may 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 price of comparable companies.

Timing also plays as important a part as any other factor in determining the final offering price of the shares. Almost any company that went public during the dot-com boom would have done so at a higher offering price than in the economic crises that began in 2008. 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 by 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, and ideally, the offering price should 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 may not provide adequate investor return, resulting in a weak or depressed aftermarket, while pricing at the low end may 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 a price of $8 may be perceived to be offering a more speculative stock, while a $15 stock price may not be so perceived. At the other end of the spectrum, an IPO price of $25 may be considered overpriced.

In addition to the price, the number of shares offered should be sufficient to ensure 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 is over—the underwriting agreement is signed by authorized representatives of a company and the underwriter. Also at this time, the final amendment to the registration statement is prepared, including (as applicable) the agreed-upon 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.

In an effort to simplify the filing requirements associated with the final pricing amendment, the SEC passed a rule allowing 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, a company and its 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

7 days after 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 pricing of the offering. At closing, a company delivers the registered securities to the underwriter and receives payment for the issue. Various documents, including the bring-down letter prepared by the independent accountant, are also exchanged.

05 Life as a public company

Public companies must proactively manage their reputations by communicating regularly with investors, analysts, and the financial media to maintain a positive image and make sure their story is being told accurately. The public's perception of a company has a direct effect on the value of its stock. Do not underestimate it. Life as a public company also means getting comfortable with the rhythm of quarterly and annual reporting requirements, their content, and costs.

Maintaining investor enthusiasm

Once a company is public, considerable effort must be expended to maintain its market position. If investor enthusiasm for a company is not maintained, trading will decline. If a company's shares are thinly traded, the benefits sought from the IPO (such as liquidity through a future secondary offering) will not be realized. Thus, effective distribution and support of the stock, as well as continuing security analyst interest, is necessary after the IPO.

A strategy for after-market support can be created with the assistance of a financial public relations firm. This strategy usually includes choosing an individual within a company to handle shareholder relations. This ensures that a company will 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, may adversely affect the stock's value. Management will need to ensure 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 a company. Even after a company goes public, it should strive to maintain (or improve) the characteristics that it desired to possess prior to going public. After the IPO, ask yourself:

- 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 earnings potential of your company.
- Are your company's products or services highly visible and of interest to the consuming and investing public? Your company should project a positive image to its investors, customers, and community. This is important, since the attitude of the public may sway the stock's value. There is growing interest regarding corporate social responsibility, including sustainability and climate change issues. Companies should have a strategy to address such concerns.
- 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.

The following provides an overview of key steps in the IPO process.

Pre-Filing	Post-Filing
Accounting, reporting & Finanacial Effectiveness	
Evaluate & resolve complex accounting issues & SEC reporting issues. Prepare financial statements & other S1 information, with auditor reviews. Receive SEC comments and revise S1. Perform "road show". Accelerate financial close & reporting timelines. Enhance policies and procedures to support accelerated timeline & certifications. Enhance management reporting, including budgeting & forecasting. Assess accounting and financial gaps and needs. Recruit additional finance talent and improve departments.	Prepare 10Q in 45/40 days and 10K in 90/75/60 days. Continue to enhance policies and procedures, budgeting and forecasting.
Governance & Leadership	
Assess corporate governance gaps. Provide solutions for Board/Audit Committee (independence) pre-filing.	Perform incremental compliance and transparency enhancements.
Internal Controls	
Assess internal control gaps and needs. Create Sarbanes 404/302 compliance plan. Execute Sarbanes pre-filing steps (Sec. 302). Recruit Sarbanes talent.	Execute Sarbanes 404 readiness.
Media & Investor Relations	
Assess media/investor relations needs. Establish process for earnings releases and earnings calls. Provide solutions for personnel and process gaps pre-filing (in conjunction with reporting needs).	Perform incremental improvements/ enhancements.
Treasury & Risk Management	
Assess treasury needs. Provide solutions for personnel and process gaps pre-filing.	Perform incremental improvements/ enhancements.
Legal	
Assess legal needs for filing and beyond. Create appropriate legal entity structure. ontain required regulatory approvals. Retain securities counsel. retain underwriters.	Operate under new legal guidelines.
Tax	
Assess tax needs for filing and beyond. Create appropriate tax structure and strategy for public company. Provide solutions for personnel and process gaps pre-filing.	Execute tax strategic plan and enhancements.
Human Resources	
Assess HR and benefit needs. Create appropriate compensation, benefit plans and agreements for public company. Support recruiting and reorganization efforts of workstreams throughout the organization pre-filing.	Ensure adequate resources & administer new plans.
Technology	
Assess IT needs. Modify or enhance technology capabilities to support financial reporting requirements, and to support efforts of workstreams throughout the organization.	Perform incremental improvements/ enhancements.
Project Managerment	
Establish project governance. Manage the pre-filing activities.	Manage post-filing activities.

S1 Effective

Preparation for life as a public company

The IPO is not the end of the story—it is only the beginning. Once listed, a company will be under far greater public scrutiny and will have a range of continuing obligations with which to comply. Any weakness in systems or failure to comply with regulations could cause management public embarrassment, reputational damage, and the potential for company and personal fines. The benefits of careful preparation and planning are realized within the first year of the IPO

Public companies are required to comply with a host of reporting and other requirements. The most significant change for many companies is the need to close and report publicly on their financial results on an accelerated timeline and to comply with Sarbanes-Oxley requirements. This is a process the company will need to be fully prepared to meet; the inability to meet these requirements will shake investor confidence or subject the company to a delisting. Throughout the IPO process, the company will need to be prepared to discuss their Sarbanes-Oxley readiness plan and must be sure that it can comply with these requirements.

Preparing for life as a public company should happen in parallel with the process the company undertakes for its IPO. The company should take stock of its processes and infrastructure so it can make any necessary changes in advance of the IPO date. Key questions to ask include:

- Do we have the ability to close our books accurately each quarter and report the results to the public in accordance with SEC guidelines? Do we currently have a repeatable monthly and quarterly close process?
- Does our finance department have the expertise with SEC accounting and reporting requirements to allow us to comply with regulations we did not need to consider before as a private company (e.g., stock compensation and segment reporting)?
- Does our planning and analysis function have the ability to accurately forecast our results to allow for more effective interaction with the investor community and to assist in analysis of the current period results for reporting purposes?
- Are all our processes and controls adequately documented and tested to comply with our Sarbanes-Oxley requirements?
- Does our technology infrastructure adequately support our compliance efforts?
- Have we established an ethics and compliance process and communicated it throughout the organization?

This preparation process can often be lengthy, depending on the current maturity of a company's existing processes. It is vital that the company understand and address any gaps before going public. The magnitude of the required improvements will determine the number of resources required. Many companies have resource constraints during the going-public process, during which there is so much attention being paid to the initial filing documents and the marketing efforts.

Meeting reporting requirements

Public companies are required by the SEC, under the Securities 1934 Act, and Sarbanes-Oxley to file certain periodic reports to keep the investing public informed. This requirement will continue as long as the investor and asset tests are met. As noted previously, preparing to meet these requirements should be a focus for a company as it creates its filings. Companies should discuss their obligations under the various regulations with their attorneys and accountants at the beginning to lay out the obligations and ensure they can be met.

Legal counsel should also be consulted to confirm the SEC requirements pertaining to the form, content, and timing of specific reports. A financial public relations firm can assist companies with furnishing annual reports to shareholders. The table below presents an overview of the basic SEC reporting requirements for public companies based on their designated filer status. (See the discussion on designated filer status in the section immediately following the table on the next page).

Form	Description	Due date based on designation
Form 10-K	This is the annual report to shareholders (conforming to SEC specifications), and it discloses in detail information about the company's activities, risks, financial condition, and results of operations. It also contains the company's audited annual financial statement, which includes the external auditor's opinion of financial statements and Section 404 of Sarbanes-Oxley (only required from the second Form 10-K filed after going public).	• Large accelerated filer—60 days after fiscal year end • Accelerated filer—75 days after fiscal year end • Non-accelerated filer—90 days after fiscal year end • Newly public company—90 days after fiscal year end
Form 10-Q	This is the 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 subject to a review by an independent accountant prior to filing.	• Large accelerated filer—40 days after fiscal quarter end • Accelerated filer—40 days after fiscal quarter end • Non-accelerated filer—45 days after fiscal quarter end • Newly public company—45 days after fiscal quarter end
Form 8-K	This is a report filed for significant events such as an acquisition or disposal of assets; a change in control; bankruptcy; a change in independent accountants; resignation of directors because of disagreement with the registrant; the entry into a material definitive agreement; creation of direct obligations or obligations under off-balance sheet arrangements; a commitment to a plan involving exit or disposal activities; asset impairments; and when a company concludes or is advised by its independent accountants that previously issued financial statements should no longer be relied upon.	• Due within four business days of event
Proxy information	This contains data furnished to shareholders so they can decide how to assign their statements proxies (votes).	• Due dates vary

XBRL Reporting

All SEC registrants are required to provide their financial statements and financial statement schedules to the SEC and post them on their corporate websites in interactive data format using XBRL (extensible Business Reporting Language). The requirement will be phased in, with all domestic and foreign large accelerated filers reporting their financial information in XBRL for fiscal periods ending after June 15, 2010, and all other remaining registrants reporting their information by June 15, 2011.

SEC-designated filer status

The SEC designates companies into three categories of filers to determine filing deadlines for Forms 10-K and 10-Q, as identified in the table above. The SEC has also designated a "smaller reporting company" filer option. The distinction among the different categories is based on the non-affiliated (i.e., excluding large institutional investors, directors, officers, etc.) market capitalization (also known as "public float") of companies as of the last business day of the company's most recently completed second quarter. Companies should discuss their categorization in detail with their counsel and accountants. However, the general guidelines for the categories are as follows:

Large accelerated filer—A company whose market value of publicly floated equity is equal to or exceeds $700 million as of the last business day of the company's most recently completed second fiscal quarter

Accelerated filer—A company whose market value of publicly floated equity is between $75 million and $700 million as of the last business day of the company's most recently completed second fiscal quarter

In addition to the market capitalization requirements, to be designated as a large accelerated filer or an accelerated filer, a company needs to meet the following conditions as of the end of its fiscal year:

- The company has been subject to SEC reporting requirements (specifically Section 13(a) or 15(d) of the 1934 Act) for a period of at least 12 calendar months
- The company has previously filed at least one annual report pursuant to Section 13(a) and 15(d)
- The company is not eligible to use the requirements for smaller reporting companies

Companies not meeting these definitions are considered non-accelerated filers. Note that companies will generally be considered non-accelerated filers in the first year of operation, as the requirements are calculated at the fiscal year end, and a newly public company would generally not have filed an annual report for the prior year. Accelerated filer status must be considered at each year-end to determine whether the designated filer status has changed.

Smaller reporting companies

The SEC has created this designation to streamline and simplify the disclosure requirements. Companies qualify as smaller reporting companies if they:

- Have a common equity float of less than $75 million

- In the case of an initial registration statement, had a public float of less than $75 million as of a date within 30 days of the filing of the registration statement, calculated by multiplying the aggregate worldwide number of such shares held by non-affiliates plus the number of such shares included in the registration statement by the estimated public offering price of the shares
- Have annual revenues of $50 million or less during the most recently completed fiscal year for which audited financial statements are available

This designation allows companies to qualify for disclosure requirements that are scaled to reflect the characteristics and needs of smaller companies and their investors and to make it easier and less costly for smaller companies to comply with disclosure requirements.

Public companies are also required to provide annual reports to shareholders and to include those reports in financial information similar to what is in Form 10-K when soliciting proxies relating to annual shareholder meetings at which directors are to be elected.

The management of newly public companies is required to deliver a report that assesses the effectiveness of the company's internal control over financial reporting, pursuant to Section 302 of Sarbanes-Oxley in the second annual report filed subsequent to the IPO. Section 404 of Sarbanes-Oxley also requires a company's independent registered public accounting firm to deliver an attestation report on the operating effectiveness of the company's internal control over financial reporting. The independent accounting firm must also give its opinion of a company's audited financial statements as of the same date. A company must perform substantial work to implement the 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 both costly and challenging.

To meet the various reporting requirements imposed on them, public companies must maintain adequate financial staff, supported by legal counsel and knowledgeable independent accountants. See Sample Compliance Calendar below for more detail.

Timely disclosure of material information

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

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

It should be noted that when a release or public announcement discloses material nonpublic information regarding a registrant's results of operations or financial condition, Item 2.02 requires that the release be identified and included as an exhibit to a Form 8-K filing within four business days. In addition, Regulation FD requires that when an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons (in general, securities market professionals and holders of the issuer's securities who may well trade on the basis of the information), it must make public that information.

Safe harbor provisions

The Private Securities Litigation Reform Act of 1995 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 which, when issued, were known to be false. A safe harbor applies to any form of written communication (e.g., press releases, letters to shareholders), as well as oral communications (e.g., telephone calls, analyst' meetings) that contains forward-looking information.

It should be noted that the safe harbor provision is not applicable 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.

To avail itself of the safe harbor provision, forward-looking information must be clearly identified as such by the company and must be accompanied by a cautionary statement identifying the risk factors that may prevent the realization of the forward-looking information. In meeting these criteria, two points should be noted:

- 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. While companies are not legally required to update such information, material changed circumstances may nonetheless have to be disclosed as dictated by MD&A disclosure requirements. From a business and investor relations standpoint, companies should consider updating such information.

A new public company should ensure that, when disclosing forward-looking information in annual reports and press releases, the requirements for using the safe harbor provision are appropriately met. Legal counsel is 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 onto 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. In the past, violators of this rule have been dealt with harshly (fined or otherwise penalized).

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 must be carefully observed after a public offering due to 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's being publicly held is the expense it entails. Significant costs and executive time is often incurred when periodic reports are prepared and then filed with the SEC. Board and shareholder meetings and communications may also be expensive.

Because of its 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 will likely result in incurring additional costs) to satisfy the NYSE or the NASDAQ National Market listing requirements.

Sample Compliance Calendar—Assumes that the Registrant has a calendar fiscal year

6/30/XX	Fiscal Year 20XX Second Quarter End
7/17/XX	Effective Date of Registration Statement – Company becomes a reporting company
8/31/XX (1)	Second Quarter Form 10-Q due (unless 6/30/XX financials are included and discussed in Registration Statement)
9/30/XX	Fiscal Year 20XX Third Quarter End
11/15/XX	Third Quarter Form 10-Q Due
12/31/XX	Fiscal Year 20XX Year End
3/01/XX (2)	Initiate Proxy search
3/15/XX	File Preliminary Proxy Statement and form of Proxy with the SEC and FINRA, if necessary
3/31/XX	Fiscal Year 20XX Form 10-K due
3/31/XX	Fiscal Year 20XX First Quarter End
4/02/XX (2)	Record Date – Annual Meeting of Shareholders
4/16/XX (2)	File Definitive Proxy Statement, form of Proxy, and Annual Report to Shareholders
4/16/XX (2)	Mail Definitive Proxy, form of Proxy, and Annual Report to Shareholders
5/15/XX	First Quarter Form 10-Q due
5/30/XX	Annual Meeting of Shareholders
7/16/XX	Section 11(a) Earnings Statement available to security holders as soon as possible covering a period of at least 12 months beginning after the effective date of the Registration Statement

(1) A first-time registrant is required to file its first 10-Q 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.

Note: Such concept does not apply to Form 10-Ks filed after an IPO under Section 12. For an equity offering (which is typically filed under Section 12) completed shortly after year-end, the 10-K would be due 90 days after the registrant's year end.

(2) Depends on timing of meeting.

Note: If a filing date falls on a Saturday, Sunday, or holiday, the document may be filed on the next business day (Rule 0-3(a)).

06 Other considerations

Even before a company begins drafting its registration statement and interviewing investment bankers, it should review its compensation design to ensure that it is competitive and can stand up to public scrutiny. As previously mentioned, making changes to stock grant and option plans should be done long before the IPO to avoid possible charges. In addition, key shareholders should take the opportunity to put into place important tax planning strategies to optimize their financial goals following the IPO.

Compensation planning and design

Basic considerations

IPO-related securities filings require companies to make extensive quantitative and qualitative disclosures about their compensation programs for executives and directors. Investors often use these disclosures to gain insight into corporate governance, risk profile, value-creation strategy, and management competence. Companies considering a public offering should review their executive and director compensation programs to ensure they accomplish the following objectives.

Support the company's strategy

Compensation programs exist to effectively attract, motivate, and retain personnel to execute corporate strategy. As a public company, a key strategy is to increase shareholder value. The compensation program, therefore, should be aligned with the business strategy, adequately communicate the performance measures that drive value, and share a portion of the value creation with employees.

Ensure competitiveness of both compensation levels and mix

The company will be required to disclose executive and director compensation levels publicly — in many cases for the first time. Registration statements and annual proxy disclosures require detailed reporting of base salaries, annual cash bonuses, perquisites and benefits, stock option grants, and any other long-term incentive grants. Specific data is required for the CEO, the CFO, the three most highly compensated executive officers other than the CEO and CFO who were serving at the end of the fiscal year, and up to two additional individuals for whom disclosure would have been provided but for the fact that these individuals were not executive officers at the end of the completed fiscal year. It is critical to demonstrate that compensation is reasonable, relative to industry practices, and necessary to the company's strategy and performance. Unreasonably low pay will attract recruiters, while unreasonably high pay will attract unwanted criticism by investors and analysts.

Shift accountability for executive pay to an independent board committee

The board of directors of a public company has a fiduciary responsibility for executive pay levels and programs. Accordingly, almost all public companies have independent compensation committees to oversee executive pay decisions.

Prepare for increased shareholder and media scrutiny

While shareholders encourage the alignment of executive and shareholder interests, they are actively monitoring pay practices for executives to ensure pay for performance. With "say on pay," advisory shareholder votes increasing at various companies, there is more scrutiny of pay practices for executives. Risk Metrics (formerly ISS) and other shareholder advisory groups have issued voting guidelines requiring that executive compensation align with the company's performance and shareholders' return. Questions may be raised as to both the reasonableness and competitive nature of the current total rewards program. Thus a company should be prepared to justify pay strategy and practices.

Compensation initiatives

Outlined below are planning and analysis initiatives that should be considered to ensure an appropriate compensation program:

- Review of competitive total-compensation levels and mix. Consider base salaries, annual bonuses, long-term incentives (primarily stock options for pre-IPO companies), perquisites, and benefits.
- Create a compensation structure that is aligned with competitive practices and based on real-time external research (not necessarily just on surveys that are out of date prior to publication). Consideration should be given to salary adjustments based on the value created by the incumbent—value based on performance, increased breadth of responsibilities, and success in helping teammates create value.
- Create an annual incentive plan that will: 1) assess performance measures driving shareholder value over the short- and long-term, and 2) reward performance based on: minimum, target, and maximum performance; eligibility; form of payment; and timing of payment.
- Establish an independent board committee to: 1) oversee executive compensation (both from a strategic and regulatory standpoint), and 2) define the role played by the CEO and management in decision-making.
- Depending on industry practices, establish executive employment contracts with change-in-control provisions for key contributors. It is difficult to anticipate what will happen after a public market is established. Make sure that key contributors can be retained under adverse circumstances and that they are taken care of in the event of a merger with another company. However, the events that constitute a triggering change-in-control event should not be defined so broadly as to provide accelerated and unduly generous payouts to executives for an event that would not be considered "adverse." Shareholders are very sensitive about payout deemed too generous, specifically severance exceeding three times an annual salary plus target bonuses, payouts upon single trigger, "voluntary for any reason" triggers, and excise tax gross-ups of any kind.

TIP

The company should get a common stock valuation report from a third party valuation contemporaneously. Such a valuation report could be used for computation of stock-based compensation and also for safe harbor purposes under Section 409A.

- Assess competitive boards of directors' compensation levels and programs. Directors of a public entity will anticipate remuneration commensurate with their time and efforts. They expect competitive retainers and fees. Many companies provide for cash compensation as well as restricted stock or stock options, sometimes fully vested to directors.
- Consider broad-based equity programs, such as all-employee stock options, restricted stock or restricted stock units, or an employee stock purchase plan.
- This is also a good time to assess the design and administration of employee benefit programs, including 401(k), profit sharing and other retirement plans, healthcare, and life and disability insurance.

Equity grants

Equity-based compensation, stock options, and now increasingly restricted stock and restricted stock units have taken the primary role as a means of compensating valued employees without a cash outlay. A company may utilize equity as an integral part of a program to secure equity capital or to achieve widespread ownership of its stock among its employees. Equity packages are often calculated in terms of a percentage of ownership of the company as a means of strengthening the ownership mentality of its employees. Determining the appropriate equity vehicle is important. Often companies may choose to offer different equity incentives for different groups of employees. For example, companies may grant restricted stock at the executive and VP and grant stock options and/or restricted stock units more broadly. We are seeing migration from stock options to restricted stock units, especially when subject to performance vesting.

Equity authorization

A key question for any company is, "How many shares should be allocated to the equity program?" Companies should consider the following factors before setting aside shares:

- Economic value of grants to employees
- Number of eligible employees
- Competitive industry practices
- Acceptable ownership dilution potential

The use of equity differs dramatically within each industry. Broad-based grant programs are prevalent in some industries. All companies should examine competitive total stock authorization as well as annual grant levels prior to finalizing a program.

Equity grant alternatives

Companies differ with respect to their industries and industry sectors, financial resources, stage of growth, form of ownership, culture, management, and philosophy. Due to these variations, there exist a number of long-term, incentive-type plans. The most common forms of compensation plans will utilize stock options, restricted stock, restricted stock units, or bonuses based on stock performance. There are several alternatives when granting equity including:

- **Outright stock grants**
- **Stock Options**—Stock options entitle an employee to pay a purchase price to acquire company stock at any point in time after vesting. There are two types of stock options in the US, incentive stock options, which provide for capital gains tax treatment at sale provided certain holding periods are met, and non-qualified stock options, which are taxed when the employee exercises and acquires the shares. For any privately held companies' granting options, it is important to ensure that the exercise price is set at the fair market value of the shares on the date of grant as defined under Section 409A. This is most often done by securing an independent valuation of the stock price annually.
- **Restricted stock**—These grants are of actual stock. The stock is subject to restrictions on sale until vested by continued employment or the attainment of performance goals. Grants typically include dividend and voting rights. These awards have become more prevalent for highly compensated individuals and often vest based on specific performance metrics instead of vesting over time.
- **Restricted stock units**—This is a promise to deliver stock in the future once restrictions are lifted. There is no grant of stock until the vesting conditions—time- or performance-based—are satisfied. At that time, the value of the shares delivered is subject to personal income tax. These awards have become more prevalent as a way to incentivize all employees.
- **Phantom stock**—Phantom stock entitles an employee to receive (at a future date in cash) any increase in stock value. It does, however, have adverse accounting implications that result in a charge to earnings as the underlying stock appreciates over time. It also does not allow for ultimate favorable capital tax treatment if the shares were actually being held.
- **Stock-for-stock exchange**—An equity plan may allow previously owned shares to be accepted as payment for the exercise of stock options, rather than cash.
- **Performance units**—These are grants of dollar-denominated units whose value is contingent on performance against predetermined objectives over a multiyear period. Actual payouts may be in cash or stock.

- **Performance shares—**These are grants of actual shares of stock or stock units whose payment is contingent on performance against predetermined objectives over a multiyear period. They are the same as performance units, except that the unit value fluctuates with stock price changes and employee performance against objectives.
- **Deferred compensation arrangements—**These are arrangements whereby a company agrees to make cash or stock payments to an employee at a future date. These arrangements are now governed by Section 409A, which mandates very strict rules on the timing of election and the distributions of payouts. These agreements may be in the form of salary deferrals, profit-sharing plans, and deferred stock units, and they are sometimes funded by means of corporate-owned life insurance or split-dollar insurance in which the cash surrender value and death benefits are owned separately by the company and the individual.
- **Employee Stock Ownership Plan—**This is a tax-qualified, defined-contribution retirement plan that invests primarily in a company's common or convertible preferred stock. A company may either contribute cash or its stock to the plan; or, alternatively, the plan may borrow money to purchase the employer's stock. The stock is subsequently distributed to employees under the provisions of the plan.

Each of these plans has distinct advantages and disadvantages. When adopting any type of incentive vehicle, a company's primary criteria should be the program's ability to reinforce both the company's strategic business objectives and its supporting compensation philosophy.

Pre-initial public offering tax planning for corporations

Net operating loss carryovers

Net operating losses are beneficial to the company in that they can usually be carried forward 20 years and carried back two years, offsetting, to their full extent, the income earned in those years. However, some of this benefit is lost if a company with a net operating loss goes public and the IPO results in an "ownership change."

"Ownership change" is a technical term defined by the Internal Revenue Code. Generally, it is defined as a change in ownership (during a three-year period) of greater than 50 percent. If an ownership change occurs, a company with a net operating loss will often be allowed to use only a fraction of its net operating loss to offset income in future years.

As a result of a company's possible forfeiture (upon going public) of the use of a net operating loss, tax planning — with regard to the full use of this net operating loss—should occur well in advance of the public offering.

State and local planning

Many states have tax laws that may impact companies doing business therein as well as the owners of such companies. While it is not possible to list all tax-planning opportunities due to variations in state tax laws, there are often significant tax-saving opportunities that can reduce the taxes of the company or individual owners if properly planned in advance of the IPO.

Change of accounting method for cash-basis taxpayers

If the company is an S corporation that uses the cash-basis accounting method, it must adopt the accrual-basis accounting method after converting to C corporation status. The adoption of the accrual-basis accounting method will affect the tax liability of the company in future years. This method can affect the company negatively or positively, depending on the planning that was completed prior to the adoption of the accrual method of accounting, and therefore it should be planned thoughtfully.

Termination of S Corporation Status

Most companies are generally in the form of a C corporation (i.e., a regular taxable corporation). Therefore, either prior to going public or as a result of an IPO transaction, an S corporation will generally terminate its S corporation status and become a C corporation. At the time the company terminates its S corporation status, the S corporation tax year of the company will end. The next day, the company will begin a new tax year as a C corporation. At that time, the company and its shareholders must decide how to allocate the company's taxable income, deductions, and credits between the two tax years. A company may allocate these items between two short tax years ratably based on the number of days in each, or elect to include all income accrued through the date of termination of S corporation status. This allocation choice will have significant tax consequences that should be planned for well in advance of the IPO. If more than 50 percent of the stock is sold during the tax year, a ratable allocation will not be available.

To illustrate the above, assume a calendar-year company, whose seasonal business profits are concentrated in the latter months of the year, converts to a C corporation in October. This company has the option of ratably "smoothing" the earnings between the S corporation and C corporation short tax years. If, however, greater than 50 percent of this company's stock were sold during the year, the company, upon conversion to a C corporation in October, would be required to reflect its earnings for the months October through December as earnings for the C corporation, possibly resulting in greater taxes being paid than would have been had the company been able to utilize the ratable allocation.

"Accumulated Adjustments Account" Bail Out

All S corporations have an accumulated adjustments account (AAA). This account contains the cumulative amount of S corporation undistributed income. This income has already been taxed because all income earned by an S corporation is taxed in the year in which it is earned whether or not it is distributed during that year. Going public often provides the funds necessary for distributing the balance of this account to the shareholders.

If the accumulated adjustments account is not distributed prior to the public offering, then the distribution can be made up to 12 months after the company's termination of its S corporation status. This distribution usually gives the shareholders of the S corporation a significant amount of cash and tax savings. The tax savings made through distributions while a corporation holds an S corporation status, or made within the 12-month period after the termination of that status, will provide a federal tax benefit of approximately 40 percent.

It should also be noted that prior to terminating its S corporation status, a company should declare the distribution ("dividend") of the AAA so that only existing S corporation shareholders receive the distributions. A declaration after terminating S corporation status will result in the company having to distribute the AAA to all current shareholders, including new shareholders as a result of the IPO.

Conclusion

You now have the facts about what it takes to go public — the preparation, execution, compliance, and ongoing commitment. You have a good idea of the time it takes, and you have weighed the costs against the benefits. Practically speaking, you've 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've also reviewed alternative methods of raising capital.

You have all the factual information you need to make an informed decision. But ultimately, the decision comes down to examining and evaluating the reasons for taking your company public. How will your decision affect the company itself? Are you considering going public solely to raise money? To exit an investment? 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're looking for greater personal liquidity or a planned exit strategy?

An IPO can work for any of these reasons. But remember, it takes careful preparation and timing.

About PwC

Like any other major strategic undertaking, taking a company public requires careful planning to ensure success. The process requires thought around two main facets of operating as a public company. First, the company must prepare its management team and business units to begin acting and functioning as a public company, both internally and externally, in advance of entering the capital markets. Second, it must identify qualified advisors and key managers to form the going-public team.

Accountants play a vital role in advising a company as it navigates the complex lifecycle of a capital market transaction, from the identification of an entry strategy to the public registration and offering processes and subsequent management of ongoing public company financial reporting obligations. In addition, the post-Sarbanes-Oxley regulatory environment has raised the bar on the amount of advance preparation and careful planning necessary to complete a successful IPO in the US capital markets. The risks and consequences of encountering material weaknesses or a breakdown of internal controls are significant. For these reasons, companies often seek advice and assistance from accountants who specialize in such transactions.

PwC's IPO Services provide experienced advice to a company as it moves through the life cycle of the IPO process and the post-IPO financial reporting obligations. The firm's IPO advisors work closely with the company's management as they go through the all-consuming process that is the IPO. Management can leverage PwC's extensive experience in capital-raising activities combined with its deep technical accounting knowledge and focus on bigger picture issues and the deal. Your PwC engagement team will be chosen specifically to meet your unique needs and will be supported by resources that bring the technical, industry, private and public company, and IPO transaction expertise required to keep you ahead of the curve and prepared for potential issues you could face as a publicly held entity.

Whether acting in the capacity of your auditor, tax service provider, or non-audit accounting advisor, PwC will be an active part of your team—we want to be the business advisor who helps you complete a successful offering.

Readiness assessment

Evaluate your readiness to go public

By undertaking a structured exercise to analyze a company's state of preparedness for going public, we can give management a full understanding of key IPO issues as they apply to the company. From the results of this assessment, we can help you develop a project plan to address issues and identify resources. A typical IPO readiness assessment addresses the questions: What additional information is needed for the prospectus, such as additional financial statements of acquired and to-be-acquired businesses? 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?

A readiness evaluation can address deal-structuring, including tax planning, and assess:

- Corporate structure
- Board structure and board subcommittees
- Board and senior management capabilities
- Corporate governance arrangements
- Stock exchange listing eligibility issues

PwC will review your objectives and capital needs; advise you of the advantages and disadvantages of going public; identify the options available; offer insights on stock exchanges; provide insight into costs that will be involved; and work with you to establish a reasonable timetable. The assessment process allows a company to identify and resolve issues at an early stage, thereby saving time and money. Advance planning helps you minimize the impact of potentially unpleasant surprises and be prepared to benefit from any positive market movements. In our experience, businesses that have undertaken a full pre-IPO readiness exercise are those that are best prepared to handle the complexities of the IPO transaction.

Action plan advice and assistance

Our team will work closely with you as you develop a plan to begin to "get your house in order" and make the transition from a private enterprise to a public company. We will advise you during your financial statement preparation, advise on necessary management restructuring changes, assist in the establishment of an IPO advisory team, and provide guidance on professional relationships for an IPO.

Internal controls review

We can provide the understanding you need about system controls requirements and corporate governance to be ready for the reporting demands of a public company, including compliance with Sarbanes-Oxley requirements. We can help you assess your internal controls, highlight areas of potential risk, and provide recommendations for improvement.

A corporate governance gap analysis

This step prepares you for the requirements of managing a public company. We can evaluate your actual or planned corporate governance practices and policies against securities regulations and stock exchange listing guidelines, identify potential weaknesses, and recommend remedial action.

Our tax check-up

This process helps you understand the tax advantages and 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.

Compliance with tax requirements

We will help you develop policies and procedures to provide appropriate monitoring of compliance requirements.

Going public

Drawing upon our extensive experience, there are many ways in which PwC can help our clients during the IPO process. We can provide a variety of services including assurance on historical financial information, participating in due diligence with investment banks, and providing comfort on financial information included in the registration statement.

We can advise you in connection with the drafting of the registration statement including the critical Management Discussion and Analysis (MD&A) and Compensation Discussion and Analysis (CD&A) in your prospectus. We can advise you on the presentation of your financial statements, including pro forma financial statements that may be required, advise you on your selection of key accounting policies, and provide advice on tax structure. Our prior experience will give you invaluable insights on current SEC views and how other registrants are dealing with common IPO issues. We can help you anticipate and respond to issues raised by regulators. These insights will help streamline the IPO process. We can also advise you on a wide variety of infrastructure issues, including process alternatives for designing key controls and outsourcing issues to meet the certification requirements under sections 302 and 404 of Sarbanes-Oxley. We have helped many small and mid-sized companies do just that in connection with their IPOs.

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 assess project deliverables, interdependencies, risks, and resources.

Being public

Systems and internal controls

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

Internal controls

- Our internal controls services assess the current environment and establish a rationalized controls framework. We use a risk-based approach, and we have the ability to provide controls comfort in an efficient manner.
- We provide a Sarbanes-Oxley readiness assessment of controls effectiveness in advance of the external auditor review. We provide management insights into the controls environment and have the ability to remediate possible controls deficiencies.

- We provide access to existing libraries of controls to streamline the process of developing a framework, and we leverage industry leading practices.
- We provide third-party assurance to give comfort regarding the operations and controls of a third-party service provider for key financial and/or technology support.

Assistance in defining needs and selecting new systems

We have industry and technology-focused professionals who have controls-related experience across most major technology platforms.

We assist our clients in the selection process for key accounting, management and investor reporting technology platforms, and provide consolidation applications for their business needs. PwC will work with you to document a list of key requirements that can be used to evaluate each option to enable you to determine the best fit. PwC works closely with you throughout this process, 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 through the selection process, including identification of a streamlined set of vendors, preparation of an RFP, and participation in vendor demonstrations and analysis
- Provide insights into the ongoing operating model and the potential benefits and risks of the use of a third-party service provider to support the technology

Governance and leadership

We can assist our clients with performing governance diagnostic and benchmark studies and advise management in:

- Designing corporate governance structures to comply with relevant regulatory requirements
- Developing approaches for planning and embedding governance, risk management, and compliance into the organization
- Delivering training on various aspects of corporate governance
- Advising management on enhancing board charter, by-laws, committee mandates, and corporate governance
- Developing corporate policies and procedures

Media and investor relations

Private companies frequently have little to no experience in communicating with the investor community. They need to create the appropriate infrastructure to support the IPO process and the regular earnings release schedule. PwC can help a company understand the challenges with investor and media relations. This could include benchmarking key performance indicators, non-GAAP measures, and reporting timetables of public peer companies.

Human resources

Research suggests that proactively addressing an organization's human resource issues in the context of an initial public offering can increase the likelihood of a successful offering. Executive compensation and making sure the organization has an appropriate depth of talent are examples of two key areas of focus. PwC 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 can review existing compensation programs and determine how new compensation currency affects the design mix in the post-IPO environment.

Treasury and risk management

In an lPO environment, a company may be exposed to significant risks related to treasury activities. PwC can assist with developing appropriate best practice treasury management and cash recommendations linked to the finance function and wider business. For example, in certain circumstances, we can help design and implement policies and procedures, cash flow forecasting, and systems and risk management processes.

Whether your company is an emerging business seeking venture capital or an established company seeking to expand through an initial public offering, PwC can provide a full range of advisory and support services.

To contact the nearest PwC professional, please visit our web site at www.pwc.com/us/deals.

Appendices

The following two sections provide additional background and reference material that may be of interest as you consider the going-public decision.

Appendix A
The “kick-off” organizational meeting and planning process

The Organizational Meeting is normally one full day of activities that includes:

1. **Introduction of the working group**—This group is comprised of high-level company management, company counsel, independent auditors, the lead or managing underwriters, the underwriters’ counsel, and any consultants hired by the company to act as independent advisors to the company as the IPO process progresses and issues or questions arise.

   Procedurally, all issues affecting the upcoming IPO will be handled or delegated by this group. Due to the compressed time frame of the IPO process and the busy schedules of all parties involved, the finalized list of working group members, including addresses, phone, pager, fax numbers, and email addresses will be prepared and distributed. Finally, all parties are made aware of the confidential nature of the discussions.

2. **Discussions about the Offering**—This is lengthy and detailed. It covers:
   - The minimum size and composition of the offering
   - The target price range and whether there is a need for a pre-IPO stock split to move the projected value of the company into the target price range
   - Fees and expenses to be incurred
   - Use of the proceeds
   - Distribution of the shares
   - Agreement to a “lock-up” period
   - Registration rights of “early holders,” especially venture capitalists who may want to cash out as part of the IPO or soon thereafter
   - Directed share programs, whereby designated individuals are allocated shares during the IPO and are able to buy them at the IPO price

3. **Time and responsibility schedules**—These weekly schedules will include major corporate events, scheduling conflicts of working group members, and a week-by-week listing of responsibilities and meeting assignments.

Other activities during the Planning Period include:

4. **Due diligence activities:**
   - Company management will make presentations to the group regarding the status and future of the company.
   - The underwriters will provide a list of issues/questions to be resolved.
   - Site visits will need to be set up.
   - The auditors must be interviewed.
   - Interviews with major landlords and vendors must be arranged to ensure that there are no unknown issues or pending lawsuits.
   - The directors and officers will need to complete questionnaires about their ownership interests and involvement in the company, including related-party transactions. (This is an ongoing process involving continuous business, financial, and legal review of the company and its environment.)

5. **Business matters**—The company management team and board of directors will be presented. During the pre-planning process, there may have been changes made to either or both groups to strengthen or broaden them so that a frank discussion of vision, skills, and experience will help provide assurance to all members of the working group about their qualifications. Additionally, the group will be made aware of any significant operational matters (major new products to be introduced, impending strikes, etc.).

6. **Accounting matters**—As previously mentioned, three years of audited financial statements are required, with a minimum of one year providing quarterly results. In addition, stub period financial statements for the current period are required. Although the audit may take some time, the working group can be made aware of potential areas in which the company is not following GAAP and thus where changes will need to be made and reflected in the financial statements. As the actual date of the IPO nears, the auditors will provide a comfort letter to the underwriters indicating that the financial position of the firm is as indicated in the financial statements and that there are no underlying unresolved accounting or financial issues.

7. **Legal matters**—There are two legal matters of primary importance:
   - First, the status of pending or threatened litigation. No one wants to invest in a firm about to be sued to the point of bankruptcy. As a result, any "at fault" cases should be discussed and attempts made to settle them before the IPO. Other actions, to the extent possible, should be resolved or liability minimized prior to the IPO.
   - Second, there must be full disclosure of all material related-party transactions in the registration statement. Other legal issues needing attention are the formal establishment of a shareholders' meeting, selection of a transfer agent/registrar, and identification of decisions that will need board authorization.

8. **Publicity**—It has been said that you can't "over-advertise." While true in most situations, prior to the IPO the firm should be very careful not to overstate its case, especially regarding the effectiveness, uniqueness, etc., of its service or products. The SEC will review the materials containing such claims. This is especially true for the company's web site, since it will be easily accessible. That warning aside, the company should develop plans to make its presence known as much as possible — in industry trade journals, information releases, conferences, and finally, in meetings with security analysts. Overall, the buzzword phrase in publicity is "controlled, appropriate, and carefully worded" dissemination of favorable company information.

9. **Printing issues**—A printer experienced in printing registration statements and prospectuses will be needed, as these are very specialized documents. Any artwork, including appropriate lead times to develop and revise, needs to be coordinated carefully. These documents will be the primary "picture" that potential investors and the SEC will have about a company. They should be prepared as professionally as possible.

Appendix B
Glossary

1933 ACT See SECURITIES ACT OF 1933.

1934 ACT See SECURITIES EXCHANGE ACT OF 1934.

ACCELERATED FILER
Domestic reporting companies that have a public float of at least $75 million, that have been subject to the Exchange Act's reporting requirements for at least 12 calendar months, and that previously have filed at least one annual report.

ALL-HANDS MEETING
A meeting that occurs during preparation for an IPO that is attended by company representatives, company counsel, independent accountants, underwriters, and underwriters' 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 cancelled.

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS (AICPA)
The organization that governs and disciplines the conduct of certified public accountants 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 for the purpose of providing investment advice.

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.

BLUE SKY LAWS
The name applied to the securities laws of various states enacted to protect investors. While the SEC regulations are national in application, various states have securities laws that affect public offerings.

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

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 that they trade and, accordingly, do not share in the risks or rewards of ownership.

CAPITALIZATION
The total amount 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 prior to the offering, assuming that all securities offered are sold.

CARVED-OUT ENTITY
A subsidiary, division, or lesser business component that is separated from another entity. This carved-out entity may 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 in which 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."

COMMENT LETTER
A letter written by the SEC review staff that requests modification to the registration statement or the inclusion of additional information.

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.

DILUTION
A reduction in a shareholder's relative ownership percentage of a company or the company's earnings per share (EPS) 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.

DIVISION OF CORPORATION FINANCE
A division of the SEC which, among other things, reviews registration statements filed with the SEC.

DUE DILIGENCE
A reasonable investigation conducted by the company's officers and directors, underwriters, 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.

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 to 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 good 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 in which stock ownership is between 20 and 50 percent of the outstanding securities of the investee).

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 qualify them as specialists in their fields.

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)
An independent, self-governing association of securities brokers and dealers that helps to govern, among other things, its members and the over-the-counter stock market. FINRA also performs market regulation under contract for NASAQ Stock Market, NYSE Amex, the International Security Exchange and the Chicago Climate Exchange.

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.

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 underwriters for their own account.

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.

FORM S-1
The most common form of registration statement used in the initial public offering of securities by issuers for which no other form is authorized or prescribed.

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

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).

INSIDERS
Individuals that may have access to nonpublic information, e.g., officers, directors, and major shareholders.

INSTITUTIONAL INVESTORS
Non-individual shareholders. Institutional investors include pension funds, mutual funds, and trusts.

INTERIM FINANCIAL STATEMENTS See STUB-PERIOD FINANCIAL INFORMATION.

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 only provides one specific service.

JOINT VENTURE
An arrangement whereby two or more parties (the ventures) jointly control a specific business undertaking and contribute resources towards its success.

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

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 of time 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.

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.

MERGERS
A business combination in which one entity becomes a part of another entity.

NATIONAL ASSOCIATION OF SECURITIES DEALERS AUTOMATED QUOTATION SYSTEM (NASDAQ)
The NASDAQ is a large electronic stock exchange in the United States.

NEW YORK STOCK EXCHANGE (NYSE)
The NYSE is a large New York-based stock exchange.

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

OVERALLOTMENT OPTION
The sale of shares by the underwriter in excess of those shares initially available.

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, which results in limitations on the ability of the corporation to utilize pre-ownership change net operating 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
These plans provide for the award of units to employees whereby each unit entitles an employee to receive in cash or stock a certain amount if specific performance criteria (e.g., sales growth, increases in earnings per share, or return on equity) are met 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 (SAR).

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 together 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 calculated 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 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 U.S. 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 non-affiliates.

QUALIFIED INSTITUTIONAL BUYER (QIB)
A non-individual shareholder that owns and manages at least $100 million in securities, 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 issuance of securities. Required by the Securities Act of 1933, a registrant generally uses Form S-1 for an initial public offering.

REGULATION S-K
Contains the disclosure requirements for the non-financial 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 legended stock or lettered stock.

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

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

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

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, the purpose of Sarbanes-Oxley is to restore confidence in public financial reporting by prescribing fundamental changes in how audit committees, management, and auditors interact and carry out their responsibilities.

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)

The 1934 Act requires companies registered under the 1933 Act to file periodic reports (e.g., Forms10-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 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.

SIGNIFICANT SUBSIDIARY

A business is deemed to be significant if any of the following tests are met:

a. The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed ten percent of the total assets of the registrant and its subsidiaries, consolidated as of the end of the most recently completed fiscal year. (For a proposed business combination accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds ten percent of its total common shares outstanding at the date the combination is initiated.)

b. The registrant's and its other subsidiaries' proportionate share of the subsidiary's total assets (after intercompany eliminations) exceeds ten percent of the registrant's or its subsidiaries' consolidated total assets as of the end of the most recently completed fiscal year.

c. The registrant's and its other subsidiaries' equity in the income of the subsidiary from continuing operations before taxes, extraordinary items, and cumulative effect of accounting changes, exceeds ten percent of such income of the registrant and its subsidiaries as of the end of the most recently completed fiscal year.

These tests are performed to determine whether separate financial statements are required for businesses acquired or to be acquired or for equity method investments. (Materiality, i.e., 10 percent threshold, varies depending on the particular transaction.)

SMALLER REPORTING ISSUER
A U.S. or Canadian entity with revenues of less than $50 million and whose public float is less than $75 million.

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, and consult with your legal counsel for further clarification.

STOCK OPTION PLANS
Plans whereby employees are granted options to purchase a company's stock at a stated price within a specified period of time. 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 of time during which the stock must be held before it can be sold.

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.

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.

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.

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.

UNIT
A combination of two securities sold for one price. A unit usually consists of common stock and warrants of common stock and debt.

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 registration statement becomes effective.

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

WINDOW
The time during which the market is receptive to a particular type of offering.

About PwC

Whether your company is an emerging business seeking venture capital, or an established company seeking to expand through an initial public offering, PwC can provide a full range of advisory and support services.

PwC brings experiences in a broad range of functional areas to help management anticipate business risks and develop programs for managing such risks early in the IPO planning process. Our experienced teams work with clients to provide guidance through the complex lifecycle of a capital market transaction, from helping to determine the right entry strategy and assessing IPO readiness, to assisting with the public registration process, to preparing for ongoing obligations as a new public company.

PwC's global presence, extensive knowledge of capital markets, and network of financing relationships provides you the expertise and insight you need at every stage.

- We provide experienced and integrated insight into multiple elements of the transaction process;
- We advise on the technical accounting and financial reporting complexities associated with the going public process;
- We evaluate and advise on your controls and processes in place to comply with Sarbanes-Oxley;
- We advise on the breadth of the change on your organization as it prepares to migrate into a public company across multiple functional areas;
- Our services enhance management's ability to focus more time on the marketing phase of the deal and the ongoing management of the business.

If you'd like to contact the nearest PwC advisor, please visit our website at www.pwc.com/us/deals.

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Contact us

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