

Roadmap for an IPO

A guide to going public

November 2017

A publication from PwC Deals



Table of contents

Introduction	1	Consolidation.....	39
The decision to go public	3	Income taxes	39
What is a public offering?	3	Building a going public team	41
Why “go public?”	3	Identifying your going public team	41
Is going public right for your organization?	4	The SEC	41
Major factors to consider when exploring whether to go public..	7	Company personnel	41
Determining filer status	11	Securities counsel	42
Do I qualify as a foreign private issuer?	11	Investment banker or underwriter.....	42
Do I qualify as an emerging growth company?	11	Capital markets advisor.....	43
What are some of the advantages of qualifying for EGC status? .	12	Underwriters’ counsel	43
How does qualifying for EGC status impact the going		Independent auditors.....	43
public process?.....	14	Advisory accountant	45
How long does a company retain its EGC status?	16	Financial printer	45
What if I don’t qualify as an EGC?.....	17	Other professional advisors.....	45
Preparing to become a public company	19	Preparing the registration statement	47
Preparation is the secret to success	19	The Form S-1 registration statement	47
What areas should management evaluate as part of an IPO		Sources of SEC technical requirements.....	47
readiness assessment?	20	Registration statement filing	48
Accounting and financial reporting	21	Preparing the registration statement	49
Finance effectiveness	21	The Form S-1 filing.....	49
Internal controls	22	Navigating the IPO process	55
Tax.....	23	Typical execution timeline	55
Executive compensation and HR	24	Days 1–60	56
Governance and leadership.....	25	Holding the all-hands meeting	56
Financial planning and analysis.....	27	Performing due diligence	56
Treasury.....	27	Days 61–90	57
Legal.....	28	Timeliness of financial information and going “stale”	57
Internal audit.....	29	Filing the registration statement and SEC review.....	58
Engage with investment banks	29	Confidentiality	58
Media and investor relations	29	The waiting period.....	59
Enterprise risk management.....	29	Days 91 onward	59
Corporate strategy and development.....	30	Responding to SEC comment letters and preparing the	
Wealth management planning	30	amended registration statement.....	59
Technology	31	The preliminary prospectus or “red herring”	60
Project management, change management		Financial analyst meetings or roadshows.....	60
and communication	31	Negotiating and signing the price amendment and the	
Common accounting and financial reporting issues	33	underwriting agreement	60
Common accounting and reporting issues	33	Holding the closing meeting.....	61
Segment reporting	33	Summary timing, participants and roles and responsibilities ...	62
Non-GAAP measures	33	We are public! Now what?	65
Management’s Discussion and Analysis (MD&A)	34	Preparation for life as a public company	65
Risk factors	35	Understand your reporting obligations.....	65
Compensation Discussion and Analysis (CD&A)	35	Maintain investor enthusiasm	68
Revenue recognition	35	Maintain regulatory compliance.....	68
Stock-based compensation	36	Conclusion	71
Earnings per share (EPS).....	36	How PwC can help	73
Liability versus equity classification.....	37	The benefits of having PwC as an advisor on your IPO	75
Beneficial conversion features of preferred stock and debt....	37	What our clients are saying about IPO readiness	75
Employee notes receivable	38	Contact the PwC Deals practice	77
Pro forma financial information	38	More from PwC	79
Goodwill and intangible assets.....	38	Glossary	80
Business combinations	38		



Introduction

Going public is a monumental decision for any company. It forever changes how a company goes about doing business. While a public company faces greater public scrutiny and regulations, it also secures access to more, and often deeper, sources of capital. How do you get there? And how do you know if it is the right path to capital for you?

An initial public offering (IPO) is a transformational event for an organization. Preparation for “being public” is just as important as preparation for “going public.” A company will need to meet additional requirements and continuing obligations as a public company that will require new skill sets, additional talent and changes to business as usual. Thinking through these requirements in advance and developing an appropriate plan will help ensure you’re able to own success at every turn.

For organizations looking to open paths to capital, particularly an IPO, it is also useful to understand how quickly windows of opportunity can open and close. That way, you can leverage the right insights to make the right moves at the right times.

The landscape for IPOs is, to put it mildly, dynamic—varying peaks and valleys prompted by macroeconomic trends, world events, political change and new regulations.

It is a landscape that is still adapting to the enactment of the Jumpstart Our Business Startups (JOBS) Act in April 2012 and the Fixing America’s Surface Transportation (FAST) Act in December 2015, which have eased the on-ramp for many companies and can be an important consideration in developing a roadmap for going public—particularly for emerging growth companies (EGCs), which represent the vast majority of IPOs since 2012.

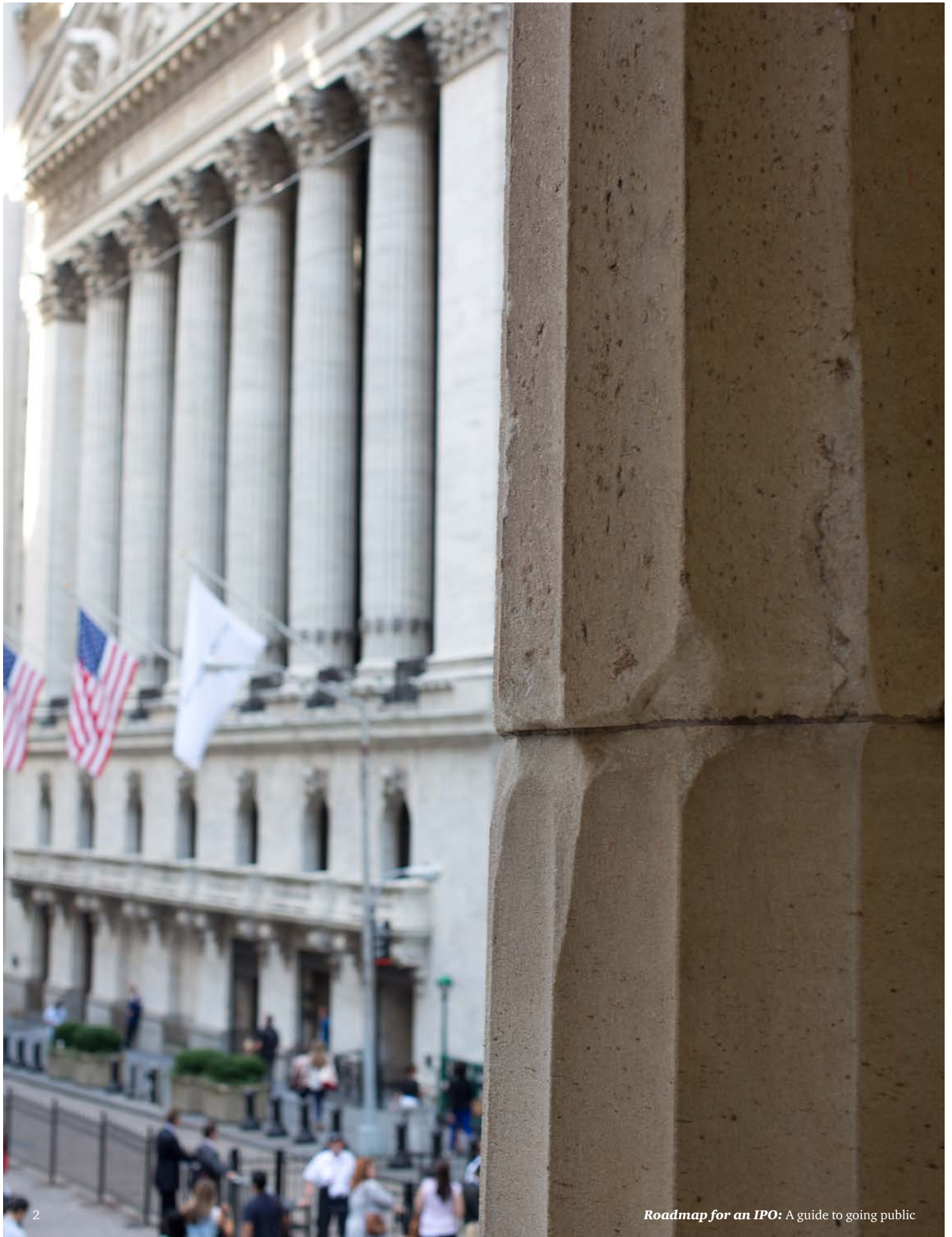
In June 2017, the SEC’s Division of Corporation Finance announced a number of policy changes intended to facilitate capital formation. Many of the provisions from

the JOBS and FAST Acts were extended to all issuers, which gave the issuers the ability to apply some of the accommodations previously limited to EGCs, including confidential review of registration statements. In August 2017, the Division of Corporation Finance further clarified the policy changes through the release of Compliance and Disclosure Interpretations (“C&DIs”). These clarifications expanded on accommodations available to companies regarding omission of certain financial information in confidential pre-effective submissions.

And the landscape continues to evolve with more recent triggers, such as changes in the global political climate and interest rate environment.

This publication is a comprehensive guide to going and being public. Our aim is to help companies make informed decisions by addressing such factors as the advantages, disadvantages, costs, timing and alternatives to going public. It outlines the process for going public and discusses the registration process and ongoing reporting requirements of a public company, including determining filer status. Further, this guide summarizes the most significant accounting and financial reporting matters and broader readiness considerations of becoming a public company.

If you’re considering an IPO as the means to fuel your company’s future, we hope you find this guide to be a helpful and easy-to-use reference. Should you wish to discuss your company’s path to capital, we welcome the opportunity.



The decision to go public

Going public 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 new securities and receives all 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 “go public?”

The most important question business stakeholders should ask is, “Why go public?”

Some possible reasons include the following:

- To access public capital markets and raise money to expand 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; and
- To enhance a company’s reputation.

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



Useful 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 across many areas both inside and outside of the organization, including:

- Accounting and financial reporting
- Finance effectiveness
- Internal controls
- Tax
- Executive compensation and HR
- Governance and leadership
- Financial planning and analysis
- Treasury
- Legal
- Internal audit
- Engage with investment banks
- Media and investor relations
- Enterprise risk management
- Corporate strategy and development
- Wealth management planning
- Technology
- Project management, change management and communication



Is going public right for your organization?

A company usually begins to think about going public when the funding required to meet the demands of its business begins to exceed its ability to raise additional capital through other channels on attractive terms. But simply requiring additional capital does not always mean that going public is the right, or even possible, answer. There are a number of questions you should consider before deciding to go public.

Do you 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 IPO that they back and underwrite to be successful. Therefore, they look for companies that can fulfill several benchmark criteria to boost the chances for a successful offering and solid performance in the aftermarket. Here are some of the most important factors:

- A large addressable market;
- A unique and differentiated business model;
- An attractive product or service, preferably one with a competitive advantage or first-mover status;



Useful 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. This includes addressing ongoing compliance and regulatory requirements, operational effectiveness, risk management, periodic reporting and investor relations.

- A well-thought-out, focused business plan;
- Favorable financial prospects in a growth industry, including
 - Revenue growth,
 - Future earnings visibility (such as subscription or contract revenue), and
 - Strong cash flow generation;
- Established track record;
- An experienced, “public company-ready” management team; and
- Strong financial, operational and compliance controls.

Though some companies may not meet all these criteria, they may still be perceived as having enormous potential for growth because of other favorable characteristics (e.g., a product or service that is highly visible, unique or of public interest. Biotech, for example, may fit this profile given the unique drug development process).

Are your prospects good for maintaining a strong sales and earnings growth trend?

Companies that successfully go public can show market support for their product or service that is likely to sustain a strong annual growth rate over time. A track record demonstrating the ability to forecast sales and earnings trends and evidence of predictability in the business will help to differentiate companies looking to go public.

Are your 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, particularly within the technology and life sciences and pharmaceutical industries.

Are you prepared to file timely financial statements with the Securities and Exchange Commission (SEC)?

Public companies must file financial statements on a quarterly and annual basis with the SEC, with prescribed data requirements and adherence to rigorous SEC accounting and disclosure guidelines. Because these financial statements are due soon after each period end, there is increased time pressure on reporting compared to that of a privately held company. Identifying ‘long poles in the tent’ (i.e., critical path items due to the length of time required to address) in the close process as well as building out appropriate systems, processes and controls is critical to the ability to meet public company reporting requirements.



Useful 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; and cultivate relationships with professionals who can help you, including underwriters, lawyers and accountants.

Have you 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 US capital markets. This legislation, among other provisions, requires Chief Executive Officers (CEOs) and Chief Financial Officers (CFOs) to explicitly evaluate and report to the public on the effectiveness of internal controls over financial reporting in the company’s first filing as a public company. In this publication, we use the term “Sarbanes-Oxley” or “SOX” to refer to either the legislation or its provisions. The JOBS Act of 2012 provides a time period of relief for certain areas of compliance with Sarbanes-Oxley. For issuers that do not qualify under the JOBS Act, the company’s external auditor is required to annually attest to the effectiveness of the company’s internal controls over financial reporting beginning with the registrant’s second annual report. Accordingly, a plan for compliance with Sarbanes-Oxley should be part of every company’s going public and being public roadmap.

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 both the board of directors and management have the right blend of experience and skills to operate a public company, manage investor relations, establish the optimal corporate governance structure and ensure that board committees are operating effectively.

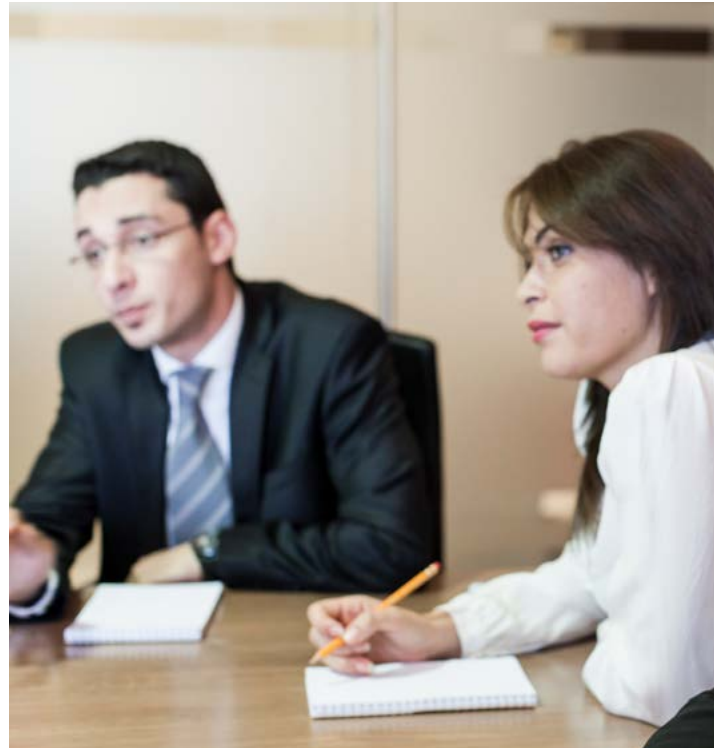
To gain credibility with the investing public, the organization must have experienced leadership that functions well as a team. Ownership by management demonstrates to investors that management has a vested interest in the company’s future. To have a successful IPO, management must be committed to the 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, to accommodate shorter financial reporting deadlines and to confirm the ability to forecast future operating performance, all 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 advisor fees and expenses. As with many business initiatives, the answer as to whether the benefits outweigh the costs will not be known until several years after an IPO.

Which stock market?

A company seeking to go public must choose the market, geography and exchange that is right for its stock. Each exchange has specific entry requirements regarding such factors as earnings history, shareholders' equity, market capitalization, number of expected shareholders and corporate governance. 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 exchange early in the capital-raising process to ensure the smoothest possible transaction. Companies considering overseas or dual listings will also need to evaluate the impact of an International Financial Reporting Standards (IFRS) or other potential Generally Accepted Accounting Principles (GAAP) conversion on the offering process, and internal control related requirements.



Is the market right?

The demand for IPOs can vary dramatically depending on overall market strength, the market's recent experience with 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 critical in achieving the best possible result.

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 or comes to a stop. Although it is impossible to accurately forecast the market's receptivity, a company must consider the importance of timing and be prepared to alter its timetable. In general, from the initial meeting of all team members until the first filing, it can take at least five months (under the best circumstances) to price an offering and begin selling shares, although the timeframe can be significantly longer.

Recognizing the urgency of the registration process and being prepared to efficiently navigate the going public process is critical. The proper approach is to plan well, anticipate the likelihood of delays and position your company to launch when a window opens. Missing an IPO window by as little as one day can result in a postponed or withdrawn IPO or a lower market valuation.



Useful 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 take advantage of an opportune market and the greater proceeds and market valuation that favorable market conditions will provide. By engaging external advisors early in the IPO process, companies get an objective and professional mechanism for assessing their state of readiness for life as a public company.



Major factors to consider when exploring whether to go public

Companies should consider the following factors when evaluating whether to commence the going public process:

- **Increased cash and long-term capital**—Funds 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 the transparency of a publicly traded security.
- **Mergers and acquisitions**—Public companies can use their stock as acquisition currency, thereby conserving cash.
- **Liquidity**—Subject to certain restrictions and practical market limitations, shareholders may, over time, sell their stock in the public market.
- **Ability to attract and retain 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 retain key personnel. Stock option plans may be more attractive to officers and other key personnel than generous salary arrangements due to the significant upside potential.
- **Enhanced reputation and brand**—Visibility for shareholders and their company is usually enhanced. The ability to enter into and influence customer negotiations can be positively impacted by having the transparency of public company status.
- **Going public expenses**—Several factors play a role in determining the cost of an IPO, but the costs of going public are always significant. These costs usually include underwriting fees, 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 and any Blue Sky filing fees. The term “Blue Sky” refers to the securities laws of various states that have been enacted to protect investors. While the SEC regulations are national in application, various states have securities laws that affect public offerings. Most expenses directly related to the offering in a completed IPO are reflected as an offset to the proceeds received and a reduction of additional paid-in capital. IPO costs are, therefore, not expensed in the statement of operations. If the IPO is not completed or is not likely to be completed, such costs are expensed.
- **Being public expenses**—New roles and responsibilities associated with being a public company will require hiring of new talent with skills across several areas of the business, particularly within finance and reporting, legal, human resources (HR), information technology (IT) and investor relations. 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’ (D&O) liability insurance as well. Furthermore, compliance-related costs could also increase due to management’s assessment of, and if applicable the auditor’s attestation on, internal controls over financial reporting.
- **Loss of control**—The shares offered in an IPO are widely distributed such that management and the board of directors may maintain effective control, even though they own less than 50 percent of the shares. **Some** companies structure their offerings so that after an IPO, the founder(s) still has control. This is often accomplished through the use of dual class stock, corporate governance and voting structures.
- **Loss of privacy**—The registration statement and subsequent filings for public company 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:
 - 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);
 - Compensation of officers and directors, including cash compensation, stock option plans and deferred compensation plans;
 - Security holdings of officers, directors and major shareholders (insiders); and
 - Increased transparency into a variety of corporate practices (e.g., conflict mineral disclosures required by the Dodd-Frank Act).

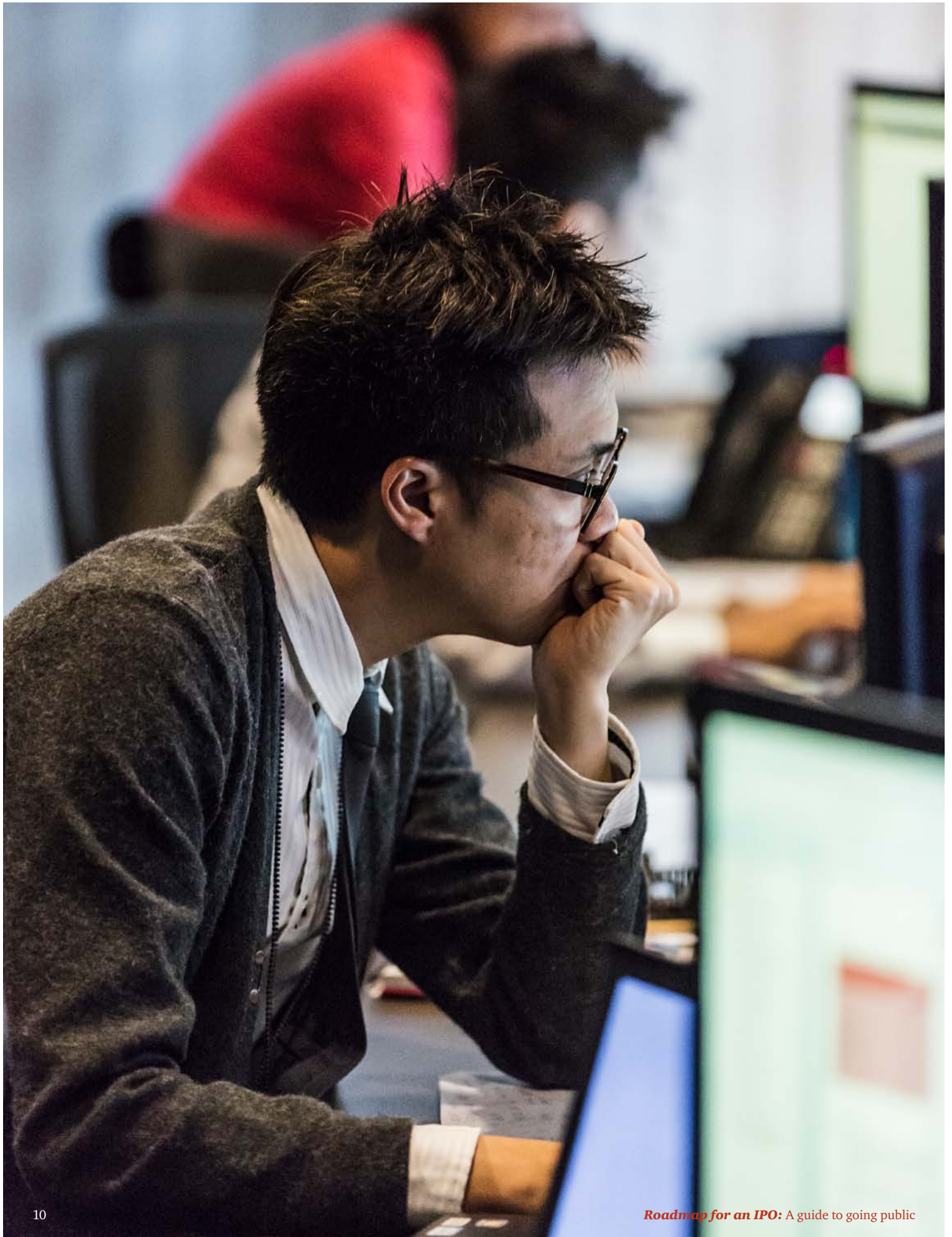


- **Pressure for performance**—In a private company, the business owner/manager operates more independently. However, once the company becomes publicly owned, the owner acquires as many partners as the company has shareholders and is accountable to all of them. Shareholders expect steady growth in areas such as sales, profits, market share and product innovation on a quarterly basis. 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 for short-term earnings can dramatically hurt the marketplace's valuation of a company. In the first year of being a public company, failing to meet analyst expectations and the resulting loss of investor confidence can be a substantial and long-lasting blow to a company's stock.
- **Prospect of shareholder activism**—If a company's stock price performance or valuation lags behind its peers, there is increased chance of an approach from activist shareholders seeking board seats or changes to company strategy. A significant amount of time may be consumed in handling activist shareholders.
- **Restrictions on insider sales**—Stock sales by insiders at the IPO are usually limited. Underwriters also 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**—The responsibilities of CEO or CFO in a private company shift dramatically both leading up to and after the IPO process. Preparation and coaching for both non-deal and deal roadshows, mock analyst and investor presentations and "test the waters" meetings require additional personnel or public relations resources. Further, investor inquiries, investment community presentations, managing activist shareholders and printing and distributing quarterly and annual financial reports require a significant time commitment from management once a company goes public.
- **No turning back**—The IPO process is a significant distraction. Management will be challenged to run the day-to-day operations while actively participating in the IPO process.

- **Vulnerability to hostile takeovers**—Having publicly traded shares reduces a 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 the passing of Sarbanes-Oxley. Newly public companies are especially vulnerable to class-action lawsuits in the initial year of being a public company, particularly when investor expectations have not been met.

All too often, going public is viewed as the only means, rather than one of several, to achieve a company’s objectives. If a company is seeking to expand rapidly, it may consider commercial bank loans, private placement of debt or equity or the IPO alternatives in the chart below. Advisors can provide the expertise that will enable you to make an informed, intelligent and objective decision.

IPO alternatives			
<i>IPO alternative</i>	<i>What is it?</i>	<i>Advantages</i>	<i>Disadvantages</i>
Exempt offerings (144A offerings)	Transaction in which securities are sold on a restrictive basis to sophisticated investors, with very limited SEC filing and reporting requirements	<ul style="list-style-type: none"> • Can be completed quickly, as there is no SEC review process • Funds are raised immediately, but public company reporting obligations are deferred (in cases where these securities are exchanged for registered securities later) 	<ul style="list-style-type: none"> • May result in lower valuation than an IPO due to less liquidity for investors • Potential investor base is limited to qualified institutional buyers (QIBs) • Costs could increase due to preparation of offering memorandum plus subsequent registration statement
Reverse merger/special purpose acquisition company (SPAC)	<p>A reverse merger is a transaction in which a privately held company merges with a publicly held company</p> <p>A SPAC raises equity capital upfront without knowing the exact use of the funds—the acquisitions are closed using the capital subsequent to the SPAC doing its IPO</p>	<ul style="list-style-type: none"> • Lower cost and time requirements than an IPO • No dependence on market “window” • Underwriters are not required but can add valuable support • SPACs often utilize specialized investment banks 	<ul style="list-style-type: none"> • 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 or public buyer(s) outside of an exchange	<ul style="list-style-type: none"> • Can usually complete a larger percentage sale of equity initially • Lower cost and time requirements (no SEC review) • Underwriters are not required but can add valuable support in structuring 	<ul style="list-style-type: none"> • May result in lower valuation than an IPO • Potential loss of future tax benefits • Smaller pool of potential buyers



Determining filer status

Filer status determines reporting requirements, during both the going public process and in life as a public company. Filer status should be assessed continuously throughout the going public process and at the end of the second quarter of the fiscal year for public companies.

Do I qualify as a foreign private issuer?

The majority of companies registering with the SEC are domestic issuers. However, there are several areas of potential relief available to companies that qualify as foreign private issuers (FPI). Securities law defines a foreign issuer as a foreign government, a foreign national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country. A foreign issuer can qualify as an FPI unless the following applies:

- More than 50 percent of the issuer's outstanding voting securities are held directly or indirectly of record by residents of the United States; and
- Any of the following:
 - Majority of executive officers or directors are US citizens or residents;
 - More than 50 percent of assets are located in the United States; or
 - Business is administered principally in the United States.

A foreign company that obtains FPI status has certain benefits, including the following:

- Required to file annual reports up to four months after year-end;
- Permitted to file using foreign accounting principles (such as IFRS), provided material differences are reconciled to US GAAP;
 - Reconciliation requirement is waived if financial statements are prepared in accordance with IFRS as issued by the International Accounting Standards Board (IASB);
- Not subject to SEC proxy rules or executive compensation disclosures under S-K Item 402 and Regulation FD;

- Not subject to quarterly reporting on Form 10-Q or periodic reporting on Form 8-K (but required to file Form 6-K when applicable); and
- Not required to provide the S-K 302 supplementary financial information related to selected quarterly financial data.

The remainder of this publication will focus on requirements related to domestic issuers. However, several of the considerations herein, particularly surrounding IPO readiness, are equally relevant to FPIs. If a company contemplating an IPO determines that it may meet the FPI criteria, consultation with a PwC IPO specialist is recommended.

Do I qualify as an emerging growth company?

The JOBS Act was enacted on April 5, 2012. The principal goal of the JOBS Act was to encourage private companies to raise capital through an IPO of their common equity. The Act was initially contemplated in March 2011 when it was determined that a long-term decline in US IPOs could result in a loss of up to 22 million American jobs.

The FAST Act was enacted on December 4, 2015. While the primary objective of the law was to ensure funding for US transportation and infrastructure improvements, the FAST Act also included a number of securities-related provisions, including changes to the requirements of the JOBS Act.

In August 2017, the Division of Corporation Finance further clarified the policy changes through the release of Compliance and Disclosure Interpretations ("C&DIs"). These clarifications expanded on accommodations available to companies regarding omission of certain financial information in confidential pre-effective submissions.

The two main objectives of the JOBS Act are:

1. To create an "IPO on-ramp" which reduces the filing and disclosure burdens associated with undertaking an IPO.
2. To provide companies easier and broader access to the capital markets.

The Act applies to EGCs for up to a maximum of five years. EGCs are broadly defined as companies that meet the following criteria:

- < \$1.07 billion in gross revenue (such amount is indexed for inflation every five years);
- < \$1 billion in issues of non-convertible debt in a three-year period; and
- Generally less than \$700 million in worldwide public float (not a large accelerated filer).

As long as these criteria are met, companies are permitted to abide by less stringent financial reporting rules as compared to non-EGC filers. Both domestic issuers and FPIs can qualify to be EGCs.



Useful tip

The JOBS Act and FAST Act have made it easier for qualifying smaller companies to go public by simplifying the IPO process and ongoing SEC reporting requirements. Companies should explore with their legal counsel their ability to take advantage of this opportunity.

What are some of the advantages of qualifying for EGC status?

Several of the accommodations offered to EGCs are outlined in the table below—see specific differences highlighted in red. Note that qualifying EGCs are not required to follow each of the JOBS Act or FAST Act provisions; rather, these are privileges which may be exercised at the company’s discretion.

	Non-EGC requirements	EGC requirements
Form S-1 filing/submission	Companies can submit a registration statement for SEC review on a confidential basis up until 15 calendar days before a company’s roadshow	
Annual audited financial statements in an effective IPO filing (*)	Balance sheet – 2 years Statements of operations, cash flows and shareholders’ equity – 3 years	Balance sheet – 2 years Statements of operations, cash flows and shareholders’ equity – 2 years
Selected financial information in an effective IPO filing (*)	5 years	2 years
Annual audited financial statements in pre-effective IPO submissions and filings (*)	A non-EGC may omit financial statements that it reasonably believes will not be required at the time the registration statement is publicly filed	An EGC may omit financial statements that it reasonably believes will not be required at the time of the contemplated offering (i.e., prior to distribution of the preliminary prospectus to investors)
Selected financial information in pre-effective IPO filings (*)		
Interim audited financial statements in confidential pre-effective IPO submissions	A non-EGC may omit interim financial information that it reasonably believes will not be required at the time the registration statement is publicly filed	An EGC may omit interim financial information that it reasonably believes will not be required at the time of the contemplated offering; however, EGCs must include applicable interim financial information at the time the registration statement is publicly filed
Audited financial statements of an acquired business in an effective IPO filing (*)	20% significance – 1 year 40% significance – 2 years 50% significance – 3 years	20% significance – 1 year 40% significance – 2 years 50% significance – 2 years

	Non-EGC requirements	EGC requirements
Audited financial statements of an acquired business in pre-effective IPO submissions and filings (*)	A non-EGC may omit financial statements that it reasonably believes will not be required at the time the registration statement is publicly filed	An EGC may omit financial statements that it reasonably believes will not be required at the time of the contemplated offering
Effective date and transition of new accounting standards	A company preparing an SEC filing must apply all accounting standards as if it had always been a public company	An EGC may elect to apply new or revised financial accounting standards on the same date that a company that is not an issuer is required to apply the new or revised accounting standard
Management assessment of internal control SOX 404(a)	Management's assessment on internal controls over financial reporting in second Form 10-K filing	
Auditor attestation on internal control SOX 404(b)	Auditor's attestation on internal controls over financial reporting in second Form 10-K filing (applicable for accelerated and large accelerated filers)	Deferred for as long as the company is an EGC, i.e., deferred for up to 5 years
Executive compensation disclosures	Shareholders' voting on "say on pay" and "golden parachute" compensation disclosures are required Provide full compensation disclosures (e.g., compensation tables for top 5 executives for 3 years)	EGCs are exempt from shareholders' voting on "say on pay" and "golden parachute" compensation disclosures EGCs are allowed to follow reporting obligations of smaller reporting company (SRC) (e.g., compensation tables for top 3 executives for 1 year within the Form S-1)

* Upon written request by the registrant, SEC staff will consider a waiver for the exclusion of certain financial statements pursuant to Rule 3-13 of Regulation S-X.

The provisions allowing EGCs to (1) omit financial statements that are not reasonably believed to be required until the time the registration statement becomes effective, (2) include one fewer year of audited financial statements and up to three fewer years of selected financial data in an effective registration statement, and (3) omit interim financial information that they reasonably believe will not be required at the time of the contemplated offering can be particularly attractive to companies that have not previously prepared historical financial statements. This allows those companies to avoid the extra time and expense associated with preparing additional years of financial information. However, a registration statement must be amended to include interim information at the time of the public filing and all other information required by Regulation S-X before the distribution of the preliminary prospectus to investors and effectiveness of the offering.

EGCs are also exempt from the requirement to obtain an audit of internal control over financial reporting. It is important to note that this exemption only applies to the internal control audit requirements (Sarbanes-Oxley Section 404(b)). EGCs are not exempt from the requirement for management to assess internal control over financial reporting (Sarbanes-Oxley Section 404(a)) beginning with the company's second annual report.

The JOBS Act also provides EGCs additional flexibility with respect to many current and forthcoming executive compensation-related disclosure requirements. An EGC may comply with the SEC's detailed executive compensation disclosure requirements (set forth in Item 402 of Regulation S-K) on the same basis as a smaller reporting company (SRC). Executive compensation continues to be a very high-profile topic at the SEC. Therefore, EGCs may wish to discuss the extent of executive compensation disclosure with their legal counsel, underwriters or other professional advisors.

How does qualifying for EGC status impact the going public process?

In addition to financial reporting implications discussed above, there are other factors related to the SEC filing process that should be considered by management and legal counsel.

Initial and pre-effective filings

Neither the JOBS Act nor the FAST Act specify the exact content requirements for a draft registration statement; however, the SEC expects that any draft registration statement would be substantially complete (including exhibits) at the time of initial submission. The review of a draft registration statement that is materially deficient will be deferred.

The FAST Act allows omission of certain historical financial information in pre-effective IPO filings. EGCs may omit financial information (including audited financial statements) from a Form S-1 filed (or confidentially submitted) for an IPO if that financial information relates to periods that are not reasonably believed to be required at the time of the contemplated offering (i.e., prior to distribution of the preliminary prospectus to investors). Additionally, the FAST Act allows omission of other required financial statements (e.g., financial statements for a business acquired or to be acquired under Rule 3-05 of Regulation S-X or for an equity method investee under Rule 3-09 of Regulation S-X) that are not reasonably believed to be required at the time of the contemplated offering (i.e., prior to distribution of the preliminary prospectus to investors).

For example, assume that a calendar year-end EGC is planning an IPO that it expects to be complete in the summer of 20x4. Because an EGC is only required to provide two years of audited financial statements in its IPO registration statement (i.e., fiscal years 20x3 and 20x2 in this example), the EGC could omit its 20x1 audited financial statements from its initial registration statement that is filed or confidentially submitted during 20x3. Further, if audited financial statements for an acquired business are required by Rule 3-05 of Regulation S-X, the EGC could omit financial statements if the issuer reasonably believes those financial statements would not be required at the time of the offering in 20x4. This situation could occur when an issuer updates its registration statement to include its 20x3 annual financial statements prior to the offering and, after that update, the acquired business has been part of the issuer's financial statements for a sufficient amount of time to eliminate the need for separate financial statements.

An EGC may also omit from its draft registration statements interim financial information that it reasonably believes will not be required to be presented separately at the time of the contemplated offering. However, EGCs must include applicable interim financial information at the time the registration statement is publicly filed.

For example, consider a calendar year-end EGC that submits a draft registration statement in November 20x3 and reasonably believes it will commence its offering in April 20x4 when annual financial information for 20x3 will be required. This issuer may omit from its draft registration statements its 20x1 annual financial information and interim financial information related to 20x2 and 20x3. Assuming that this issuer were to first publicly file in April 20x4 when its annual information for 20x3 is required, it would not need to separately prepare or present interim information for 20x2 and 20x3. If this issuer were to file publicly in January 20x4, it may omit its 20x1 annual financial information, but it must include its 20x2 and 20x3 interim financial information in that January filing because that interim information relates to historical periods that will be included at the time of the public offering.

The SEC staff has indicated that since a draft registration statement is not a "filing," it does not need to be signed and does not need to include an auditor's (or other expert's) consent. However, a draft registration statement submitted by an EGC must include a signed audit report(s) of the independent registered public accounting firm(s) covering the fiscal years presented in the registration statement.

Confidential SEC review

Ordinarily when a registration statement is submitted to the SEC for review, it becomes immediately available to the public via the SEC's Electronic Data, Gathering, Analysis and Retrieval (EDGAR) system. However, EGCs are permitted to submit their registration statements on a confidential basis to the SEC.

The confidential submission and review process allows an EGC to keep its financial and business-related information confidential until it has received initial feedback from the SEC staff and until it has decided to complete its transaction. It will also permit an EGC to explore alternate paths (e.g., pursuing a strategic or financial buyer) while concurrently preparing for a public offering. The ability to pursue multiple alternatives outside the public eye may provide the EGC with additional flexibility and leverage. There may, however, be reasons why an EGC might want to opt for a public submission from the outset. For instance, if the EGC is



Determining filer status

concurrently seeking a strategic or financial buyer, the public availability of the early registration statement may encourage additional bidders to come forward and may help advance the due diligence process.

If an EGC decides to abandon its transaction, the information previously submitted to the SEC will not become public and that information would be exempt from disclosure under the Freedom of Information Act.

Comment letters

The SEC staff has indicated that it will publicly release comment letters and company responses relating to confidential submissions. EGCs are asked to resubmit response letters relating to confidential submissions at the time of the first public filing. Those letters and responses will be released in the same timeframe as letters and responses relating to public filings (no earlier than 20 business days after the effective date of the registration statement). An EGC should follow the normal SEC procedures for seeking confidential treatment (sometimes referred to as following Rule 83) if there are sections of response letters that the EGC wishes to keep confidential after the letters and responses are publicly released.

Quiet period restrictions

An exception to the “quiet period” rule restricting dissemination of published information outside the prospectus is provided for EGC filers. EGC filers may engage in oral or written communications with certain potential investors during the quiet period to gauge interest in the offering. The potential investors must be either qualified institutional buyers (QIBs) or institutions that are designated as accredited investors. These activities, referred to as “testing the waters,” may occur prior to or following the date of the registration statement filing. These discussions help management and their advisors gauge the level of interest in the market for their stock. Companies should bear in mind that any materials used to test the waters may be requested by the SEC and remain subject to federal securities laws.

Roadshow timing

The FAST Act amended the JOBS Act timeframe to make confidential registration statements public before a roadshow. Since 2012, EGCs have been permitted to submit certain registration statements for review by the SEC staff on a confidential basis (although the EGC must file that registration statement and any amendments publicly before starting its roadshow). The FAST Act reduced the required timeframe to make the registration statement public to 15 calendar days from 21 calendar days. The initial confidential submission and all amendments are required to be publicly

filed with the SEC no later than 15 calendar days before the date on which the issuer conducts a roadshow (as defined in Securities Act Rule 433).

This 15-day period (sometimes referred to as a seasoning period) is designed to provide potential investors with ample time to review the information previously submitted on a confidential basis. If the EGC does not make use of a roadshow (or communications that would constitute a roadshow for purposes of this analysis), then its registration statement and prior confidential submissions should be publicly filed no later than 15 calendar days before the anticipated effective date of the registration statement.

How long does a company retain its EGC status?

A company will remain an EGC so long as it does not trip certain thresholds. A company that is an EGC as of the first day of its fiscal year will continue to be an EGC until the earliest of:

- The last day of the fiscal year during which it had total annual gross revenues of \$1.07 billion or more (such amount is indexed for inflation every five years);
- The date on which the issuer has issued more than \$1 billion in non-convertible debt securities during the previous three-year period; or
- The date on which the issuer becomes a large accelerated filer (generally, a company with a worldwide public float of at least \$700 million—see Exchange Act Rule 12b-2).

The FAST Act provides a grace period for companies that lose EGC status during the registration process. If a company that filed (or confidentially submitted) a registration statement for an IPO as an EGC loses its EGC status, the company will continue to be treated as an EGC until the earlier of: (1) the date on which the company completes its IPO, or (2) one year from the date that the company ceases to be an EGC.

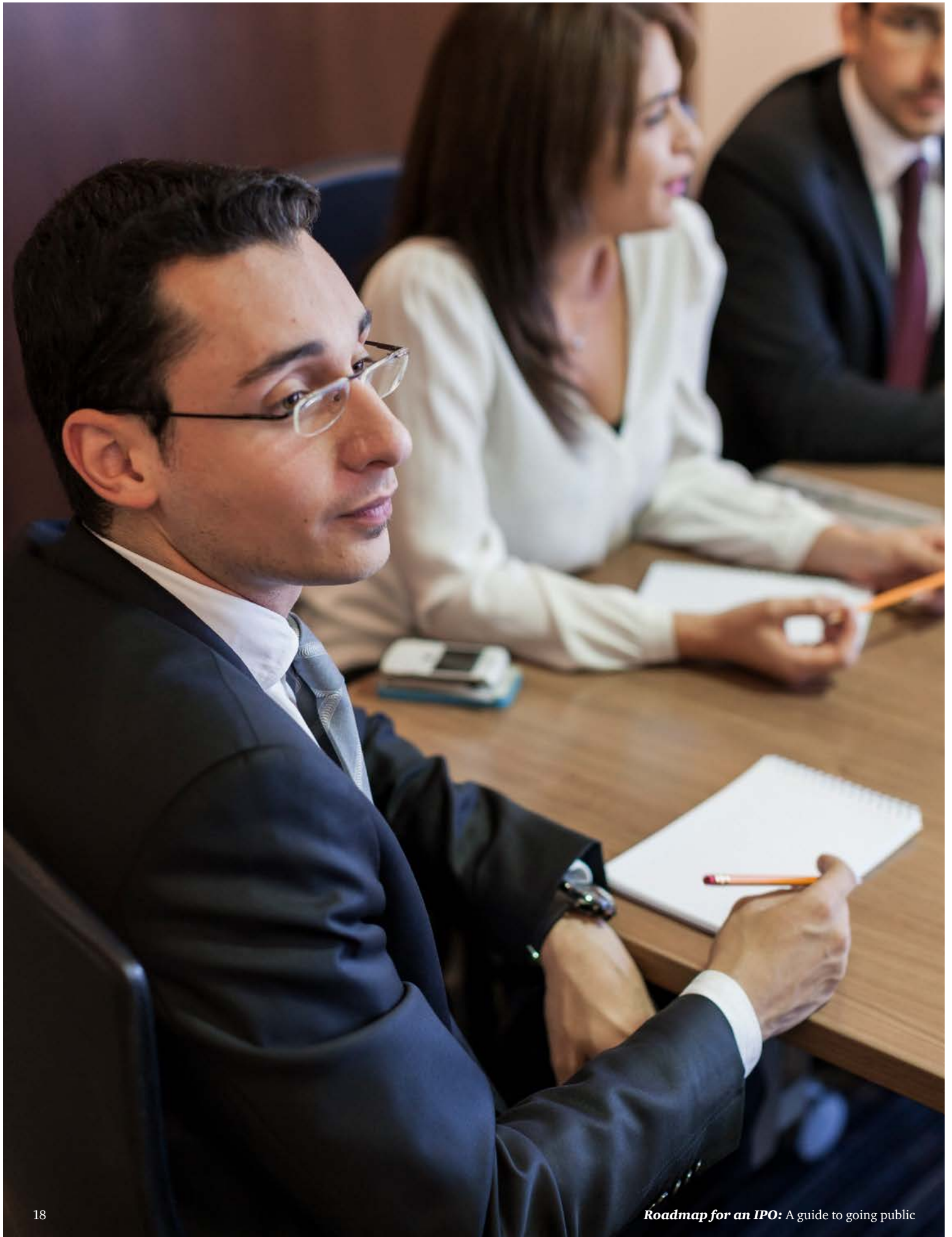
Once the IPO is completed, an issuer that is an EGC as of the first day of its fiscal year will continue to be an EGC until the earlier of (1) the dates listed in the criteria outlined above relating to gross revenues, non-convertible debt or filer status; or (2) the last day of the fiscal year following the fifth anniversary of the first sale of the issuer’s common equity securities in an offering registered under the Securities Act. Certain of these criteria are largely predictable; however, EGCs will need to closely monitor their total annual gross revenues and worldwide public float. If an EGC experiences significant increases in revenues or volatility in share price, it might exit EGC status sooner than expected, triggering unplanned SEC reporting requirements.

What if I don't qualify as an EGC?

Companies that do not qualify for EGC status are still afforded certain accommodations that are consistent with those available to EGCs. All companies, regardless of EGC qualification, can take advantage of the following:

- **Initial and pre-effective filings**—A non-EGC may omit audited financial statements and selected financial data if that financial information relates to periods that the company reasonably believes will not be required at the time the registration statement is publicly filed. A non-EGC may omit from its draft registration statements interim financial information it reasonably believes will not be required to be separately presented at the time it publicly files its registration statement.
- **Confidential SEC review**—Companies may confidentially submit certain registration statements for SEC review, allowing them to keep their financial and business-related information confidential until they have decided to complete their transaction.
- **Comment letters**—Companies need to resubmit response letters relating to confidential submissions at the time of the first public filing, which will be released no earlier than 20 business days after the effective date of the registration statement.
- **Roadshow timing**—Companies may keep the financial information associated with the initial submission and all amendments confidential up until 15 calendar days before the date on which they conduct a roadshow.





Preparing to become a public company

A successful IPO requires careful planning. A company must prepare its management team and business units to begin acting and functioning as a public company, both internally and externally. Focusing narrowly on accounting and financial reporting matters surrounding preparation of the offering document is the wrong approach—a cross-functional, holistic view to readiness is critical to preparing the organization to operate as a public company.

Preparation is the secret to success

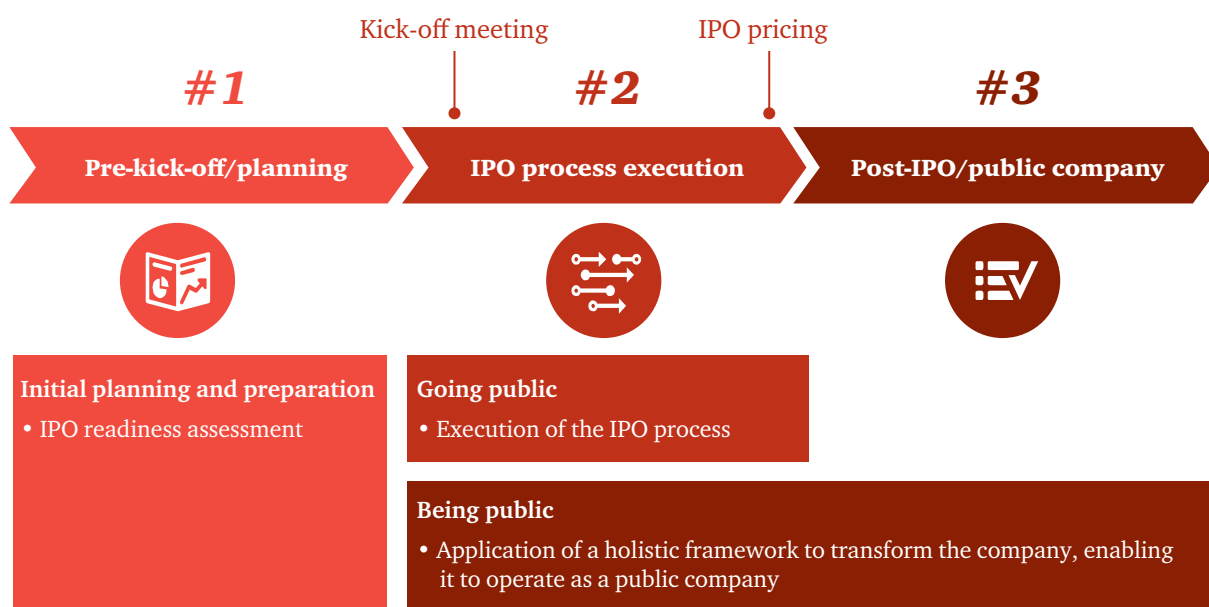
Planning, executing and managing an IPO is a complex task for any organization. The better prepared a company is, the more efficient and less costly the process can be. While the planning process for an IPO can start the day a company is incorporated or as late as months before a public offering, we recommend that an orderly plan be executed over a one- to two-year period. This window gives a private company time to build the capabilities to think, act and perform as a public company.

The preparation process can often be lengthy, depending on the 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.

In our experience, a successful IPO has three equally important elements:

1. A thorough **IPO readiness assessment**, where big picture issues are identified early and realistic timetables are established based on the offering's strategic objectives, the company's specific business issues, the time needed to prepare registration information and the time required to prepare for operation as a public company.
2. A working group focused on the immediate process of **going public**.
3. A working group focused on the tasks needed to prepare the business for **being public**.

These three elements and their sequencing are illustrated below.



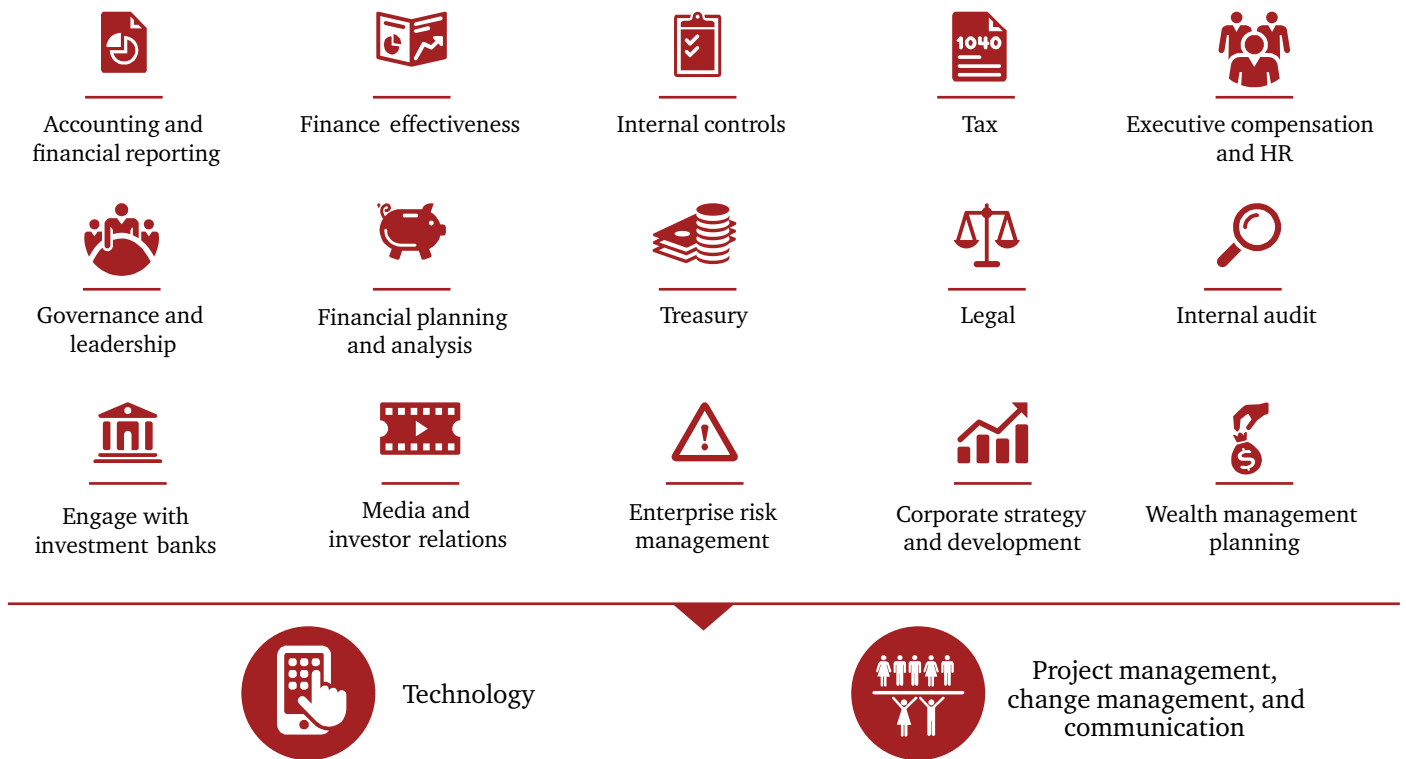
Going public is the process of gathering the necessary data for the registration statement, submission to the SEC, all the way through to the roadshow and pricing. This includes preparing the required financial, marketing and business information, as well as determining the optimal tax and legal structure, all of which are vital steps in the process. The going public process ends when the offering is sold and the company and/or its shareholders receive the proceeds.

Being public is the process of preparing the organization to operate as a public company. The many tasks involved include upgrading, sustaining or enhancing financial reporting capabilities; creating an investor relations function; and meeting the governance, reporting and internal controls standards and listing requirements of the SEC and of the selected exchange. The JOBS Act temporarily exempts companies that qualify as EGCs from Section 404(b) of the Sarbanes-Oxley Act, relating to the company's independent

auditor's attestation of internal controls over financial reporting; however, the temporary exemption does not apply to management's reporting on internal controls over financial reporting requirements of the Sarbanes-Oxley Act.

What areas should management evaluate as part of an IPO readiness assessment?

Challenging accounting and financial reporting issues are the mere tip of the iceberg in terms of IPO preparation. The greater challenge is looking across major functions to identify which areas may need to be created or enhanced to prepare the company to become a public company. The chart below illustrates the IPO readiness framework that PwC uses to evaluate public company readiness across major functions and activities.



Accounting and financial reporting

Evaluate auditor independence

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. 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.

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

A company that wants to go public needs to have audited financial and interim (reviewed) 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. As a company gains financial sophistication, it should also begin preparing quarterly financial statements. Preparing these statements in a timely manner can add to an investment banker's positive evaluation of a company. Though not required for SEC reporting purposes, investment bankers may want to include unaudited financial information for the prior four to eight quarters in order to reflect growth and trends. If such quarterly financial information is presented, underwriters typically require that it be reviewed by the company's independent auditors under the Public Company Accounting Oversight Board's (PCAOB) AS 4105, "Reviews of Interim Financial Information" (formerly AU 722 and SAS 100).

In draft registration statements submitted for confidential review, a company may omit interim financial information it reasonably believes will not be required to be separately presented at either (i) the time of the contemplated offering (if the company is an EGC) or (ii) the time it publicly files its registration statement (if the company is a non-EGC). However, once a company files publicly (even if it is an EGC), it will need to include all required interim periods, even if those periods are not the same periods required to be presented separately as of the contemplated offering.

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 from the financial statements a company previously prepared.



Useful tip

Waiting until "crunch" time to have multiple-year audits could lead to two nasty surprises: first, the high costs of reconstructing historical financial statements; and, second, figures that show the company may be performing at a level below expectations, resulting in potential significant delays in the process.

Assess need for additional audited financial statements for certain specified entities

Another area that requires advance planning is assessing whether the IPO document will require separate financial statements of certain specified entities such as significant businesses acquired or to be acquired (Rule 3-05), certain equity method investments (Rule 3-09), guarantors of public debt securities (Rule 3-10) and affiliates whose securities collateralize a registered debt issuance (Rule 3-16). These separate financial statements must also comply with SEC rules and guidance on form and content (Regulation S-X), although a non-public entity would not need to include public company disclosures, such as segment information, pensions and earnings per share (EPS). However, solely with respect to financial statements required under Rule 3-10, the SEC allows a reduced level of reporting with condensed consolidated financial information or specified narrative disclosure as a substitute for full financial statements, provided certain criteria are met.

Although there is some relief for inclusion in a pre-effective filing, obtaining separate audited financial statements that might be required by Rule 3-05, 3-09, 3-10 or 3-16 can often be a difficult and costly task and could potentially delay an IPO. Further, 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. Pursuant to Rule 3-13 of Regulation S-X, companies may request the SEC's consideration to waive requirements for certain financial statements.

Finance effectiveness

Assess adequacy of finance resources for public company reporting

Finance leaders should evaluate their organization to ensure the structure is in place to meet specific stakeholder needs. Beyond the traditional back-office role, finance staff and systems must be prepared to meet the needs and requirements of new external stakeholders, including higher

expectations of transparency and data reliability, increased scrutiny of budgets and projections and demands for accelerated filing. Public company experience and technical accounting capabilities must be a priority when acquiring and growing talent. Enabling the finance organization with mature processes and technology will help to ensure that finance resources are able to provide value-added analysis rather than simply gathering data. Improved communication and collaboration significantly enhances the ability to proactively manage issues and avoid surprises. Due to the accelerated timeline and number of dependent steps for public company reporting, clear responsibilities and the ability to efficiently share knowledge and level of progress is essential. Leading companies are leveraging workflow and collaboration technology to improve control, communication and accountability.

Establish a controlled and accelerated close cycle

Beyond satisfying new and accelerated external reporting requirements, a smart and efficient close-to-report cycle creates a foundation for evaluating performance and supporting business decisions. Finance organizations should focus on control, accountability and first-time accuracy as opposed to speed alone. Focusing on speed alone often results in a close cycle followed by a series of post-close adjustments and rework. Several key strategies should be leveraged to improve quality and timeliness of the end-to-end cycle. These include:

- Streamlining the cycle by appropriately sequencing work steps and by eliminating bottlenecks, duplication of effort and non-value-added activities;
- Sequencing dependent tasks and distributing workload away from a time-intensive period-end to avoid duplication and unnecessary down time; and
- Simplifying and standardizing processes to eliminate unnecessary complexity and inconsistencies.

Leverage technology and data to align planning, reporting and analytic capabilities

Effective reporting requires much more than just looking at past performance. Companies need to know how they perform against expected results and the key drivers impacting any variance in order to improve their predictive capabilities. Establishing consistent definitions and common data structures provides a foundation that can significantly reduce the time spent collecting information, reconciling data and understanding variances. Automation of manual activities and streamlining the flow of information can improve quality, consistency and timeliness. Leading organizations are expanding existing consolidation systems to collect additional supplemental data to support footnote and Management's Discussion and Analysis (MD&A) preparation, as well as the flow of information to functions

such as tax and investor relations. Aligning planning, reporting and analytic capabilities is essential for public company finance organizations.

Internal controls

Prepare for Sarbanes-Oxley compliance

Waiting until the registration statement is being prepared and marketed to address compliance with Sarbanes-Oxley can make for a challenging IPO 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 requirements can create a huge burden on staff who should be focused on preparing the filing statements and coordinating with banks and underwriters. The Sarbanes-Oxley Act contains 11 major sections that enumerate responsibilities incumbent upon public company management, boards and auditors in the areas of financial practices, accounting controls and corporate governance. The Act also imposes criminal penalties for non-compliance.

The most costly provision of the Sarbanes-Oxley Act, Section 404, requires a registrant's management (CEO and CFO) and external auditor to report on the adequacy of the company's internal control over financial reporting. This section mandates the inclusion of an internal controls report in annual financial reports, affirming management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting. This includes performing an assessment of the effectiveness of the company's internal control over financial reporting.

Companies must also identify the control framework used to conduct the required evaluation. Typically, US companies use the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Controls—Integrated Framework. COSO articulates five components necessary for effective internal control: control environment, risk assessment, control activities, information and communication and monitoring. In response to an increasingly complex, technologically driven and global business environment, COSO released an updated framework in 2013. While the fundamentals of the original Framework remain unchanged, the 2013 Framework articulates 17 principles for effective internal control within the five components, as well as points of focus that describe characteristics of the principles. An effective system of internal control requires that each of the five components of internal control and relevant principles is present and functioning and that the five components are operating together in an integrated manner.

While newly public companies (defined as those that were 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) are not required to comply with either the management or auditor reporting requirements relating to internal control over financial reporting until their second annual report, companies preparing for their IPO need to consider the discussion of their Section 404 plan and timeline in their marketing documents. Companies are required at their initial public company filing to be in compliance with Sections 302 and 906, which require that the CEO and CFO of a public company certify that the company’s financial statements are accurate and comply with the requirements of the 1934 Act and that the information reported is fairly presented. For this reason, management should integrate consideration of internal controls into the company’s financial processes as early as possible to allow time to implement and adequately assess the effectiveness of those controls.

EGCs are also exempt from the requirement to obtain an audit of internal control over financial reporting. It is important to note that this exemption only applies to the internal control audit requirements (Sarbanes-Oxley Section 404(b)). EGCs are not exempt from the requirement for management to assess internal control over financial reporting (Sarbanes-Oxley Section 404(a)) beginning with the company’s second annual report. All companies need to consider the discussion of their Section 404 plan and timeline in their registration statement.

Additional Sarbanes-Oxley requirements that often overlap with listing requirements of some exchanges include:

- A majority of board members at a public company must be from outside the company;
- Public company boards must have an independent audit committee with at least one member qualified as a financial expert;
- The company’s external auditor is prohibited from providing certain non-audit services, including, but not limited to, internal audit, legal and valuation services; and
- The company must have a code of ethics for senior financial officers or clarify why one has not been implemented.



Useful tip

The market has created an expectation that if a material weakness is not disclosed in a company’s registration statement it is assumed one does not exist. If one is identified sometime after the IPO, the effect on a company’s share price can be significant. Therefore, while full compliance may not be immediately required, companies should ensure they have done enough work, pre-IPO, to determine if a material weakness exists.

Tax

Evaluate efficiency of existing tax structure

In a traditional IPO, all historical owners hold economic and voting shares in the registrant and sell the shares to the public at the time of the desired exit. Typically, the public company pays tax on its earnings and US shareholders pay tax on the sale of the shares and on dividends from the company, resulting in two layers of tax. Generally, the IPO-related transactions should only be taxable to the extent of cash received. However, certain transactions may result in gains that could be deferred in an alternative structure.

For companies treated as flow-through entities for tax purposes, usually no tax is paid at the company level. The profits of the company flow through to the owners and generally distributions are non-taxable, resulting in a single level of tax at the owner level only. Therefore, a company currently treated as a flow-through entity and contemplating an IPO may want to consider alternative structures that continue to provide flow-through tax benefits to investors.

The benefits of most alternative structures are limited to specific industries (e.g., real estate investment trusts, master limited partnerships, etc.) based on certain requirements in tax law. However, one alternative structure, the Up-C structure, provides significant tax and economic benefits to pre-IPO investors in any industry. In an Up-C IPO structure, the public typically invests in a newly formed corporation (PubCo) that uses the IPO proceeds to acquire an interest in a partnership. Any economic interest retained by the pre-IPO investors continues to be in the partnership. The Up-C structure provides the following benefits:

- **Access to public markets and a flow-through structure**—The structure allows historical owners in any sector to retain the tax benefits of a flow-through investment, mitigating potential gain from conversion to a corporation.
- **Increased proceeds on exit**—Historical owners may receive 40–50 percent of additional proceeds after they exit if they enter into a Tax Receivable Agreement (TRA) with PubCo in conjunction with the IPO.
- **Liquidity**—Historical owners have similar liquidity rights as they would holding PubCo shares directly via exchange rights.
- **Ability to retain control**—Historical owners can hold high-vote shares in PubCo to retain control of the business post-IPO.

Assess 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 net operating losses goes public and the IPO results in an “ownership change.”

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

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

Plan for state and local tax compliance

Many states have tax laws that may impact companies doing business there, 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 savings opportunities that can reduce the taxes of the company or individual owners if proper planning is done prior to the IPO.



Useful tip

Key shareholders should take the opportunity to put into place important tax planning strategies early in the process to optimize their financial goals.

Executive compensation and HR

Consider executive compensation programs

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 their objectives.

Support the company’s strategy

Compensation programs exist to effectively attract, motivate and retain personnel to execute corporate strategy. A key strategy for public companies 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.

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 management and employees shortly after formation. Plans to grant equity securities (including options and warrants) within two years of an IPO should be carefully evaluated. Companies should also consider establishing employee stock ownership plans (ESOPs) contemporaneous with a public offering.

Ensure competitiveness of 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. For EGCs, this would be the top three compensated executives. 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, 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 actively monitor 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. Institutional Shareholders Services (ISS) and other shareholder advisory groups have issued voting guidelines advocating 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.



Useful tip

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. Making changes to stock grant and option plans should be done long before the IPO to avoid possible incremental income statement charges.



Governance and leadership

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 team is not a “one-person 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 that has been through the IPO process before. To obtain maximum financial return and valuation, the team needs to be cohesive and share a long-term vision for the company.

Understand the basic governance requirements for a public company

Public companies are subject to many requirements that impact their board composition and governance practices, as well as the structure, composition and responsibilities of their board committees. So it is important to start by understanding the basic rules that will apply once a company goes public.

The SEC has a number of rules on governance. For example, specific requirements for audit committees and compensation committees address independence, authority and selected responsibilities. The SEC also requires a number of specific proxy disclosures on governance issues that describe how the board oversees risk, establishes board leadership, considers its diversity and provides directives on board committees and the number of board and committee meetings the company holds. Additionally, the SEC requires companies to provide detailed proxy disclosures about each director.

The NYSE and the National Association of Securities Dealers Automated Quotation System (NASDAQ) both establish governance requirements for their listed companies. They require that a majority of directors on a company’s board be independent and also that all directors on audit and compensation committees are independent. Both exchanges provide exemptions to these rules for controlled companies where more than 50 percent of the voting power for the election of directors is held by an individual, group or another company.

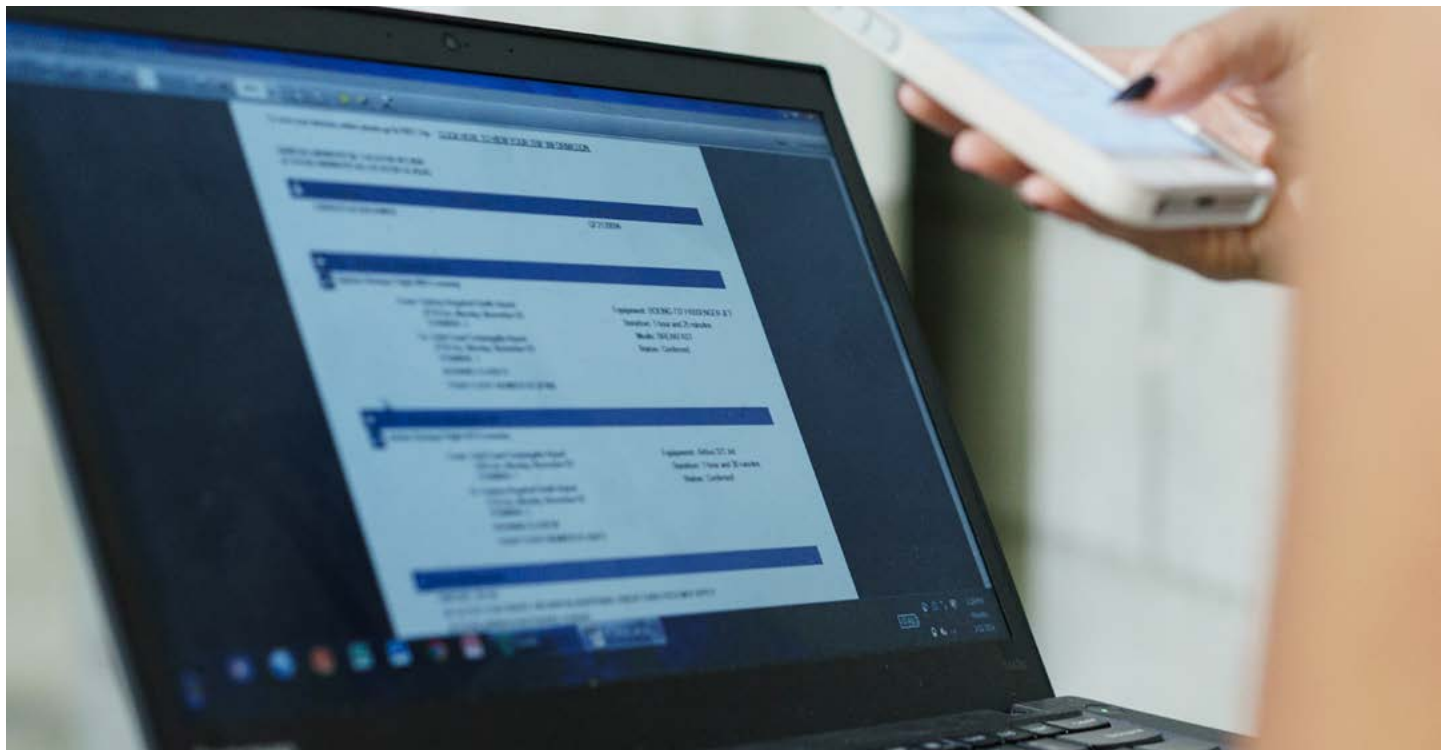
Other governance requirements differ based on whether the company decides to list on the NYSE or the NASDAQ. Some of those differences—such as the definitions of what constitutes an “independent” director—are subtle. Others are more substantial, such as the additional responsibilities the NYSE requires surrounding the requirement to have an internal audit function.

Both the NYSE and the NASDAQ allow new public companies a transition period before they are required to comply with the board and committee independence requirements. That said, many companies fully adopt the board and committee independence requirements by the time their final registration statement goes effective.

Recruit independent members to the board of directors

Attracting and retaining board members has become more difficult and expensive due to the perceived higher level of risk and shift from equity to cash compensation. 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.

As companies consider the transition to becoming a public entity, along with the growth and evolution that process involves, it is helpful to consider what additional skills, experience or diversity on the board would be beneficial



as the company grows. One of the best sources of objective advice can come from an independent or outside director. While a private company may already have excellent directors, if those directors are not independent, they will not be eligible to serve on key committees and their long-term service on the board may be limited. Therefore, it may be necessary to transform the existing board to meet independence requirements.

Once a company is public, its directors are going to draw scrutiny. Shareholders will be assessing board composition and starting with the first annual meeting of shareholders after going public, they will get a vote on electing directors. Certain major institutional investors have become more vocal about board composition for new companies. They express concerns about any directors they believe are “overboarded”—that is, sitting on numerous boards—and if a board does not appear to be sufficiently diverse.



Useful tip

Build in enough time to recruit proper outside directors. In the post-Sarbanes-Oxley environment, companies may want to allow four to six months for this process.

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 of its subsidiaries. The NYSE and the NASDAQ have different rules for independence—companies should consult with their securities counsel to confirm in advance of going public.
- Designate at least one member to serve as a financial expert, which is 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 (e.g., as an investment banker, venture capitalist, commercial banker or financial analyst).

- 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 from employees and others regarding accounting, internal control or auditing matters.

Understand potential shareholder mix

When a company is planning to go public, there is an understandable tendency to focus on the initial sale of shares to the public including how the underwriter will market the offering, how many shares to sell and how to price the shares. As a result, companies devote a lot of attention to attracting initial buyers. However, sometimes investors who buy at the IPO do not hold the shares for the long term. Accordingly, once initial IPO investors have disposed of their shares, companies may find they have a different mix of investors and face challenges to understand what these investors expect from a governance perspective.

The shareholder base will not be homogeneous. Shareholders have different investment horizons and objectives and may have different expectations for a company's performance, as well as conflicting perspectives on how to structure the board and which governance practices to adopt. Addressing the divergent needs of shareholders can be a challenge.

It is helpful for a company to understand which institutional investors it might have and what their expectations are for governance. Large institutional investors often provide policy statements that outline their preferences and views on governance structures. The statements also give some indication of how they are likely to vote on routine matters, such as director elections and executive compensation and on governance proposals, such as splitting the CEO and board chair roles or changing director terms from three years to one year (also known as declassifying a board).

Evaluate corporate governance principles and practices

Both the NYSE and the NASDAQ have specific corporate governance standards that need to be addressed in connection with an IPO and the listing of a company's equity securities on their exchanges. These listing standards address such matters as board composition, structure and process, including the nomination of directors, compensation practices and similar matters. The standards are in part a response to Sarbanes-Oxley, but they go further 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 the 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 their public offering.

Address other governance issues

Sarbanes-Oxley requires a code of ethics for senior financial officers or clarification of why one has not been implemented. Many exchanges also require a code of ethics and whistleblower programs. It is important to understand the overlapping nature of these requirements so that appropriate processes can be put in place. Sarbanes-Oxley also 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 any such arrangements can be extinguished prior to the IPO.

Financial planning and analysis

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 to put a budget and forecasting process in place. The company should get into the habit of preparing realistic budgets and updated forecasts and be able to articulate why variances have occurred. For an early-stage company, projections and profitability 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 those of the investment community can have a significant impact on its stock performance. Therefore, accurate budgeting and forecasting is critical for a successful IPO, as the market allows little room for error and punishes companies for significant underachievement.

Treasury

Create a forward-looking capital structure

As a company begins to consider an IPO, the focus is often solely on the equity issuance process, key decisions related to this process and the management of investor relations and communications. Typically, companies will also need to consider access to the debt capital markets to fund ongoing business investment needs, provide fuel for growth and, in time, support potential acquisitions. Accordingly, companies should consider their overall financing strategy, including target capital structure, interest rate risk management and potential shareholder payout strategies including dividend policy and share repurchase programs. New debt issuances may also require companies to register debt securities,

engage with financial intermediaries (investment and commercial banks) and establish credit ratings. In short, while the focus for pre-IPO companies is equity capital, it is likely that additional work needs to be done to develop a sound capital structure and ensure ongoing access to capital and liquidity at a reasonable cost to fund the business after the IPO.

Proactively manage financial risks

A key focus for newly public companies is external communication relating to quarterly financial performance metrics (e.g., revenues, EPS, cash flow, etc.). Among factors that influence financial performance are financial risk variables tied to foreign exchange rates, interest rates and commodity prices. To mitigate potential volatility in financial results, pre-IPO companies should consider implementing hedging programs and strategies for managing foreign currency, interest rate and commodity price risks. Where financial derivatives are currently utilized for hedging, companies should consider whether derivatives used in existing risk management programs might qualify for hedge accounting, allowing for the deferral of hedge gains and losses to coincide with the timing of the recognition of underlying exposures in earnings.

Secure adequate insurance coverage

Prior to an IPO, most companies already have brokerage relationships and insurance coverage for property damage, general liability, employer liability, business interruption and many other specialty lines of coverage suitable to their business risk profile. While existing relationships and insurance levels may have met a company's needs for many years, the run-up to an IPO is an opportune time to reevaluate the company's risk profile and assess whether existing coverage and retention levels are appropriate for a public company. Beyond traditional basic insurance programs, many private companies do not maintain directors' and officers' (D&O) liability insurance coverage. As a newly public company, the potential liability for directors and officers to public shareholders is greatly increased. Securing appropriate coverage is critical to attracting and retaining talented directors and officers to lead the public company and is an important action item for any company planning an IPO.

Consider upgrading the treasury function

In many ways, an IPO should not require much change to the operational infrastructure of a treasury function that is required to execute the daily tasks of collecting, concentrating, disbursing and investing cash and other liquid assets. However, for a newly public company, the expectations for the control, effectiveness and efficiency of treasury operations increase. Consequently, as part of planning for an IPO, many companies perform

comprehensive assessments of their treasury functions with the objective of matching their practices to these higher expectations. Such an assessment may result in: changes to treasury's governance model, signature authorities and limits; upgrades to the skills and sophistication of the team (especially with respect to capital markets activities and financial risk management); process changes to improve controls, particularly around the management of cash; and, finally, implementation of leading-edge treasury tools and technologies that increase visibility of cash and liquidity, automate key processes and provide greater access to information and data for improved decision making around funding, cash and liquidity management and financial risk. Importantly, investments in the treasury organization, processes and infrastructure can not only reduce financial statement and operational risk, but also potentially provide benefits in the form of lower cost of capital, increased cash flow and reduced operating costs.

Legal

Consider appropriate level of required legal counsel

Legal counsel is a critical function of any public organization. In some cases, internal counsel can be more cost effective than external counsel, but internal counsel will not replace the requirement for specialists such as SEC counsel, litigation attorneys, etc. If management has no legal counsel, it should consider which core legal expertise would be most needed internally and staff counsel appropriately with support from external specialists. In addition, internal counsel can provide perspective and oversight for understanding legal obligations and internal compliance requirements.

Build an effective legal and compliance program

A Chief Compliance Officer (CCO) is a critical role for organizations as they think ahead to the regulatory and other risks impacting strategic goals and threatening the sustained growth of the business. In short, a CCO can provide executive management and boards with comfort that the organization is appropriately addressing its internal and external obligations.

The CCO, like the Chief Information Officer (CIO) or the CFO, sets the framework for managing compliance throughout the organization. The CCO should develop, understand and monitor compliance metrics to help detect issues early and improve the effectiveness of internal programs for maintaining compliance with laws and regulations. The CCO should also ensure that ethics (and ethical decision making) are an integral part of everyday business discussions, that there is a framework in place to manage the complex and rapidly expanding regulatory environment, that there are appropriate compliance skills embedded in every function as appropriate and that employees see compliance as part of what they do every day.

Internal audit

Consider requirements for an internal audit function

Regardless of industry, a public company will generally require the following:

- Policies and processes to allow effective risk identification, assessment and management by senior leaders;
- Processes and mechanisms to prioritize risks and allocate resources on a risk-rated basis;
- Formal communication channels to the board regarding compliance, risk and risk management issues;
- Mechanisms to make risk disclosures to the public; and
- A formal compliance infrastructure, compliance program and related reporting.

Establishing a formal internal audit function is a beneficial way to evaluate a company's risk, compliance and control environment given the new requirements it faces. While a formal internal audit function is only a current requirement of the New York Stock Exchange (NYSE), risk, controls and compliance become vital drivers of sustainable growth, giving companies the tools to meet investor, market and regulatory expectations and improving risk management and operational effectiveness.

Enhancing risk management processes and structures starts in the C-suite, with the board exercising its oversight role by requiring management to identify all relevant risks and then obtaining assurance that those risks have been properly managed. From there, risk management cascades down into the business, where it is overseen by the company's various risk and compliance functions, which could include internal audit, legal, regulatory, SOX, IT, etc. Coordination is critical. When the disparate strands of a company's governance, risk, compliance and internal audit efforts are brought together into a coordinated system rather than operating in silos, the result is not only greater effectiveness and efficiency, but also the ability to align systems, people and culture with management's strategic priorities.

Risk management, controls and compliance processes are likely already in place at some level in most pre-IPO companies, but may be neither formalized nor sufficiently robust to meet the requirements placed on public companies. A company preparing to go public will therefore need to build out its risk, controls and compliance and internal audit functions, while prioritizing the people, processes and technologies that will be most critical as it navigates the IPO process and assumes its new responsibilities as a public entity. Another option is to outsource all or part of the company's internal audit and/or compliance processes, including SOX compliance, in order to get up to speed

quickly and be able to scale internal audit and compliance capabilities post-IPO.

Engage with investment banks

Build relationships with investment banking firms

Solid relationships with investment banks will help establish a company's credibility and can factor greatly in the success of an IPO as well as other capital raising and M&A activities. Investment bankers can help assess and sharpen a company's equity story, provide valuation guidance and provide a sense of the appropriate IPO timing based upon the company's financial perspective and market receptivity. Specific skills and support include the following:

- Experience in marketing, structuring and facilitating the underwriting syndicate to create support for the stock after it is issued;
- Assessment of market conditions and appropriate investors/targets;
- Expertise in pricing an offering so it will be attractive to the company but also generate a reasonable return for the investor; and
- Visibility and ongoing updates to public investors.

Media and investor relations

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 potential buyers and those who influence their buying decision (e.g., financial analysts, stockbrokers, the financial press and industry media). A positive image cannot be developed overnight; it can take months or even years to achieve, 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."

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 the company has gone public.

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

Enterprise risk management

Elevate your enterprise risk management activities

The SEC requires disclosure of how boards administer risk oversight as part of their proxy disclosures. Regulators have

stated in the past that risk oversight is a key responsibility of the board and that additional disclosures would improve investor and shareholder understanding of the role of the board in the organization's risk management practices. Companies are encouraged to share information about how the board and management work together in addressing the material risks facing the company.

Recognizing that the board's role is oversight while the management team's responsibility is day-to-day execution of risk management activities, the disclosure requirements provide companies some flexibility in describing how the board fulfills its duty. It is important to consider and formalize the division of responsibility between the full board and individual board committees, establishing a clear process for how those committees report back to the full board on the major risks under their purview. For example, is risk oversight administered through the whole board, a separate risk committee of the board or the audit committee? Do individuals who assume day-to-day risk management responsibilities report directly to the board as a whole or to a board committee? How does the board or a committee receive information from these individuals?

Beyond any requirements for implementing a risk management program, it is also imperative to understand how effective risk management enables the organization to take risks and achieve strategic goals. This includes proactive mitigation strategies as well as strong response and recovery from unexpected events that would help to minimize the impact of those events. This will require clarification of the roles and responsibilities of management and business leaders with regard to ongoing risk oversight. Once the roles and responsibilities are clear, the supporting processes can be enabled. Consider how the company manages different types of risks, as well as the unique cultural and organizational realities that need to be addressed.

Management should consider creation of a risk function that is focused on enabling achievement of strategic objectives. This is not a risk ownership group or a risk auditing group, but a function designed to drive consistency and transparency and support a clear understanding of the organization's risk appetite. The risk function may facilitate, monitor and coordinate the methodologies, tools and templates, but the business always owns the management of risks. The organization should look to create a function that delivers risk information for better decision making.

Corporate strategy and development

Develop the equity story

It is important to present a well-articulated equity story to the marketplace so that investors understand the company and the drivers that provide the basis for the valuation of the

company. An investment thesis that resonates with potential shareholders can provide the foundation for strong IPO aftermarket stock performance. Developing the equity story is the synthesis of many components, including:

- Business model of the company;
- Growth strategy;
- Forecasts and projections including company guidance;
- Positioning of the company to be valued against the right comparable companies; and
- Management who can execute the business model.

These elements need to be woven together to create the equity story and the rationale for an investor to take an interest in the company and, ultimately, to buy at the IPO and in the aftermarket. The equity story is the underlying theme for the marketing of the IPO and will be communicated in the following:

- Pre-IPO "test the waters" investor meetings;
- Prospectus (Form S-1/Form F-1);
- Roadshow slide deck and presentations;
- Financial projections; and
- Earnings release and conference call.

All of these elements need to be integrated to tell the same equity story for the company. This will ensure that the message to investors and research analysts is consistent.

Wealth management planning

Conduct pre-IPO estate planning

An IPO requires the full attention of all executives involved in the transaction. Providing executives with guidance in the estate planning process is important to minimize distractions and maintain focus on taking the company public. Proper estate planning during the pre-IPO phase also helps to align the interests of executives with those of the company throughout the transaction and following the IPO. Pre-IPO estate planning is critical in taking advantage of significant tax savings opportunities and can aid in the overall wealth management strategy of executives.

Early in the process, the IPO project lead or HR manager should notify executives and engage advisors to ensure that all necessary components are considered in developing the executives' estate plans. While all estate plans should include a will, healthcare proxy and durable power of attorney, each should also be tailored to the individual and based upon the executive's needs and objectives. Executives may have different requirements in terms of liquidity, equity options, managing taxes, charitable contributions and passing

wealth along to future generations. Furthermore, the estate plan must be sensitive to regulatory requirements, market perception and potential timing constraints. Implementing a well-crafted pre-IPO estate plan can align incentives and ultimately preserve wealth generated during an IPO.

Technology

Gauge the ability of systems to meet new requirements

A company's existing systems and processes will often prove inadequate for its future as a public company. Therefore, another vital aspect of the enterprise risk assessment process should involve determining whether those systems are sufficiently robust to accommodate growth and deliver the levels of information and detail required to meet the company's new public reporting and compliance responsibilities. A growing company, for instance, may not be able to continue using off-the-shelf accounting software once it gains scale and operational mass. Companies being spun out from larger enterprises might face the opposite problem: scaling down from more complicated tools and processes. Moreover, companies built through acquisition often face challenges of disintegrated systems and questionable data quality. In any of these cases, processes have to change before new tools are installed—preferably a year or more ahead of the IPO process launch. Areas in which scalability issues present a risk include:

- **Accounting systems**—Most companies will need to grow the capabilities of their accounting systems during the run-up to their IPO. Systems more suited to a small, private company can't be allowed to slow the process of closing the books in a timely fashion. If closing eats up two to three weeks every month, the finance function will lack the bandwidth to focus on value-added activities and not be able to meet public company reporting requirements. An ineffective process could also lead to reporting errors and inadequate analysis of results. The increased scrutiny and reporting requirements that come with being a public company also make it imperative for accounting system issues to be resolved during the pre-IPO stage.
- **HR systems**—With the war for talent raging worldwide, attracting and retaining talent can be one of a company's biggest challenges. A flexible, integrated, easily customizable HR system can help in this area. Most companies will want to look for one that covers not only the basic HR management functions but also areas such as strategic recruiting, employee development, internal employee communications, social and mobile networking and embedded metrics to allow for robust talent analytics.
- **Customer relationship management systems**—In the lead-up to an IPO, investors will be paying particular attention to a company's potential for growth and assessing

whether the company has the capabilities and systems to deliver profitability. To help drive sales and revenue in the 18 months prior to an IPO, companies should take steps to capture all information flows about current and future market opportunities and integrate them within a central repository. This will give leadership a complete picture so it can focus resources on high-potential opportunities, predict future areas of growth and acquire and enable sales leadership to keep the momentum going.

Though ramping up processes and systems can seem daunting, especially while a company is mired in the other complexities of IPO preparation, there are considerable benefits to having the necessary platforms in place to support the business and the upcoming IPO.



Useful tip

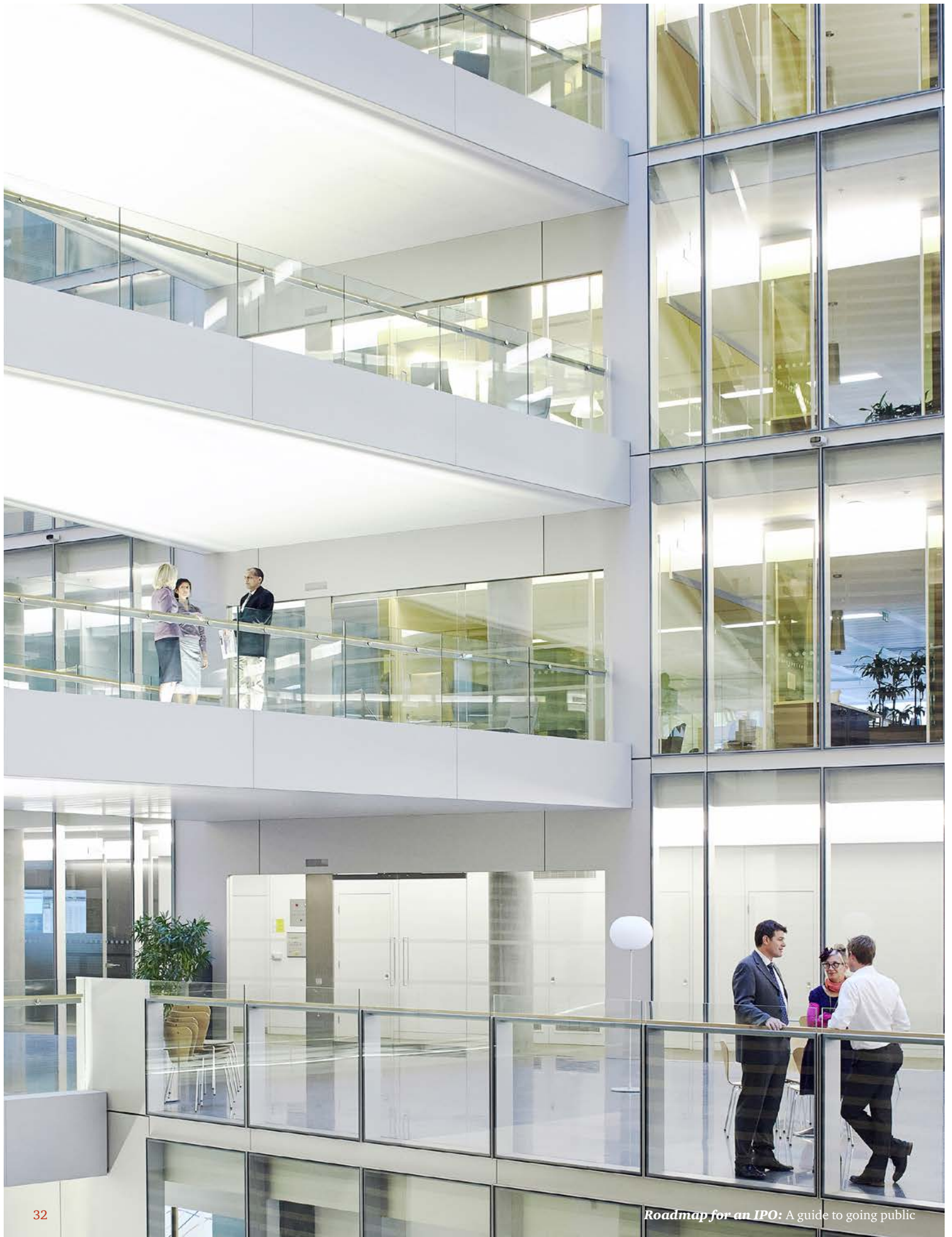
Staff up early, as there will be many demands on the company's key resources at peak times, at which point it may be too late to bring in temporary assistance. Strike the right balance between internal and external resources to ensure appropriate knowledge retention after the registration is complete,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

Project management, change management and communication

Develop a strong project management office (PMO) function

Launching a successful IPO requires making many decisions and coordinating the various parts of your business to achieve common goals. An effective PMO will allow you to coordinate internal and external resources from a wide array of advisors and organization units. Strong project management is essential to achieve a level of success that could be vital to the success of your IPO process as well as the market perception of your company.

The establishment of a PMO to manage IPO preparation activities includes many elements and several considerations based on an organization's communication preferences, historical level of involvement with a PMO and familiarity with public company requirements for those tasked with executing the going public tasks. For a project management function to be effective and operate efficiently, it will require a strong project governance structure with proper decision-making authority delegated at each level of the organization, a detailed project plan with accountable owners and a robust communication and reporting cadence. An efficient and experienced project management solution can result in reduced execution costs, fewer surprises, increased project efficiencies, enhanced transparency and accountability and improved issued resolution.



Common accounting and financial reporting issues

There are many accounting and financial reporting disclosure issues to address with an IPO, including matters related to financial statements, taxation, compensation and complex technical accounting areas. The key is to get in front of these issues well in advance of the registration process so that they will not be an impediment to becoming a public company.

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.

Segment reporting

Private companies are not required to report financial information about their segments, so this is usually a major change for companies undertaking an IPO. Segment reporting has been an area of recurrent comments from the SEC, which frequently challenges the identification and aggregation of operating segments. Reporting only one segment is considered a “red flag” that will attract a comment almost without exception.

When operating segments are aggregated, questions often center on the application of the “similar economic characteristics” criterion, with special attention paid to the similarity of long-term average gross margins. Companies should be prepared for the SEC to request a copy of the reporting package that the chief operating decision maker (CODM) receives. This is usually the CEO or a combination of the CEO and board of directors.

Segment reporting is based on the information included in the internal reporting package and it is presumed that all information made available to the CODM is actually used to assess the performance of the business and make decisions about the allocation of resources. The objective is for investors to have the benefit of seeing the business in the same level of detail as management.

The SEC will also remind registrants that they are required to disclose certain enterprise-wide information, such as disaggregated revenue by products or services (unless impractical to do so, which should be stated) and geographical disclosures (revenues and assets) by country, if greater than 10 percent of the consolidated totals.

Typical areas of SEC comment

- Determination of the 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
- Aggregation of segments, which the SEC has noted represents a “high hurdle” that is only suitable in certain limited situations
- Inconsistencies in the manner in which the business section and MD&A are written

Non-GAAP measures

As companies plan for an IPO, among the many choices they must make is how to utilize non-GAAP measures (NGMs) in their IPO filings and in discussions with potential investors. Use of the right NGMs allows companies to highlight key facts and circumstances and position themselves to the investment community and against their peers. However, while NGMs can be a key tool during an IPO, companies should carefully consider the costs and benefits associated with their use. The SEC will closely review the basis of calculation and level of disclosure. The investment community will expect consistent usage of the NGMs and consistency with peers both during and following the IPO. Thus, appropriately identifying these items early in the IPO planning process is critical. In a worst case scenario, improper usage or disclosure of NGMs can lead to unanticipated costs and delay the company’s IPO. It can also have a negative impact on the company’s share price after its IPO.

Companies often present certain quantitative measures of past performance, financial position or cash flows that make various adjustments (inclusions or exclusions) to measures reported in the GAAP financial statements. Such NGMs are permitted to be included in registration statements, including IPO filings, as long as they meet the requirements of Regulation G and Item 10(e) of Regulation S-K. Examples of common NGMs can include adjusted earnings before interest, taxes, depreciation and amortization (EBITDA), free cash flows or quality of earnings adjustments.

Typical areas of SEC comment

- Equal or greater prominence given to NGMs relative to the equivalent GAAP measure
- Reasons why management believes NGMs provide useful information to investors
- Items in the reconciliation of NGMs to the most comparable GAAP measure
- Labeling of items as non-recurring, infrequent or unusual when a similar item has occurred in the prior two years and/or is reasonably likely to occur again
- Labeling NGMs as “pro forma” when they do not comply with the provisions of Article 11 of Regulation S-X

Management’s Discussion and Analysis (MD&A)

A stumbling block that many companies face is their inability to describe the effect 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 MD&A related to a company’s financial statements. Specifically, MD&A is intended to give the reader information about the quality of the company’s earnings and cash flow so that investors can ascertain the likelihood that past performance is indicative of future 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 non-recurring charges, significant environmental exposures, off-balance sheet arrangements, contractual obligations and other risks and uncertainties.

As a company completes its annual and quarterly financial statements, it should take time to write its MD&A. It can be very difficult to remember, three years after the fact, why insurance costs went up or when a marketing campaign commenced. The practice of writing a high quality, comprehensive MD&A will expedite a company’s registration process and be a major step toward operating like a public company. The SEC comment letter process has reinforced the well-established MD&A objectives that disclosures should be transparent in providing relevant information, tailored to the company’s facts and circumstances, consistent with the financial statements and other public communications and comprehensive in addressing the many business risks that exist in today’s economic environment.

Typical areas of SEC comment

- Addition of an executive overview section
- Explanation of the underlying specific drivers behind changes in financial position, results of operations and cash flows
- Reasons for and specifically quantifying significant underlying variances, even when they offset each other
- Discussion and quantification of the impact of pricing and volume changes on results of operations
- Material known trends that may positively or negatively impact future results of operations and liquidity
- Quantified impact of foreign currency fluctuations on revenues, expenses and margins
- Quantified impact of acquired or disposed businesses on results of operations
- Discussion of known trends, events or uncertainties that are reasonably likely to impact future liquidity
- Further disclosure of sources and uses of cash and drivers of cash flows as opposed to repeating what can already be found on the face of the cash flow statement itself
- Description of the covenants in the company’s debt agreements and an indication regarding compliance
- Amounts of cash held overseas, especially where a company has asserted that it will permanently reinvest foreign earnings

Risk factors

Risk factors are included in the non-financial part of a registration statement. Regulation S-K requires companies to disclose all known significant factors that make an offering risky or speculative. Common categories of risk include industry risks, company risks and investment risks. Risk factors should be specific to the company and described in clearly understandable language.

Typical areas of SEC comment

- Removal of risks that could apply to any issuer in the same industry
- Removal of any disclosure implying that there are other material risks that are not described in the filing
- Expanded disclosure for EGCs relating to the risk of a lack of comparability of financial statements and reduced reporting requirements
- Additional information regarding any material weakness or significant deficiency reported in the filing process
- Description of the nature, severity and frequency of any data breaches

Compensation Discussion 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 also 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. EGCs are required to follow smaller-company reporting rules, which provide relief regarding compliance with CD&A requirements.

Recent changes to proxy requirements require a 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 related to 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 the company's risk and the management of that risk. Public companies are required to discuss and analyze in the CD&A the risk attributes of their broader compensation policies for employees (including non-executive officers). This disclosure is only required if the risks from a company's compensation policies have a material impact on the company.

Typical areas of SEC comment

- Basis for omitting incentive plan performance targets (this is a high hurdle) and disclosure regarding the relative likelihood that those performance targets will be met
- Description of incentive plan performance targets
- Identification of other companies used for benchmarking purposes
- Description of the roles and responsibilities that the CEO, compensation consultants and compensation committee had in the executive compensation decision making process

Revenue recognition

Revenue recognition still receives a great deal of attention from the SEC. Some of the most common topics include the following:

- Software revenue recognition
- Multiple-element arrangements
- Gross versus net revenue presentation
- Reseller arrangements
- Collaboration agreements
- Barter transactions
- Bill and hold/consignment sales
- Upfront fees

New revenue recognition guidance issued by the Financial Accounting Standards Board (FASB) will affect almost all entities and significantly increase required disclosures. While current guidance is often industry-specific and spread across various pieces of accounting literature, Accounting Standards Codification (ASC) 606, "Revenue from Contracts with Customers," provides a single, comprehensive model to be applied in all industries. The standard is effective for public entities for annual reporting periods beginning after December 15, 2017, including interim periods therein. For non-public entities, the standard is effective for annual reporting periods beginning after December 15, 2018, and interim periods within annual periods beginning after December 15, 2019. Early adoption is permitted only as of annual reporting periods (including interim reporting periods within those periods) beginning after December 15, 2016. Companies contemplating an IPO should begin an assessment of the impact of the new standard on the organization so they can articulate to investors, investment bankers and other stakeholders the potential impact of the adoption of the new guidance.

Typical areas of SEC comment

- Level of detailed disclosure surrounding revenue recognition policies in the notes to the financial statements
- Questions about a registrant's determination of separate units of accounting or performance obligations, allocation of arrangement consideration to separate deliverables or performance obligations, application of fair value criteria and determination of transaction price
- Detailed analysis of the gross and net indicators as they pertain to specific arrangements in order to assess the appropriateness of a company's conclusion regarding the presentation of revenue
- Upfront versus over-time recognition and the appropriate period over which revenue should be recognized

Stock-based compensation

“Cheap stock” refers to the issuance of equity instruments (e.g., options, warrants, common stock or restricted stock) typically during the 12 to 24 months preceding an IPO, for a price (or with a strike price) that is below the expected IPO price. This issue usually arises in connection with the granting of employee stock options and often results in the recognition of additional stock-based compensation expense.

The SEC expects that companies will provide critical accounting estimate disclosures within the MD&A section of the registration statement surrounding methods that management used to determine the fair value of the company's shares and the nature of the material assumptions involved. Alternatively, companies may request confidential treatment of this information by submitting a letter to the SEC with such disclosures. With respect to valuations performed, management should include a detailed discussion of the valuation approaches for estimating the value of an enterprise, such as the cost, market and income approaches, various methodologies for allocating the value of an enterprise to its common stock, the weighting of the different models used and any significant changes in the weighting over time.

Companies may receive comments requiring explanations for valuations that appear unusual (e.g., unusually steep increases in the fair value of the underlying shares leading up to the IPO). Companies preparing for an IPO need to carefully review their option pricing history. Where option exercise prices are significantly less than the price of 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 areas of SEC comment

- 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
- 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



Useful tip

A contemporaneous common stock valuation report from a third-party valuation specialist can not only ease SEC scrutiny, it can also be used for computation of stock-based compensation and for safe harbor purposes under Section 409A.

Earnings per share (EPS)

Private companies are not required to present EPS and for companies with complex capital structures—including multiple types of equity, different types of potential common shares and various classes of common stock—this calculation can be complex. To further complicate matters, companies may have participating securities that are required to be included in the calculation of basic EPS using the two-class method (under which EPS is calculated separately for each class of common stock and any participating securities).

Common shares (securities or other contracts that may entitle their holders to obtain common stock, such as options, warrants, forwards or other contracts) may be participating securities if, in their current form, they are entitled to receive dividends when declared on common stock. For example, an unvested, share-based payment award that includes non-forfeitable rights to dividends or dividend equivalents meets the definition of a participating security. Lastly, dividends declared in the year preceding an IPO are presumed to be in contemplation of the IPO.

When the dividends declared in the latest year exceed earnings for the previous twelve months, the SEC presumes they will be funded with proceeds from the IPO and, therefore, registrants are required to present pro forma earnings per share on the face of the income statement. This requirement applies to dividends declared after the latest balance sheet included in the registration statement, as well as planned but not yet declared dividends.

Typical areas of SEC comment

- Treatment of nominal issuance/penny warrants
- Inclusion of pro forma EPS on the face of historical financial statements due to automatic conversion of preferred stock upon IPO

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 that of mandatorily redeemable shares.

The definition of mandatorily redeemable securities has historically been found only in SEC rules. However, recent guidance issued by the 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. Accordingly, a mandatorily redeemable security that does not require liability classification under FASB’s rules may require separate classification and accounting under the SEC rules. The rules can be complex and can vary significantly based on the preferred stock redemption provisions.

Typical areas of SEC comment

- Assumptions used to determine the fair value of the instrument, including the underlying security (e.g., the fair value calculation of a preferred stock warrant and the underlying price of the preferred stock itself)
- Changes in the valuation of the instrument over time
- Variation of the valuation of the instrument from the value of the registrant’s common stock

Beneficial conversion features of preferred stock and debt

Similarly 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 that of cheap stock and it has approached it in a similar manner.

In some cases, the SEC staff has required that the IPO price be used as the market price of the company’s 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, then the “in the money” portion would be reduced from the net income available to common shareholders, lowering EPS.

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.

Particular care should be taken if the company receives any “bridge financing” in anticipation of an IPO. For example, a company may issue a convertible note with an accounting conversion price of \$14 per common share when its expected IPO price is \$18 per common share. These types of financing arrangements often contain multiple settlement features that are contingent on various outcomes (e.g., IPO by a certain date). Such interim financing arrangements need to be evaluated for BCFs as well as embedded derivatives.

Typical areas of SEC comment

- Significant factors, assumptions and methodologies used to determine fair value
- Explanations of why or whether marketability discounts, illiquidity discounts and common stock discounts (due to preferential rights of preferred stock) were used

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 non-recourse 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 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 action 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 areas of SEC comment

- Classification of employee notes receivable if not presented as contra equity where the receivable was the result of a stock transaction, unless such receivable was repaid prior to the issuance of the financial statements

Pro forma financial information

The objective of pro forma financial information is to provide investors with an understanding of the continuing impact of particular transactions by indicating how they might have affected the historical balance sheet and income statement had they occurred at an earlier date. Companies with significant business combinations or dispositions, previous history as part of another entity, material repayment of debt, changes in capitalization at the effectiveness or close of an IPO and other events and transactions that have had or will have a discrete material impact on the financial statements are required to include pro forma financial statements in the registration statement.

Typical areas of SEC comment

- Whether adjustments are directly attributable and factually supportable to the transaction
- The level of reliable, documented evidence in support of the adjustments
- Whether adjustments to the pro forma income statement have a continuing impact

Goodwill and intangible assets

Companies are required to assess goodwill and indefinite-lived intangible assets for impairment at least annually. Assessment is required sooner if there are any triggering events that may be indicative of an impairment. The basis for performing the two-step goodwill impairment test is the reporting unit. The SEC staff has often challenged registrants' determination of reporting units, since setting them at too high a level may result in avoiding an impairment charge.

Typical areas of SEC comment

- Incremental disclosures in the critical accounting estimates section for any reporting units with material goodwill balances that are "at risk" of failing step one of the goodwill impairment test
- Disclosure of the percentage by which the fair value of the reporting unit exceeds its carrying value
- Further qualitative discussion of assumptions used to determine fair value
- Where no impairment charge was recorded during the annual assessment, but other publicly available data indicated the presence of a negative trend

Business combinations

US GAAP requires that the purchase price allocation in a business combination begin with an analysis to identify all tangible and intangible assets acquired. Intangible assets, such as patents, copyrights, brand names, customer lists and above/below market contracts should 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.

In addition to providing the acquisition disclosures required under ASC 805, "Business Combinations," companies need to evaluate the significance of any acquisitions completed up to three fiscal years prior to the filing of the Form S-1. Registrants may be required to provide audited historical financial statements of the acquiree(s) and pro forma financial information in accordance with Rule 3-05 of Regulation S-X.

Typical areas of SEC comment

- Appropriateness of the fair values used to record assets and liabilities acquired
- Additional information about the qualitative factors that resulted in significant goodwill
- 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 related accounting

Consolidation

New guidance on consolidation significantly changes the consolidation rules for variable interest entities. The consolidation principles are now closer to the traditional control-based approach than to previous guidance that focused more on the quantitative assessment of economic risks and rewards. Impacted arrangements include the consolidation of common structures, such as joint ventures, equity method investments, collaboration arrangements, co-manufacturing agreements 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, systems and stakeholder communications, to name a few.

Typical areas of SEC comment

- Consideration as to 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
- Incremental disclosures 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

Income taxes

The accounting for income taxes, including related disclosure requirements, is often complex and involves significant judgment.

Typical areas of SEC comment

- Disaggregation in the income tax provision disclosure
- Sufficiency and consistency of indefinite reinvestment disclosures
- Incremental disclosure of how the results of operations are impacted by having proportionately higher or lower earnings in jurisdictions with different tax rates
- Interplay between indefinite reinvestment assertion and liquidity
- Sufficiency of valuation reserves and uncertain tax provisions



Building a going public team

A successful IPO requires advisors who have “been there and done that.” A company must identify the key players in its going public team, from the specialists it will hire to the staff members who will help prepare the registration statement and other sales documents.

Identifying your going public team

The decision to go public can be one of the most important 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 auditors, lawyers, underwriters and accounting advisors. It is a company’s duty to potential shareholders to monitor the drafting of the registration statement. Companies should ensure they completely understand all components of the document and the assumptions behind those components. The SEC will also play a significant role in the IPO process. Keeping in mind the impact that the SEC can have on the company’s registration process is important when choosing advisors who will assist in the IPO process.

The SEC

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.

The SEC’s Division of Corporation Finance reviews the registration statement and ultimately allows or denies an issue to “go effective” and sell shares. Registrants generally are assigned to one of the division’s review branches on the basis of standard industrial classification codes.

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.”

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 (Form S-1 or Form F-1 for example) 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 need 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 process 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 clearly explain 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 that companies find a law firm experienced with both the IPO process and their industry—one the company is confident will protect its interests when dealing with the underwriters and SEC staff. In addition to securities counsel, investment bankers will appoint underwriters' counsel to support the IPO transaction.

Investment banker or underwriter

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 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.

The lead(s) or managing underwriter works with a company to develop the registration statement, coordinate the roadshow, 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 aftermarket support. The share allotment each underwriter is committed to buy is stipulated in the prospectus.

Generally speaking, underwriters come in three sizes: "bulge bracket" investment banks which are global powerhouses and provide a wide range of services to major clients around the world, "boutique" banks which are smaller and often specialize in a particular industry sector or financial product and regional firms and local banks which help smaller issuers. The size and scope of a company and its offering will, in part, determine the size of the underwriter enlisted.

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:

- Discount or commission. This averages around six to seven percent of proceeds raised for the vast majority of IPOs, but could be as high as 10 percent for more difficult or smaller offerings or as low as one to two percent for large global 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 in select circumstances; and
- 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) is regulated and reviewed for fairness by the Financial Industry Regulatory Authority (FINRA) before the offering may proceed. Blue Sky laws also require a review of underwriters' compensation by state regulators.

Generally, the underwriter's agreement comes 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 cancelled (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.

Capital markets advisor

Since the financial crisis, companies have been more frequently engaging capital markets advisors to work alongside the investment banks. Capital markets advisors provide independent and objective advice to companies on key value-driving decisions and judgments throughout the IPO process. Capital markets advisors are not in competition with the underwriting banks. Rather, they seek to assist management in selecting an underwriting syndicate of banks that complement one another and generally advise management on how to get the best out of their investment banking service providers.

The capital markets advisor has two key responsibilities:

1. Supporting the company in its preparation prior to contacting and engaging the investment banks, including: advising on how to best tailor the company's equity story for a new and larger audience and helping gauge valuation expectations.
2. Assisting the company in underwriter selection (choosing the banks), underwriter syndicate structure (determining number of banks and roles), syndicate economics (compensation to the banks, including gross spread, fee splits and incentive structures) and finalizing an underwriting agreement.

Once the investment banks have been selected, the role of the capital markets advisor shifts to that of an advisor on process management and an independent sounding board on key decisions that will drive value. Capital markets advisors can counsel management on how to mitigate potential conflicts that arise among advisors and/or the parties involved in the transaction and provide insight into how to best manage the syndicate to ensure that underwriters work together toward a common goal. Likewise, they can provide experienced views on key value-driving components of the IPO process, including the following:

- **IPO process decisions**—advice in forming “go/no-go” judgments on IPO preparations, as well as IPO timing and size
- **Marketing**—independent review of marketing strategy, materials, roadshow process and investor targeting and feedback, as well as assistance in the preparation of analyst and investor presentations, investor roadshow teams and rehearsals
- **Pricing and allocation**—advice on pricing and pricing tactics, including formulating key messages to banks during the bookbuilding process, as well as advice on allocation based on demand assessment

Underwriters' counsel

Also involved in the IPO process is the underwriters' counsel, who is generally responsible for drafting the underwriting agreement and reviewing the registration statement and any related agreements and contracts that are filed as supporting exhibits. The 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 underwriters' counsel usually prepares the “Blue Sky” filing, which is necessary to get the registration approved by state regulators. Another task performed by the underwriters' counsel is negotiating the content of “comfort” letters.

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 PCAOB. The selection of an auditing firm should also be based on the following considerations:

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



Useful tip

By appointing key advisors early, management is freed up to focus on the marketing phase of the IPO, where it 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. Specific services the independent auditor will provide include:

- Strategic advice to help establish a realistic plan for entering the capital markets;
- Advising the company on preparing the registration statement in compliance with US GAAP and SEC requirements;
- Guidance on the identification of potentially sensitive or problematic accounting issues (e.g., cheap stock considerations, revenue recognition), 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; and

- A review of the prospectus and assistance in responding to SEC comment letters.

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 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 auditor independence standards.

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

- **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 effective management of the transaction.
- **Strategic advice**—Companies must evaluate alternative approaches and establish a realistic plan to enter the capital markets.
- **Issue resolution**—The advisory accountant can advise and assist with complex financial reporting and deal execution matters, including SEC pre-clearance matters.
- **Registration statement requirements**—The advisory accountant can advise and assist with financial statement requirements, including the navigation of annual audited financial statements and interim financial information requirements given accommodations now afforded to all issuers.
- **Technical advisory**—The advisory accountant brings extensive experience with complex capital markets transactions.
- **Section 404**—Companies should obtain assistance from their advisory accountant 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.
- **Post-transaction services**—A knowledgeable advisory accountant can provide advisory assistance after the IPO 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; and
- Ongoing compliance with Section 404 of Sarbanes-Oxley.

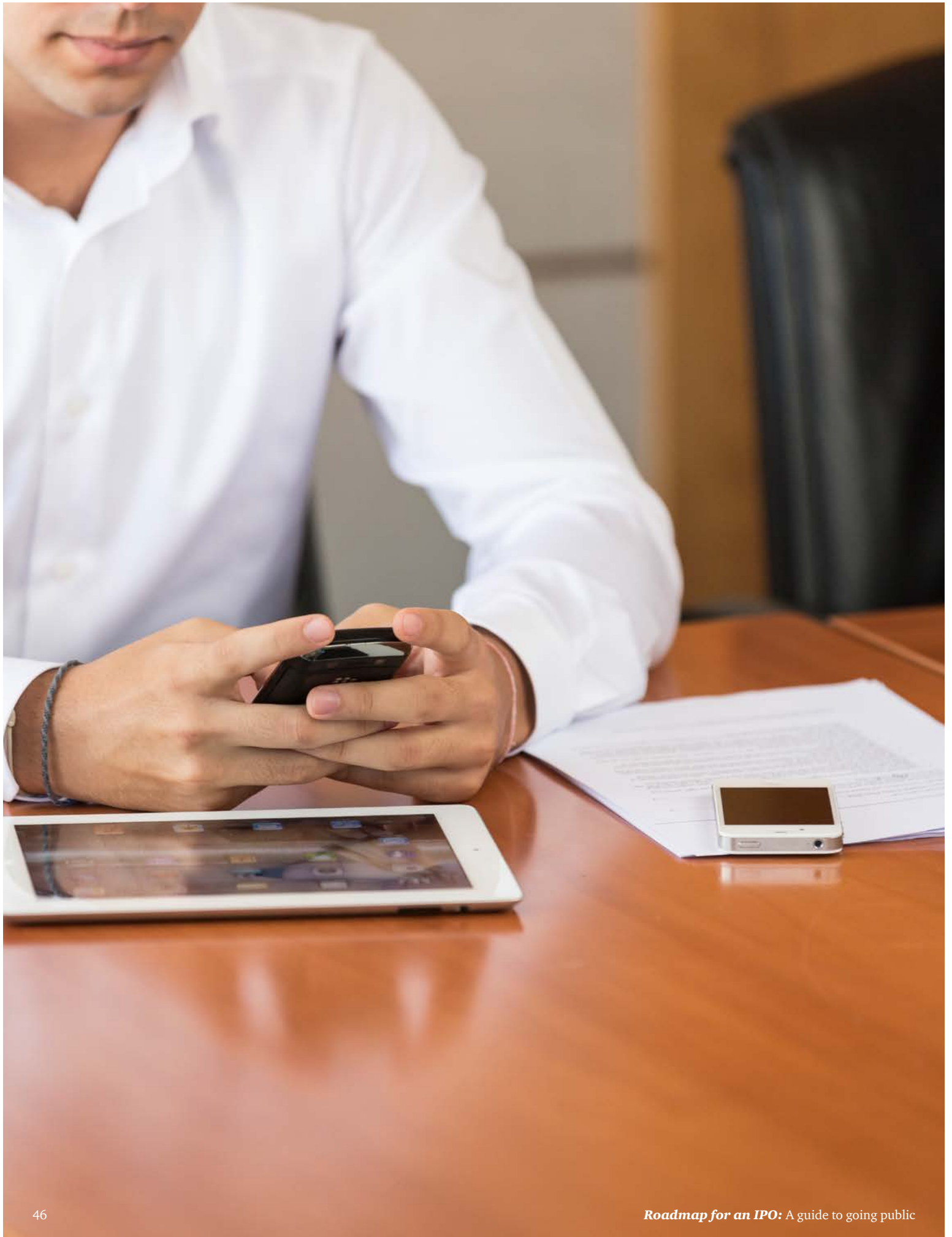
Financial printer

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. Public relations firms typically help prepare materials for analyst presentations and coach management in their presentation skills. In addition, management teams may want to hire speech consultants to help them prepare for the roadshow.

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.



Preparing the registration statement

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. Management knows the business best, so it should take an active role providing direction in the drafting process.

The Form S-1 registration statement

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).
- The Financial Reporting Manual (“FRM”) contains interpretations by the staff of the Division of Corporation Finance regarding various financial reporting matters.
- Financial Reporting Releases (“FRRs”) are designed to communicate the SEC position 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”) reflect the Commission staff's views regarding accounting-related disclosure practices. They represent interpretations and policies followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the federal securities laws.
- Compliance and Disclosure Interpretations (“C&DIs”) comprise of interpretations that reflect the views of the staff of the Division of Corporation Finance. They are not rules, regulations or statements of the Commission.
- 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 through EDGAR.

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

Registration statement filing

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. Companies may confidentially submit certain registration statements for SEC review, as well as omit audited financial statements and selected financial data if that financial information relates to periods that are not reasonably believed to be required at the time of the contemplated offering (i.e., prior to distribution of the preliminary prospectus to investors).

In draft registration statements submitted for confidential review, companies may omit interim financial information that is reasonably believed will not be required to be separately presented at either (i) the time of the contemplated offering (if the company is an EGC) or (ii) the public filing of the registration statement (if the company is a non-EGC). However, once a company files publicly (even if it is an EGC), it will need to include all required interim periods, even if those periods are the not the same periods required to be presented separately as of the contemplated offering. Companies may also request the SEC's consideration to waive requirements for certain financial statements, pursuant to Rule 3-13 of Regulation S-X.

The extent of required disclosures in the Form S-1 may be reduced if the company qualifies as an EGC. The EGC was introduced as a new filer designation in 2012 as part of the

JOBS Act, enabling private companies to more easily access the public capital markets. To qualify as an EGC, a company's annual gross revenue during the most recently completed fiscal year must be less than \$1.07 billion (such amount is indexed for inflation every five years), including some additional criteria. Generally, EGCs are permitted to do the following:

- File an effective registration statement with only two years of audited financial statements (instead of three);
- Adopt any new or revised accounting standard using the same timeframe as private companies; and
- Provide less detailed executive compensation disclosures.

Additionally, EGCs are exempt from the following:

- The internal control audit requirements of Sarbanes-Oxley Section 404(b); and
- Any future PCAOB rules that might be adopted related to mandatory audit firm rotation or supplemental auditor discussion and analysis reporting.

EGCs have the option to utilize some, all or none of the above accommodations.

Since the JOBS Act became effective in 2012, more registration statements have been submitted by EGCs than any other filer designation. The basic financial statement requirements for an effective registration statement for EGCs compared to all other companies are presented in the table below.

<i>Effective registration statement requirements</i>	<i>Non-EGC Form S-1</i>	<i>EGC Form S-1</i>
Income statement	3 years	2 years
Balance sheet	2 years	2 years
Statement of cash flows	3 years	2 years
Statement of shareholders' equity	3 years	2 years
EPS	3 years (corresponding to income statement)	2 years (corresponding to income statement)
MD&A	Required	Required
Selected financial data	Required (5 years of historical selected financial data)	Required (2 years of historical selected financial data)
CD&A	Required (3 years)	Not required (although several executive compensation disclosures have to be provided)
Separate financial statements for significant acquisitions	Required (up to 3 years)	Required (up to 2 years)
Pro forma financial information	Required	Required

While FPIs may qualify as an EGC, their reporting requirements may differ due to home country listing requirements or other relief afforded by the SEC. Accordingly, consultation with a PwC IPO specialist is recommended to confirm specific requirements. A less common designation is that of a smaller reporting company (SRC), which provides similar benefits as those afforded to EGCs. Qualifying SRCs generally have less than \$75 million of public equity float (or less than \$50 million in annual revenue if public float cannot be calculated). The accommodations available to SRCs and EGCs overlap in some areas and differ in others. It is possible for a company to qualify as both an SRC and an EGC.

The MD&A for an SRC is similar to that of other companies. However, the discussion of the results of operations would generally mirror the financial statements included in the Form S-1. SRCs are also not required to include a tabular disclosure of contractual obligations.

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 describe 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, periodically assess the status of specific sections of the registration statement and ensure that reviews of each section are timely.

The registration statement consists of two principal parts. Part I contains the essential facts regarding the business operations, financial condition and management of the company, all of which are required to be included in the prospectus, as well as 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—Appearing at the beginning of the prospectus, “the box” is 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 website 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. As this is the most frequently read section of the prospectus, management should take time to ensure it fully conveys the business and the overall offering.

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

- Recent adverse developments or operating losses;
- Need for additional financing;
- Dilution to public investors;
- Industry trends or business seasonality;
- Existence of significant competition;
- 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); and
- Technology changes.

Use of proceeds—A company must disclose the planned use of the proceeds from the offering. This section of the registration statement should be carefully drafted because the SEC requires reports on the 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 to retain earnings to finance operations and the company's expansion plans. 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—Dilution occurs when there is a disparity between the IPO price and the net book value per share of tangible assets. The effects 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. These disclosures include the following:

- A company's business plan, particularly if it has less than three years' operating results;
- A description of the company's principal segments, products, services and markets;

- 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; and
- 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 advisory accountants can be invaluable in helping it comply with these rules. In an effective Form S-1, a company generally presents 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 shareholder's equity for each of the past three fiscal years (EGCs and SRCs 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 (EGCs need not present selected financial data for any period prior to the earliest audited period presented and SRCs are not required to present any selected financial information); and

- 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 recent 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 auditors.

The following should also be noted:

- 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 significant businesses acquired or to be acquired should be included. The financial statement requirements range from one to three years (or one to two years for EGCs), depending on whether certain significance criteria are met;
- Insofar as practicable, the separate financial statements of significant equity investees of a registrant (except SRC registrants) should 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 SEC rules); and
- Companies should report separate, standalone (unconsolidated) financial information in instances in which restrictions prevent its subsidiaries from freely transferring funds to the registrant.
- EGCs may omit annual financial statements from confidential submissions and public filings if the annual financial statements relate to periods that are not reasonably believed to be required at the time of the contemplated offering (i.e., prior to distribution of the preliminary prospectus to investors). However, non-EGCs are not permitted to omit annual financial statements from

public filings. Non-EGCs may omit financial statements (including both annual and interim) from confidential submissions if those financial statements relate to periods that are not reasonably believed to be required at the time of the public filing. Both EGCs and non-EGCs are required to include interim periods in public filings, even if the periods are not required to be presented separately at the time of the contemplated offering.

- EGCs may omit other required financial statements (e.g., significant businesses acquired or to be acquired (Rule 3-05), certain equity method investments (Rule 3-09), guarantors of public debt securities (Rule 3-10) and affiliates whose securities collateralize a registered debt issuance (Rule 3-16)) that are not reasonably believed to be required at the time of the contemplated offering. Non-EGCs may omit other required financial statements from confidential submissions if those financial statements relate to periods that are not reasonably believed to be required at the time of the public filing. Non-EGCs are not permitted to omit other required financial statements from public filings. Regardless, if other required financial information is expected to be required at the time the registration statement becomes effective, both EGCs and non-EGCs may request consideration by the SEC to waive such financial statements pursuant to Rule 3-13 of Regulation S-X, when appropriate based on the specific facts and circumstances.

Pro forma financial information—Pro forma financial information includes financial statements or financial tables prepared as though certain transactions or events have already occurred. Pro forma information may be included in an IPO registration statement to reflect the impact of a recent acquisition or disposition, the use of proceeds from the IPO to repay outstanding debt obligations or other events that cause the financial statements to not be indicative of the ongoing entity.

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

	<i>Assumed date of transaction</i>	<i>Adjustments are directly attributable to transaction</i>	<i>Adjustments are factually supported</i>	<i>Adjustments are expected to have ongoing impact</i>
Balance sheet	Balance sheet date	Yes	Yes	N/A
Income statement	Beginning of earliest pro forma period presented	Yes	Yes	Yes

if the pro forma financial information would be material to investors, including the following:

- 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; and
- 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.**

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 for the past three fiscal years.

The executive compensation disclosures include the following:

- Expanded disclosure related to named executive officers including the CEO and CFO;
- A 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; and
- Enhanced related person disclosures, including disclosure of the policies for the review, approval or ratification of transactions with related persons.

As it relates to the above requirements, EGCs and SRCs both enjoy the following accommodations:

- No requirement for a CD&A section;
- Fewer named officers;
- Abbreviated "golden parachute" information and fewer required tables; and
- Only the most recent fiscal year information is required.

Executive compensation disclosures for all filer types are considered to be "stale" as of the first day of the company's new fiscal year and would need to be updated in a subsequent registration filing.

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 should be written as objectively as possible, pointing out both favorable and unfavorable developments and should be written from the point of view of the company's management. An MD&A statement includes the following:

- **Results of operations**—This is a comparison of the income statement amounts for each period (both annual and interim) 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.

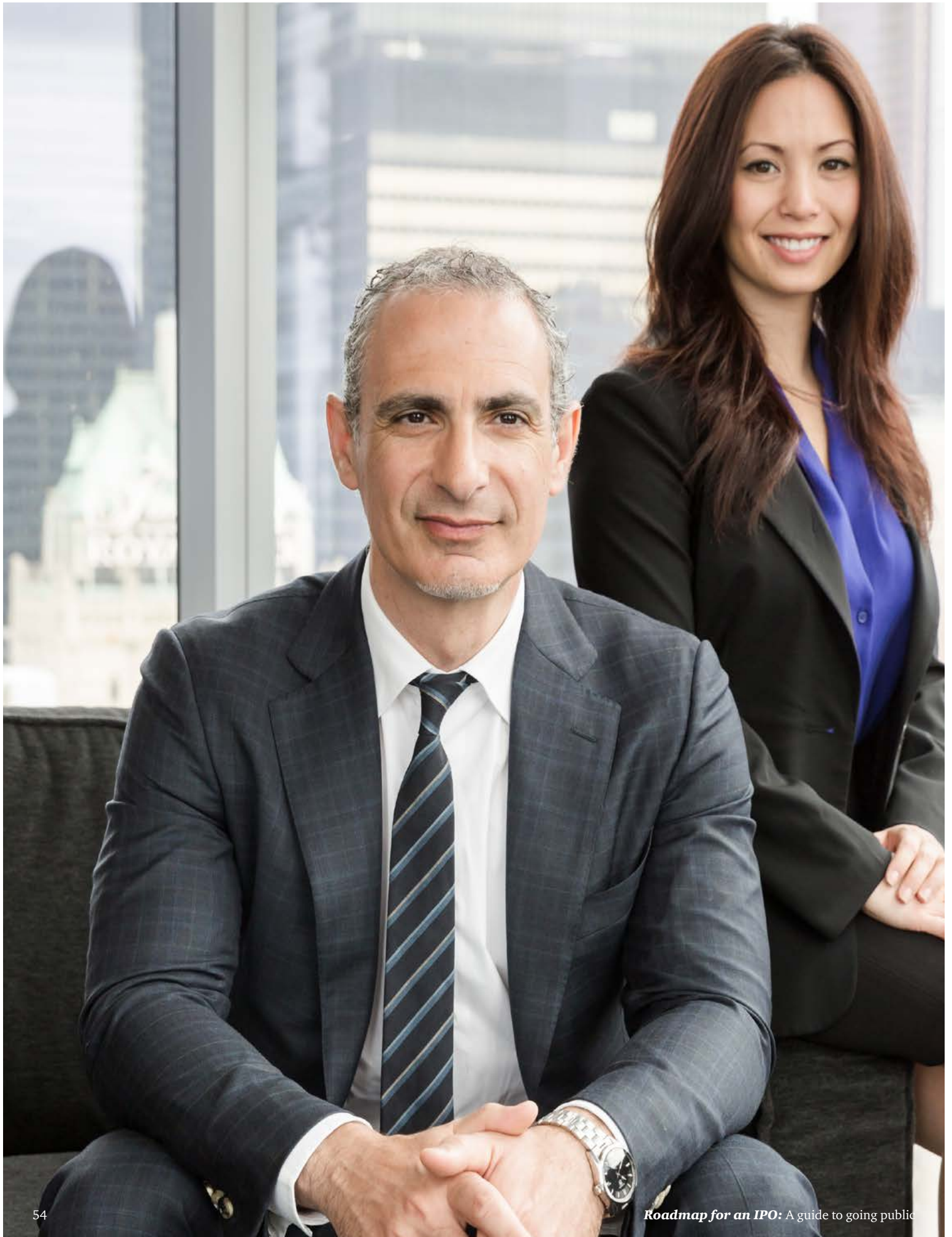
- **Capital resources**—A description of the registrant’s material commitments for capital expenditures, the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments should be included in the MD&A. Any known material trends, favorable or unfavorable, 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 by the SEC.

- **Market risk disclosures**— A quantitative and qualitative discussion of the registrant’s risk exposures (i.e., interest rate risk, foreign currency exchange rate risk, commodity price risk and other relevant market risks), how the registrant manages such risks, any changes in such tactics period over period and a sensitivity analysis as to the impact of earnings if there were hypothetical changes in interest rates, foreign currency rates, market rates, etc. that generate such market risk disclosure.
- **Other disclosures**—Other disclosures that are required in a registration statement include (but are not limited to) the following:
 - Legal proceedings, if any;
 - Interests of named experts and counsel; and
 - Certain relationships and related party transactions.

Part II—Information not required in the prospectus

This part includes disclosures regarding the expenses associated with the issuance and distribution of securities, the indemnification of directors and officers acting for the company, any sales of unregistered securities within the last three years, 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.



Navigating the IPO process

The most successful IPOs are launched by those businesses that operate as though they were public companies well in advance of their 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 six to 12 months. Advance preparation is a key success factor that allows for a smooth and efficient execution process.



Useful tip

As excited as company executives may be about the impending IPO, take care not to promote during the quiet period. Allow the quiet period to be just that—quiet. EGCs may proceed with “test the waters” discussions, but loud noises may attract unwanted attention, particularly from the SEC. Keep confidential company information private. Spreading news about the company to friends, family and even in casual conversation to someone on an airplane can be a real temptation—and can spell real trouble.

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. Continuation of established, normal advertising and publicizing of information is acceptable.

An exception to this rule is provided for EGCs. These filers may engage in oral or written communications with certain potential investors during the quiet period to gauge interest

in the offering. The potential investors must be either QIBs or institutions that are designated as accredited investors. These “testing the waters” activities, may occur prior to or following the date of the registration statement filing. Companies should bear in mind that any materials used to test the waters may be requested by the SEC and remain subject to federal securities laws.

Companies will need to juggle the following tasks in parallel timelines and keep business running as usual:

- The preparation of the preliminary prospectus;
- The investigation of the company’s affairs for underwriter due diligence; and
- The preparation of marketing materials for the roadshow.

As previously mentioned, a company can generally expect a minimum of three to five months from the time it initially files 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.



Useful tip

Of course, the company preparing to go public is 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 an experienced public relations firm and SEC counsel to properly maintain the quiet period.

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, capital markets advisors 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.

The all-hands or organizational meeting is normally a full day of activities that includes the following:

- **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, capital markets advisors and any other 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 timeframe of the IPO process and the busy schedules of all parties involved, the finalized list of working group members, including contact information, is prepared and distributed. Finally, all parties are made aware of the confidential nature of the discussions.

- **Discussions about the offering**—This is lengthy and detailed. It covers information about the following:
 - The minimum size and composition of the offering in terms of primary versus secondary shares sold;
 - The target price range and whether there is a need for a pre-IPO stock split to move the share price 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; and
 - Directed share programs, whereby designated individuals are allocated shares during the IPO and are able to buy them at the IPO price.



Useful tip

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

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

Performing due diligence

Throughout the registration statement preparation process, the entire IPO team will perform necessary procedures to provide a reasonable 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 and board of directors’ and shareholders’ meeting minutes; and performing various analyses of the company and the industry in which it operates. Due diligence also encompasses reading the entire registration statement by all parties involved in its preparation to ensure there are no material misstatements, omissions or inconsistencies.

A company’s attorneys and its underwriters’ 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 through 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.

As part of their due diligence procedures, underwriters request comfort letters from a company’s independent auditors. Comfort letters address information that appears in the registration statement outside of the financial statements, as well as events subsequent to the auditor’s 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 delays, it is important that in the early stages of the registration process, a company, its auditors and underwriters agree on the information on 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, the underwriters’ counsel and the auditors. At this meeting, the members of the underwriting group are given the opportunity to exercise due diligence regarding 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

Timeliness of financial information and going “stale”

The financial information in a registration statement that is publicly filed must comply with the SEC staleness rules on the filing date. The balancing act of preparing timely financial information while keeping up with the business-as-usual workload can be a challenging aspect of executing an IPO. The financial information filed with the SEC must be updated continuously throughout the public filing process. The table below illustrates the dates at which the latest available financial statements become stale, assuming a calendar year-end company.

Reporting period	Stale date
• Nine months ended September 30, 20x1	• After February 14, 20x2 ^{1,2}
• Year ended December 31, 20x1	• After May 14, 20x2 ^{2,3}
• Three months ended March 31, 20x2	• After August 12, 20x2 ^{2,3}
• Six months ended June 30, 20x2	• After November 12, 20x2 ^{2,3}

1 The gap between effectiveness of registration and latest audit period end cannot exceed more than 45 days after the most recently completed fiscal year end.

2 If the stale date falls on a Saturday, Sunday or holiday, the registrant has until the next business day.

3 The gap between effectiveness of registration and latest unaudited period end cannot exceed 134 days.



Useful tip

As distracting as the IPO may be, companies must keep a keen eye on their business. IPOs can be so absorbing that management loses track of day-to-day business concerns. Good project management is essential to navigating a successful IPO process while maintaining focus on the day-to-day business. It may be useful to use project management tools and appoint an IPO team captain to manage the process. Be cognizant of the potential for distraction and plan for it to ensure the business does not come out of the IPO process weaker than it went into it.

Also, it is important to consider the timing of the filing relative to potential investor presentations. When presentations to potential investors start toward the end of the reporting period window, the potential investors could ask for more recent financial information given that the financial information provided is more than a quarter old.

Filing the registration statement and SEC review

Upon completion, the draft registration statement is sent to the printer. To avoid unnecessary reprinting or amending costs, companies should ensure that this draft is close to final. 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 and 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 a financial analyst.

The SEC has 30 days to perform the initial review and provide comments on the registration statement. This may involve consultation with other SEC staff 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 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 auditor'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 SEC's Division of Corporation Finance currently uses a risk-based selective review process to decide whether a further review is warranted. If a document is selected for review, it can entail a full legal and accounting review, a full accounting review or a targeted review. Sarbanes-Oxley requires that once a company becomes a registrant, it be reviewed no less than once every three years.

Maintaining open communication with the SEC staff serves to expedite the registration process. Company counsel generally maintains close contact with the SEC staff while the registration statement is being reviewed.

At the time the document is filed, the registration statement should be complete, and the age requirements of the financial statements should be met. SEC staff occasionally receive incomplete registration statements in an attempt to "get in line" for the review process but will generally 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.



Useful tip

If a company has any new or unusual accounting or disclosure issues, obtaining preliminary SEC clearance before going to print can save considerable time and expense. The SEC permits a pre-filing review in which companies and their advisors can discuss any unusual or groundbreaking matters. These issues may be more easily handled earlier in the process rather than waiting for the SEC's comment letter.

Confidentiality

Historically, when a registration statement was submitted to the SEC for review, it became immediately available to the public via EDGAR. However, companies are now permitted to submit their registration statements on a confidential basis with the SEC.

The initial confidential submission and all amendments must be publicly filed with the SEC no later than 15 calendar days before the date on which the issuer conducts a roadshow. This 15-day period (sometimes referred to as a "seasoning period") is designed to provide potential investors with ample time to review the information previously submitted on a confidential basis. If the company does not make use of a roadshow (or communications that would constitute a roadshow), then its registration statement and prior confidential submissions should be publicly filed no later than 15 calendar days before the anticipated effective date of the registration statement.

If a company decides to abandon its transaction, the information previously submitted to the SEC will not become public and that information would be exempt from disclosure.

There may, however, be reasons why a company might want to opt for a public submission from the outset. For instance, if a company is concurrently seeking a strategic or financial



buyer, the public availability of the initial registration statement may encourage potential acquirers to come forward as a result of the credibility that results from the pursuit of an IPO and the transparency the Form S-1 brings regarding the financial success of the company.

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 onward

Responding to SEC comment letters and preparing the amended registration statement

After review of the registration statement, the SEC staff typically issues a comment letter that sets forth questions, possible deficiencies and suggested revisions. 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 comments and suggestions made by the staff are constructive.

Each comment in the staff’s letter 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 the filing is effective, the comment letters and the company’s responses 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 lawsuit, might reduce 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 issue comments. Thereafter, a company can expect to receive several subsequent comment letters from SEC staff outlining follow-up questions on responses to original comments or additional comments on new or amended information included in the registration statement. Generally these responses range from two weeks (second filing) to a week or less (subsequent filings).

In addition to filing the registration statement with the SEC, the company must make filings in the states in which the company intends to offer the securities, as well as with FINRA. Companies are required to publicly file the initial confidential submission and all amendments with the SEC no later than 15 calendar days before the date on which they conduct a roadshow.

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. The registration statement must be amended to include all information required by Regulation S-X before distributing the preliminary prospectus to investors and becoming effective. Companies are now encouraged not to print the preliminary prospectus 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.

Financial analyst meetings or roadshows

For potential investors to learn about the company, an underwriter arranges meetings, called roadshows, with financial analysts, brokers and potential institutional investors. These meetings are generally attended by the company’s key executives and may take place at various locations around the country or the world.

It is vital that the management team be well prepared for these meetings. This cannot be emphasized enough. Executives should not assume that the prospectus is able to stand on its own—rather, they should anticipate and know the answers to potential questions concerning the specifics

of the business. The credibility projected by a management team during its presentation and its ability to respond to potential investors’ and brokers’ questions will have a major impact on the success of the offering.

The roadshows 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 roadshow can last up to two weeks with several 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 attending three to five similar presentations in a day.

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 to be sold—both the number of shares and dollar amount. 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 the company, current conditions in the securities markets and indications of interest received during the roadshow.

In establishing an offering price, the underwriters will look at a multiple of revenue, earnings or cash flow based upon that of similar companies. These multiples will be applied to the company’s most recent results of operations and their projected future results. The underwriter will also examine the current stock market price of comparable companies to assess current market sentiment in the relevant sector.

Another consideration is the IPO discount. A typical IPO discount is 10-20 percent. 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. After a period of trading, the stock should settle at an aftermarket share value in line with its comparable companies.

Timing 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 it would have during the economic crises that began in 2008. In addition to cyclical market factors, particular industries go through

hot and cold periods. Stocks sold through the public market are often impacted by market sentiment, either positively or negatively.

Upon completion of negotiations with the underwriter—usually about the time the registration statement is ready to become effective and the roadshow 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 pricing amendment and is filed with the SEC.

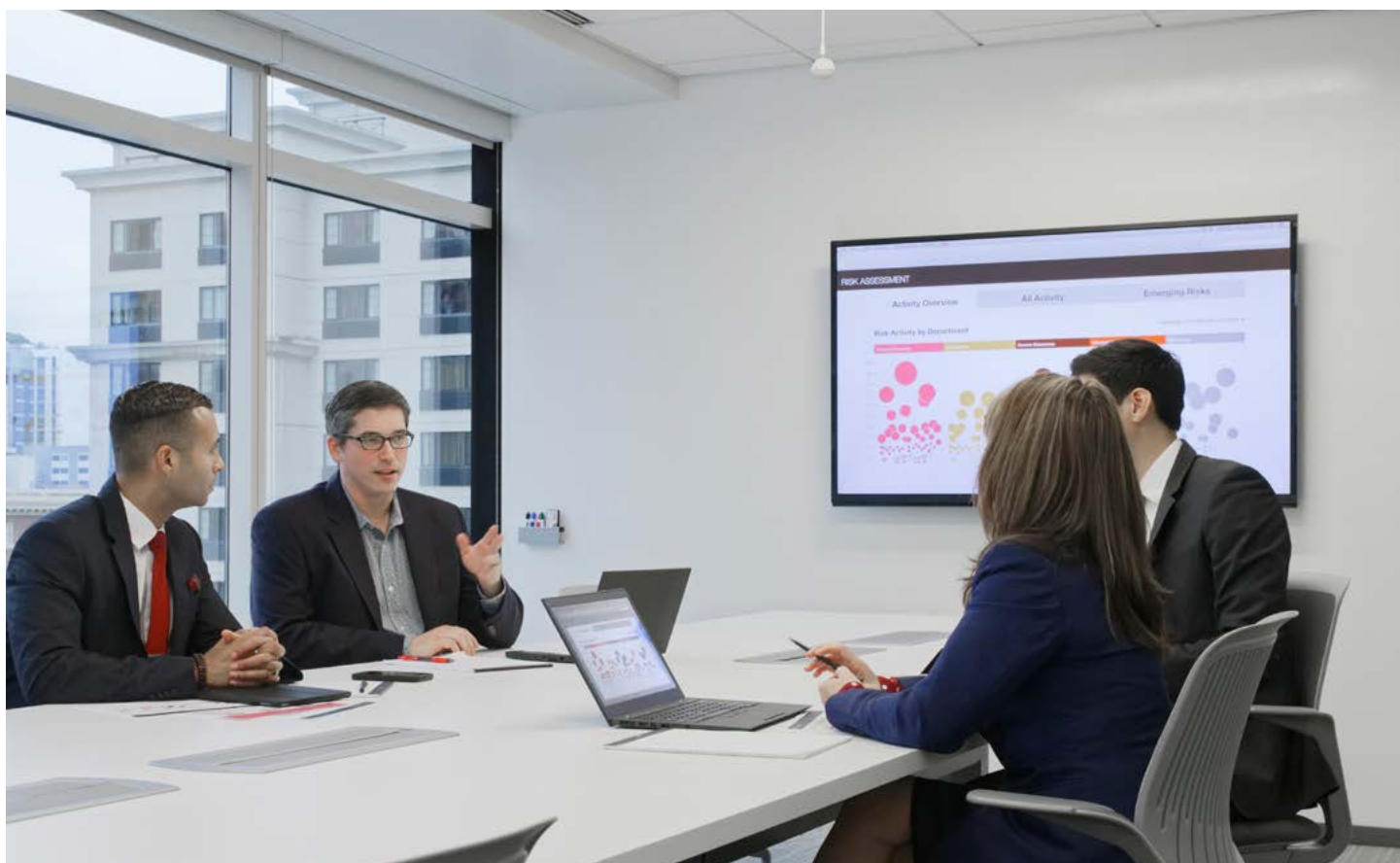
In an effort to simplify the filing requirements associated with the final pricing amendment, the SEC passed a rule allowing companies to omit information concerning the public offering price, price-related information and the underwriting syndicate from a registration statement that is declared effective. 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.

Holding the closing meeting

The closing date—This date is generally specified in the underwriting agreement and 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 auditors, are also exchanged.

Overallocation or “greenshoe” option—If an offering trades well following pricing, the company and its underwriters may exercise an overallocation option, selling more shares than originally planned. “Greenshoe” options are capped at 15 percent of the shares offered, but they can be less. Overallocation options provide book runners a useful tool for managing the initial trading of an IPO.



Summary timing, participants and roles and responsibilities

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

	Prior to filing date	Prior to completion of roadshow	Prior to effective date	Effective date	3–7 days after effective date	Thereafter
Company	<ul style="list-style-type: none"> • Begin quiet period • Hold an all-hands meeting • Select printer and transfer agent • Clean up financial statements; ensure compliance with Regulation S-X 	<ul style="list-style-type: none"> • Begin cooling-off period • Executives perform roadshow 		<ul style="list-style-type: none"> • Execute underwriting agreement • Issue press release 	<ul style="list-style-type: none"> • Provide certificates • Collect proceeds 	<ul style="list-style-type: none"> • Provide additional certificates • Collect additional proceeds (overallotment or “greenshoe” option)
Company counsel	<ul style="list-style-type: none"> • Perform housekeeping of company records • Draft Form S-1 • File w/the SEC • File FINRA listing application 	<ul style="list-style-type: none"> • Clear SEC comments 	<ul style="list-style-type: none"> • File pricing amendment • Request acceleration • File final registration statement 		<ul style="list-style-type: none"> • Deliver documents/opinions 	<ul style="list-style-type: none"> • Update closing documents
Independent auditor	<ul style="list-style-type: none"> • Complete audit of annual financial statements and review of interim financial statements • Review registration statement 	<ul style="list-style-type: none"> • Audit/review updated financial statements, if necessary • Respond to SEC comment letters 	<ul style="list-style-type: none"> • Deliver draft comfort letter 	<ul style="list-style-type: none"> • Deliver final comfort letter 	<ul style="list-style-type: none"> • Deliver bring down comfort letter 	<ul style="list-style-type: none"> • Deliver second bring down comfort letter
Advisory accountant	<ul style="list-style-type: none"> • Advise the company on the financial statements, technical accounting issues and registration statement, including any pro forma financial information 	<ul style="list-style-type: none"> • Advise the company on the updated registration statement 				<ul style="list-style-type: none"> • Advise the company on ongoing reporting and compliance requirements as a public entity

	<i>Prior to filing date</i>	<i>Prior to completion of roadshow</i>	<i>Prior to effective date</i>	<i>Effective date</i>	<i>3–7 days after effective date</i>	<i>Thereafter</i>
Investment banker or underwriter	<ul style="list-style-type: none"> Assess market opportunity Continue due diligence 	<ul style="list-style-type: none"> Distribute “red herring” Orchestrate roadshow Solicit expressions of interest 	<ul style="list-style-type: none"> Form syndicate 	<ul style="list-style-type: none"> Execute underwriting agreement 	<ul style="list-style-type: none"> Provide net proceeds 	<ul style="list-style-type: none"> Exercise overallocation option Make determination about issuing research report
Capital markets advisor	<ul style="list-style-type: none"> Advise company on underwriter selection and positioning itself with underwriters’ equity story and valuation 	<ul style="list-style-type: none"> Advise company on key decisions Serve as sounding board regarding advice provided by the investment banks 				
Underwriters’ counsel	<ul style="list-style-type: none"> Begin due diligence Prepare FINRA regulation filing Undertake “Blue Sky” filings 	<ul style="list-style-type: none"> Clear FINRA regulation comments 	<ul style="list-style-type: none"> Continue due diligence 		<ul style="list-style-type: none"> Assist in closing 	<ul style="list-style-type: none"> Assist in second closing
Financial printer		<ul style="list-style-type: none"> Print preliminary registration statement/prospectus (“red herring”) Produce SEC & FINRA regulation filing packages 			<ul style="list-style-type: none"> Print final registration statement/prospectus 	
SEC	<ul style="list-style-type: none"> Review preliminary registration statement Issue comment letters 			<ul style="list-style-type: none"> Declare offering effective 		
FINRA regulation	<ul style="list-style-type: none"> Review preliminary registration statement Issue comment letters 	<ul style="list-style-type: none"> Address comments 		<ul style="list-style-type: none"> Declare no objections 		



We are public! Now what?

Public companies must proactively manage their reputations by communicating regularly with investors, analysts and the financial media. Regular communication will help them 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 cadence of quarterly and annual reporting requirements, their content and costs.

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. Any weakness in systems or failure to comply with regulations could publicly embarrass management, damage the company's reputation and potentially result in criminal and civil liability. The benefits of careful preparation and planning are realized within the first year of the IPO.

Understand your reporting obligations

Public companies are required by the SEC, under the 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. A financial public relations firm can assist companies with furnishing annual reports to shareholders.

SEC-designated filer status

The SEC designates companies into three categories of filers to determine filing deadlines for Forms 10-K and 10-Q. The SEC has also designated an SRC 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); and
- The company is not eligible to use the requirements for SRCs.

Companies not meeting these definitions are considered non-accelerated filers. Note that companies will generally be considered non-accelerated filers in the first year as a public company, 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.

What forms will I have to prepare?

The table below presents an overview of the basic SEC reporting forms and requirements for public companies based on their designated filer status.

Form	Description	Due date based on designation
Form 10-K	This is the annual report to shareholders (conforming to SEC specifications) and it discloses detailed information about the company's activities, risks, financial condition and results of operations. It also contains the company's audited annual financial statements, which include 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).	<ul style="list-style-type: none"> • 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 auditor prior to filing.	<ul style="list-style-type: none"> • 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 auditor; 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 auditor, that previously issued financial statements should no longer be relied upon.	<ul style="list-style-type: none"> • 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).	<ul style="list-style-type: none"> • Due dates vary

Preparation of a reporting calendar

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 as

the inability to meet these requirements will shake investor confidence or subject the company to a delisting. To meet the various reporting requirements imposed on them, public companies must maintain adequate financial staff, supported by legal counsel and knowledgeable independent auditors.

The following is a sample compliance calendar assuming that the registrant has a calendar fiscal year.

6/30/x1	Fiscal year 20x1 second quarter end
7/17/x1	Effective date of registration statement—company becomes a reporting company
8/31/x1 ⁽¹⁾	Second quarter Form 10-Q due (unless 6/30/x1 financials are included and discussed in registration statement)
9/30/x1	Fiscal year 20x1 third quarter end
11/15/x1	Third quarter Form 10-Q due
12/31/x1	Fiscal year 20x1 year end
3/01/x2 ⁽²⁾	Initiate proxy search
3/15/x2	File Preliminary Proxy Statement and form of Proxy with the SEC and FINRA, if necessary
3/31/x2	Fiscal year 20x1 Form 10-K due
3/31/x2	Fiscal year 20x2 first quarter end
4/02/x2 ⁽²⁾	Record date—Annual Meeting of Shareholders
4/16/x2 ⁽²⁾	File Definitive Proxy Statement, form of Proxy and Annual Report to Shareholders
4/16/x2 ⁽²⁾	Mail Definitive Proxy Statement, form of Proxy and Annual Report to Shareholders
5/15/x2	First quarter Form 10-Q due
5/30/x2	Annual Meeting of Shareholders
7/16/x2	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 a concept does not apply to Form 10-K filed after an IPO under Section 12. For an equity offering (which is typically filed under Section 12) completed shortly after year end, the Form 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)).

Maintain 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 aftermarket support can be created with the assistance of a financial public relations firm. This strategy usually includes choosing an individual within the company to handle shareholder relations as well as assistance from an external firm. This helps ensure the release of 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 fully explain corporate results. Transparency in reporting will 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, companies should consider the following:

- Is the company demonstrating a sustained or increasing growth rate that is high enough to attract/satisfy investors? A company must continue to grow at a rate satisfactory to investors; its share value will be determined to a large extent by the company's earnings potential.
- Are the company's products or services highly visible and of interest to the consuming and investing public? The company should project a positive image to investors, customers and the community. This is important, since the attitude of the public may sway the stock's value. For example, today there is a growing interest in corporate social responsibility, including sustainability and climate change issues. Companies need 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.

Maintain regulatory compliance

Understand reporting requirements under Sarbanes-Oxley

The management of a newly public company is required to deliver a report that assesses the effectiveness of the company's internal control over financial reporting in the second annual report filed subsequent to the IPO, pursuant to Section 302 of Sarbanes-Oxley. 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.

EGCs are exempt from the requirement to obtain an audit of internal control over financial reporting. It is important to note that this exemption only applies to the internal control audit requirements (Sarbanes-Oxley Section 404(b)). EGCs are not exempt from the requirement for management to assess internal controls over financial reporting (Sarbanes-Oxley Section 404(a)) beginning with the company's second annual report. Regardless, a company must perform substantial work to implement the appropriate processes, document the system of internal control over key processes, assess control design, remediate any deficiencies identified and test the operation of controls. These processes can be both costly and challenging.

Comply with XBRL reporting

Since 2011, all SEC registrants have been 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 eXtensible Business Reporting Language (XBRL). This will be a new endeavor for many non-public companies and will require additional effort from the finance department each reporting period.

Provide 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 non-public information regarding a registrant's results of operations or financial condition, Item 2.02 Form 8-K 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 non-public 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.

Comply with 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 contain 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 applies to registration statements and 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, the following two points should be noted:

1. 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.

2. 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 provision does not require a company to update forward-looking statements. While companies are not legally required to update such information, materially 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 newly 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).

Restrict trading on non-public 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 privy 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).

Perform 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.



Conclusion

When you are pursuing an IPO, having an advisor with the right experience and insight can make the difference in helping you achieve your objectives. You need to be ready when the capital market window opens.

An IPO is a transformational event, requiring many different parts of the business to work together toward a common goal. There will be multiple workstreams, from drafting the registration statement, to preparing and auditing financial information, legal and tax structuring, creating new governance structures, developing the equity story, selecting underwriters and research analysts, providing input into valuation, identifying and educating key investors, preparing for the roadshow and readying the organization for life as a public company.

For many companies this will present a significant cultural shift and adjustment period. Improved business fundamentals will increase your chances for a successful transaction. Once the transaction is complete, your company will need to be ready for new timelines and business cycles, incremental financial and operational data needs and transparency in meeting shareholder expectations. The organization needs to effectively operate as a public company and scale its operations.

An experienced advisor can help the “going public” and “being public” processes stay on track. At PwC, our unique vantage point allows us to spot opportunities to help advance your strategic agenda. Our deals strategy, investment banking advisory, execution and implementation professionals not only give us a holistic and deep knowledge of your business, but also insights and ideas across sectors and geographies.

We will assist in the development and execution of an IPO strategy that drives your long-term growth agenda, while delivering value in the short term.

Whether you are a venture or private equity backed company contemplating your exit or a privately held company seeking to expand, PwC can provide a full range of advisory services to support your IPO.

To learn more about how PwC can support your specific growth objectives and paths to capital, please visit www.pwc.com/us/iposervices.



How PwC can help

PwC's comprehensive IPO services brings together an integrated set of solutions to help companies as they prepare for the public markets. The following chart illustrates many of the areas an organization will need to focus on to improve as the organization embarks on the going public process and transitions to operate as a public company.

PwC may advise clients in the following areas*:

Accounting and financial reporting

- Development of SEC financial statements and disclosures
- Development of MD&A, summary/selected financial data, capitalization/dilution tables and other financial data in a registration statement, prospectus or offering memorandum
- Improvement of finance organization, close process,

general finance and accounting processes and management reporting

- Documentation, identification and assistance with resolution of critical, complex and judgmental accounting issues and policies
- Development of responses to SEC comment letters
- Development of Article 11 pro forma support schedules with financial data and pro forma adjustments

Capital markets advisory

- Development of IPO story and identification of KPIs
- Identification of client's comparables
- Advisor selection process including underwriters, research analysts and exchange
- Analyst and roadshow presentations



Project management advisory

- Development of flexible and scalable project management solutions
- Development of project governance structure, communication framework and status reporting mechanism
- Development of readiness assessment, timelines and project plans
- Development of an issue resolution framework and organization around complex workstream structures
- Options to accelerate IPO closing process

Tax

- Application of ASC 740, “Tax Provisions,” accounting and disclosures
- Application of Foreign Account Tax Compliance Act (FATCA)
- Tax department organizational design, tax processes and controls
- Legal entity restructuring
- Development of jurisdiction and domicile tax plan

Internal controls and internal audit

- Development of an internal audit function
- Evaluation of internal audit co-sourcing and outsourcing solutions
- SOX readiness assessment and development of a remediation plan
- Internal control documentation, internal control testing and development of CEO/CFO annual and quarterly certification process

Executive compensation & HR

- Benchmarking, program planning and design of executive compensation program
- Preparation of compensation and governance disclosures
- HR systems and processes

Financial planning and analysis

- Improvement of budgeting, planning and analysis function and related processes

Treasury

- Development of treasury strategy
- Improvement of bank and cash management infrastructure
- Selection and implementation of treasury systems and processes

Corporate strategy & development

- Improvement of capital structure and evaluation of financing alternatives
- Development of a strategic plan to increase value

Governance and leadership

- New governance requirements
- Board and audit committee composition
- Development of charters, bylaws and whistleblower program

Enterprise risk management

- Implementation of risk management framework and processes
- Evaluation of risk management assessment and evaluation of capabilities
- Development or refinement of risk management framework

(*) PwC may not be able to provide all of these services to PwC audit clients or clients with independence restrictions.

The benefits of having PwC as an advisor on your IPO

PwC offers:

- A uniquely positioned firm that has mobilized a comprehensive set of integrated services to help you from the strategic planning stage through the execution of your IPO and then to prepare for life as a public company and beyond;
- A dedicated team of professionals specializing in IPOs, who can leverage the power of PwC’s global reach, our broad advisory and tax capabilities to address all components of your offering;
- A proven track record involving thousands of complex IPOs to help you move forward quickly and efficiently;
- Proactive resolution of issues resulting in fewer surprises and delays in your IPO process; and
- Deep technical skills combined with in-depth industry knowledge and experience that helps us provide specialized services tailored to your unique needs.

What our clients are saying about IPO readiness

“We had a huge initiative to get to our IPO. PwC brought their ‘A game’— their depth of technical expertise, cross functional approach to an IPO and overall leadership skills helped us to achieve our IPO in a very short timeframe.”

— CFO, Energy Company

“It was a huge undertaking to get through the Registration process. PwC’s commitment and effort enabled our portfolio company to overcome language, cultural and technical hurdles literally on a global scale. They assembled a strong team, accessed critical internal channels and were highly responsive throughout the process.”

—CFO, Private Equity Firm

“A lot of firms can help with the project. The difference is the people. PwC brings an experienced service team that understands our company and the transaction challenges, and knows how best to get the work done.”

—Chief Accounting Officer/Controller, Manufacturing Company

“PwC is a great firm, but service comes down to people, and they are truly a fantastic service provider.”

—CFO, Private Equity Firm

“The PwC team was outstanding and they certainly made the path getting to bell-ringing much more tolerable than it would have been otherwise. We all appreciated their support very much.”

— Senior Vice President & Chief Accounting Officer, Hospitality Company

“PwC is really the only choice when it comes to IPO work.”

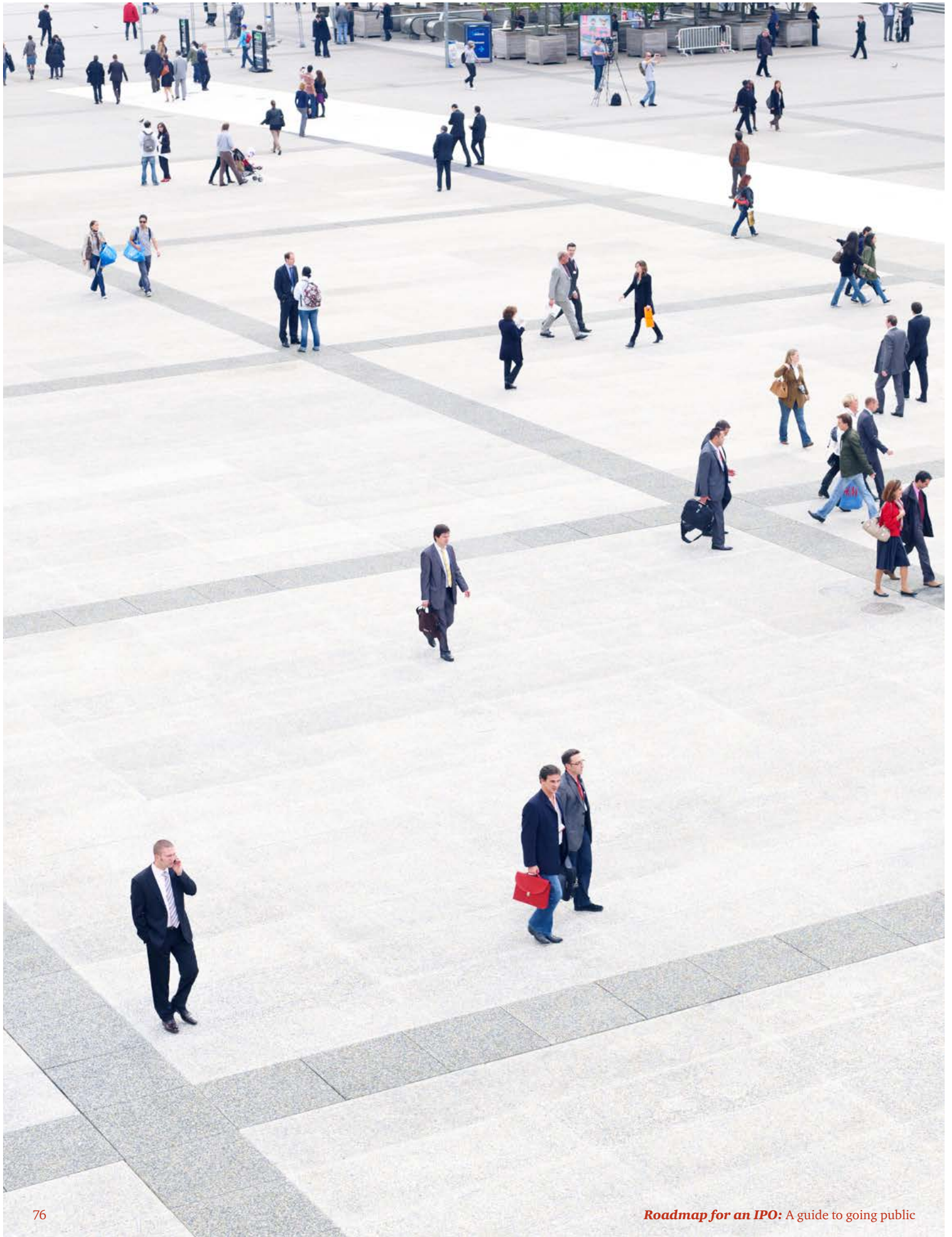
—Corporate Controller & Chief Accounting Officer, Technology Company

“We never did an IPO assessment and I wish we would have. It would have made the IPO process much easier. It was much more intense and time consuming than I had expected.”

—Corporate Controller & Chief Accounting Officer, Technology Company

“We really appreciate all the great work the PwC team did on our offering. Your help got us through critical junctures—technical accounting hurdles, due diligence support and S-1 crunch time. Great work!”

—Treasurer, Energy Company



Contact the PwC Deals practice

For a deeper discussion about our services, please contact one of our practice leaders:

Bob Saada

Partner, US Deals Leader
PwC Deals
(646) 471 7219
bob.d.saada@pwc.com

David Ethridge

Managing Director, US IPO Services Leader
PwC Deals
(212) 845 0739
david.a.ethridge@pwc.com

Alan Jones

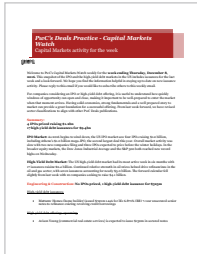
Partner, US IPO Services
PwC Deals
(415) 498 7398
alan.jones@pwc.com

Daniel Klausner

Managing Director, US Capital Markets Advisory Leader
PwC Deals
(646) 471-5388
daniel.h.klausner@pwc.com



More from PwC



US Capital Markets Watch (weekly update)



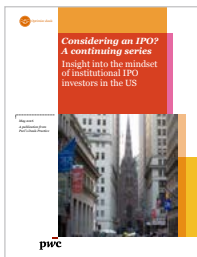
Quarterly Capital Markets Watch



2016 Annual US Capital Markets Watch: Analysis and trends



Navigating Your IPO: How PwC can help



Considering an IPO? Insight into the mindset of institutional investors in the US



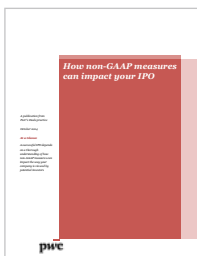
Exploring an IPO: the 9 1/2 questions boards should ask



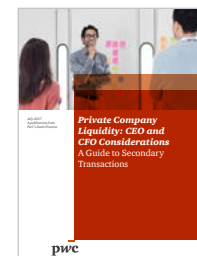
Considering an IPO to fuel your company's future? Insight into the costs of going public and being public



Material weaknesses: Why disclosing them before your IPO may make sense



How non-GAAP measures can impact your IPO



Private Company Liquidity: CEO and CFO Considerations—A Guide to Secondary Transactions

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 have previously 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 auditors, underwriters and underwriters' counsel.

All-or-none agreement

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.

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.

Beneficial conversion feature (BCF)

A BCF exists when the conversion price of a convertible instrument is below the per share fair value of the underlying stock into which it is convertible. The instrument is "in the money" and the holder realizes a benefit to the extent of the price difference.

Best-efforts agreement

An underwriting agreement in which 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.

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.

Capital markets advisor

An independent IPO advisor who can provide perspective and advice on the company's equity story, valuation and the viability of executing a successful IPO.

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.

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.

Chief operating decision maker (CODM)

The person or function that allocates resources to and assesses the performance of the operating segments. The CODM is responsible for making strategic decisions about the entity's segments.

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 three to five business days after the pricing of the offering.

Comment letter

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

Committee of Sponsoring Organizations of the Treadway Commission (COSO)

Organization focused on guiding executive management and governance entities on relevant aspects of organizational governance, business ethics, internal control, enterprise risk management, fraud and financial reporting. COSO establishes common internal control models against which companies and organizations may assess their control systems.

Compensation Discussion and Analysis (CD&A)

A required part of a company's annual proxy statement. It provides material information about the compensation objectives and policies for named executive officers.

Compliance and Disclosure Interpretations (C&DIs)

Interpretations that reflect the views of the staff of the Division of Corporation Finance.

Controlled company

A company in which more than 50 percent of the voting power is held by an individual, group or another company.

Convertible securities

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

Cooling-off period See *Waiting period*.

Dealer

A commonly used term applied to those individuals or firms that trade securities. Dealers trade securities for others and for their own account. Dealers may own the traded securities and thus are subject to the risks and rewards of ownership.

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 EPS.

Directors' and officers' (D&O) liability insurance

Liability insurance covering directors and officers for claims made against them while serving on a board of directors and/or as an officer.

Directors' and officers' (D&O) questionnaires'

Questionnaires circulated by the company's and underwriters' 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

An 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.

Emerging growth company (EGC)

An issuer that is broadly defined by:

- Less than \$1.07 billion in gross revenue (such amount is indexed for inflation every five years);
- Less than \$1 billion in issues of non-convertible debt in a 3-year period; and
- Generally less than \$700 million in worldwide public float (i.e., not a large accelerated filer).

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 talent.

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 auditors, accountants, engineers or others whose proficiency in a specific area qualify them as specialists in their fields.

eXtensible Business Reporting Language (XBRL)

The financial and operational business reporting offshoot of eXtensible Markup Language (XML), which is a freely-licensable, open technology standard used to electronically exchange business information.

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 the NASDAQ, the NYSE and the International Security 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.

Financial Reporting Manual (FRM)

Manual containing interpretations by the staff of the Division of Corporation Finance regarding various financial reporting matters.

Financial Reporting Release (FRR)

Release by the SEC designed to communicate the SEC's positions on accounting and auditing principles and practices and used to adopt, amend or interpret rules and regulations relating to accounting and auditing issues or financial statement disclosures.

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 themselves.

Fixing America's Surface Transportation Act (FAST Act)

Legislation, enacted on December 4, 2015, to provide new accommodations to facilitate capital formation by smaller companies and simplify disclosures. While the primary objective of the law was to ensure funding for US transportation and infrastructure improvements, the FAST Act included a number of securities-related provisions and includes changes to the requirements applicable to emerging growth companies (EGCs) under the JOBS Act.

Foreign Account Tax Compliance Act (FATCA)

An act generally requiring that foreign financial institutions and certain other non-financial foreign entities report on the foreign assets held by their US account holders or be subject to withholding on withholdable payments.

Foreign private issuer (FPI)

Any foreign issuer (other than a foreign government), unless

- More than 50 percent of the issuer's outstanding voting securities are held directly or indirectly or record by residents of the US; and
- Any of the following applies:
 - The majority of the issuer's executive officers or directors are US citizens or residents;
 - More than 50 percent of the issuer's assets are located in the US; or
 - The issuer's business is administered principally in the US.

Form 8-K

A form required to be filed by registrants 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 audited financial statements, related schedules and a range of 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 who may have access to non-public information, such as officers, directors and major shareholders.

Institutional investors

Non-individuals shareholders. Institutional investors include pension funds, mutual funds and trust.

Institutional Shareholder Services (ISS)

A proxy advisory firm that provides research and analysis, governance data and proxy voting advice to corporations, governance institutions and investors, including hedge funds, mutual funds and similar organizations.

International Accounting Standards Board (IASB)

A private body that establishes International Financial Reporting Standards (IFRS) that are used in many parts in the world.

Investment banker

A person or (usually) a firm that, among other things, underwrites securities, functions as a broker/dealer and offers 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.

Jumpstart Our Business Startups Act (JOBS Act)

Legislation, enacted on April 5, 2012, designed to encourage job creation and economic growth by making it easier for private companies to access the public capital markets. Title I of the JOBS Act created a number of special accommodations under US securities laws that are intended to make it easier for EGCs to complete an equity IPO and to operate in the SEC reporting system.

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

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. Usually appears as a provision in the underwriting agreement.

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

The primary decision-maker in a syndicate of underwriters, also referred to as the "lead underwriter."

Market window

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

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.

Non-GAAP measure (NGM)

A metric calculated and presented using a methodology not outlined in GAAP. Non-GAAP measures are often used to supplement GAAP financial reporting to provide investors and other stakeholders with additional insight into an issuer's performance.

Option

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. In practice, this is also referred to as a "greenshoe" option.

Ownership change

Defined in the Internal Revenue Code 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 preownership change net operating losses.

Post-effective amendment

An amendment filed subsequent to the effective date of the registration.

Preliminary prospectus See *Red herring*

Price amendment

Usually the final amendment to a registration statement; includes the offering price and final pro forma financial information.

Price range

A proposed price per share range that is often printed on the cover page of a preliminary prospectus. **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.

Project management office (PMO)

Group within an organization that defines and maintains standards for project management within the organization.

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

A statement of information required by the SEC to be furnished to shareholders by those individuals soliciting shareholder proxies.

Public Company Accounting Oversight Board (PCAOB)

An organization established by the Sarbanes-Oxley Act to oversee the audit of public companies that are subject to US securities laws. The duties of the PCAOB, as established by the Act, include establishing audit, quality control and independence standards; registering public accounting firms; inspecting public accounting firms; and conducting investigations and disciplinary proceedings. The PCAOB, subject to the oversight of the SEC, 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, was required to be printed in red ink.

Registrant

An entity that must file periodic reports with the SEC.

Registrar

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

Registration statement

The primary document required to be filed with the SEC in connection with the issuance of securities. As specified by the Securities Act of 1933, a domestic registrant generally uses Form S-1 for an initial public offering.

Regulation S-K

Regulation that outlines the disclosure requirements for the non-financial statement portion of filings with the SEC.

Regulation S-T

Regulation that governs the preparation and submission of documents filed via the SEC EDGAR system.

Regulation S-X

Regulation that 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."

Roadshow

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 corporation

Corporation that has 35 or fewer shareholders and that meets 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 provision

SEC provision that protects issuers from legal action if specified requirements have been satisfied or, in certain cases, if a good-faith effort has been made to comply with specified requirements.

Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley/SOX)

The Act 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)

Legislation passed as a result of the market crash of 1929. 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)

Legislation designed to govern the trading of securities on the secondary market and to regulate the exchanges and broker-dealers as a means of protecting the investing public. The 1934 Act requires companies registered under the 1933 Act to file periodic reports (e.g., Forms 10-K and 10-Q) with the SEC and to disclose certain information to shareholders. Companies traded over the counter with 500 or more shareholders and total assets of more than \$10 million and companies that elect to be listed on a national stock exchange must file a registration statement under the 1934 Act.

Securities and Exchange Commission (SEC)

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.

Smaller reporting company (SRC)

A US or Canadian entity with revenues of less than \$50 million and public float of less than \$75 million.

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

- 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 adding the aggregate worldwide number of such shares held by non-affiliates to the number of such shares included in the registration statement and then multiplying by the estimated number by the estimated public offering price of the shares; and
- 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. It also makes it easier and less costly for smaller companies to comply with disclosure requirements.

Sophisticated investor

Potential investor who is capable of evaluating the merits of the investment venture as related to certain exempt offerings.

Special purpose acquisition company (SPAC)

Publicly-traded buyout company that raises collective investment funds in the form of blind pool money, through an IPO, for the purpose of completing an acquisition of an existing private company, sometimes in a specified target industry. The money raised through the IPO of an SPAC is held in a trust until the SPAC identifies a merger or acquisition opportunity to pursue with the invested funds.

Staff Accounting Bulletin (SAB)

Bulletin detailing interpretations and practices followed by the SEC staff. Although these bulletins are not formally approved by the SEC commissioners, they are generally required to be followed by registrants.

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 include one of the following:

- 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 a requisite period of time during which the stock must be held before it can be sold.
- b. Non-qualified stock option plans, which are plans that are not ISOs. These plans trigger a tax upon exercise. The issuing employer, however, can obtain a tax deduction in the period the option is exercised, which is not permissible when an ISO is exercised.

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.

Tax Receivable Agreement (TRA)

A contract between the pre-IPO investors and the public company to share in typically 85 percent of the tax savings recognized by the public company as a result of certain tax attributes available due to the form of the transaction. Common tax attributes included in the tax receivable agreement are net operating losses and tax-basis step-ups under section 743(b) of the Internal Revenue Code.

Trust

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.

Up-C structure

An IPO structure in which the public typically invests in a newly formed corporation (PubCo) that uses the IPO proceeds to acquire an interest in a partnership with the historical owners. Any economic interest retained by the pre-IPO investors continues to be in the partnership. The pre-IPO investors have exchangeable partnership units that provide similar liquidity rights as do those in a traditional IPO. A tax receivable agreement is typically executed in conjunction with the IPO.

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.

www.pwc.com/us/iposervices

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors. PwC United States helps organisations and individuals create the value they're looking for. We're a member of the PwC network of firms in 157 countries with more than 195,000 people who are committed to delivering quality in assurance, tax and advisory services. Find out more and tell us what matters to you by visiting us at www.pwc.com/US

© 2017 PricewaterhouseCoopers LLP, a Delaware limited liability partnership. All rights reserved. PwC refers to the United States member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details. 329170. GF.