THE GUIDE FROM BDO'S NATIONAL ASSURANCE PRACTICE

BDO KNOWS: **GOING PUBLIC**

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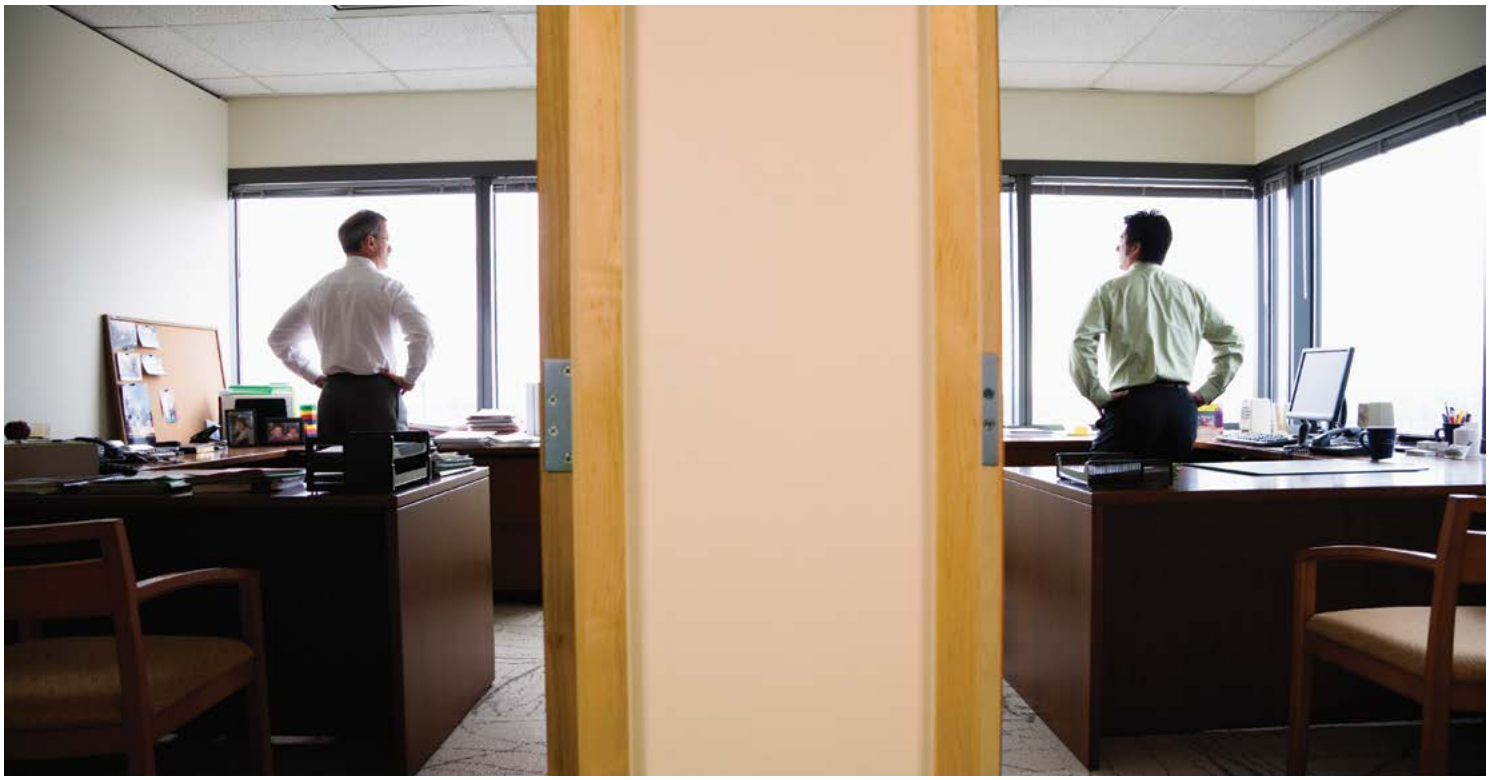


HOW TO USE THE BDO GUIDE TO GOING PUBLIC

THIS GUIDE IS FOR BUSINESS OWNERS WHO ARE CONSIDERING TAKING THEIR COMPANY PUBLIC. IT EXPLAINS AND HIGHLIGHTS THE SIGNIFICANT FACTORS IN THE GOING PUBLIC DECISION, AS WELL AS THE PROCESS ITSELF. THERE ARE ADVANTAGES AND DISADVANTAGES TO THIS COURSE OF ACTION, AND OUR GUIDE IS DESIGNED TO HELP YOU ANALYZE THEM IN RELATION TO YOUR COMPANY'S PARTICULAR CIRCUMSTANCES.

The Guide is intended to provide only general information. It is not a substitute for specific legal, accounting and financial advice from qualified professionals for the application of the laws and regulations discussed. Please consult those advisors to obtain that guidance.

For easy reference, unfamiliar terms related to going public are found in the distinctive blue blocks on the page where the term is first used. These and other technical terms are defined in the glossary. Of course, as with any guide, the rules discussed here are subject to change.

BDO is proud to have helped numerous companies go public, from the initial planning stage through the final filing of the registration statement. We would be pleased to advise you and your company in this most critical process.

IS GOING PUBLIC THE RIGHT DECISION?

MANY ENTREPRENEURS HAVE FOUND INITIAL PUBLIC OFFERINGS TO BE EXCEPTIONALLY REWARDING – BOTH FOR THEIR COMPANIES AND THEMSELVES.

Take the case of a highly successful software house that built its reputation on quality products and talented employees. The founder dreaded the time-consuming and complex process of going public and the different operating style of a public company. But, on balance, he acknowledged that the capital needs of the company dictated that the time to take that step had come. The company raised about $100 million in the public offering. After the offering the value of the stock rose in tandem with the company's earnings. As a result, the company now has a substantial foundation for future growth and its founders have become financially secure for life.

If you are the head of a privately owned company, you may very well be asking yourself, "Is going public the right decision?"

MAKING THE DECISION

IF YOUR PRIVATELY HELD COMPANY IS SUCCESSFUL AND LOOKS LIKE IT WILL CONTINUE TO GROW, YOU MAY ALREADY BE THINKING ABOUT ENTERING THE PUBLIC MARKETPLACE. YOUR COMPANY CAN GO PUBLIC THROUGH ITS FIRST REGISTERED OFFERING OF DEBT OR EQUITY SECURITIES. THIS GUIDE DISCUSSES THE PROCESS OF GOING PUBLIC BY OFFERING EQUITY SECURITIES, BUT IT IS ALSO APPLICABLE TO DEBT OFFERINGS.

Your current objectives are key in making this decision. Every founder of a privately owned business has individual preferences and goals which motivated the original investment of time, money, and energy in the enterprise. However, business and personal objectives often change, and capital to expand the business and personal liquidity may now be among your top priorities.

If you are seriously considering going public, first carefully weigh both the advantages and drawbacks of this process. Recent legislation may help to ease the process and costs associated with raising capital from the public. The Jumpstart Our Business Startups (JOBS) Act, signed into law in April 2012, amends a number of provisions of the securities laws to streamline the registration process and establish an "on-ramp" for certain companies considering an IPO. The JOBS Act provides certain reporting relief for a new category of filers called emerging growth companies, which is further highlighted in the Guide. Regardless, you will probably need to rely on trusted professional advisors to act as a sounding board. Among them, your public accounting firm should be able to assist you in determining whether a public offering is feasible and desirable in your particular circumstances. It can also help you explore other financing options such as: bank loans, private placements of debt or equity, venture capital, or small unregistered public offerings.

This Guide is designed to introduce you to the concept and major effects of going public; other financial alternatives are discussed in Appendix II on page 26.

WEIGHING THE KEY FACTORS

The opportunities for a public company to maximize the equity holding of the founders and to use the equity base for subsequent public offerings and bank borrowings are compelling. However, there are certain disadvantages associated with becoming a public company. This section describes some of the advantages and disadvantages you will encounter in the process.

WHAT ARE THE ADVANTAGES?

Stronger financial base: The major benefit of an initial public offering (IPO) is the substantial permanent capital it can provide to meet your company's immediate and long-term objectives. This new capital base can dramatically increase your company's ability to expand its current product line, engage in new businesses, or achieve any number of specific goals.

Better financing prospects: Equity raised through an IPO may help your company obtain debt financing. Returning to the market for additional capital through subsequent offerings (e.g., additional primary equity offerings, debt offerings, etc.) may also be easier once your company's stock is favorably viewed by the business community.

Stronger position for acquisitions, creating new currencies: Acquired companies frequently accept the publicly traded stock of the acquiring company in lieu of cash. In fact, a stock deal may be more attractive than a cash acquisition, after considering income taxes.

Ability to attract and retain talent: A wider range of executive compensation in the form of stock options or stock purchase plans can be used to attract and retain talented managers. The marketability and potential appreciation of publicly traded stock is appealing to executives.

An available market: Shares you own in a public company are generally much more liquid than if your company remains private, although they are subject to certain resale limitations imposed by the Securities and Exchange Commission (SEC).

Increased prestige for the company and management: The status of being a public company is generally recognized as an important credential by lenders, investors, suppliers, and customers.

WHAT ARE THE DISADVANTAGES?

Pressure to maintain earnings growth: The SEC requires public companies to file quarterly and yearly financial statements. Since stock prices are generally based on the company's recent results and prospects, management is under pressure to maintain steady growth in earnings. This sometimes leads to decisions that conflict with sound long-range business strategies. For example, a company may forego a needed R&D project because of the resulting charge to earnings.

Disclosure of corporate and personal information: Public companies are required to regularly disclose information about sales, gross profit, net income, and EPS. Disclosure requirements also cover compensation of officers and directors, major customers, strategic plans, and related-party transactions.

Costs: While the costs of going public can be substantial, they are usually only a relatively small portion of the final offering proceeds.

However, once your company is public, there will be significant ongoing legal and accounting fees, independent directors fees, periodic filings fees, and directors and officers liability insurance. These costs might also include the costs of expanding your internal accounting system to generate the necessary management information and to meet the compliance and certification requirements of Sarbanes-Oxley Act Section 404 on internal control.

Loss of control: You will now be accountable to the shareholders, a board of directors, regulatory agencies, and financial analysts for all important business decisions. Your shareholder accountability has increased due to SEC rules mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act which requires companies to provide its shareholders with the ability to vote on executive compensation programs and golden parachute arrangements. While the votes are non-binding and advisory in nature, they place additional scrutiny over your executive compensation.

Enhanced corporate governance: You will need to meet the corporate governance and disclosure requirements of the Sarbanes-Oxley Act and the exchange on which your securities are traded. Officers and directors are now held to much higher corporate governance standards than in the past and face a greater risk of personal liability.

Loss of personal benefits: You may need to reduce business with related companies, move relatives off the payroll, or reduce your other "perks" to remove any appearance that insiders or others are being favored at the company's expense.

CEO and CFO acceptance of personal responsibility for periodic reports: Your CEO and CFO will need to certify responsibility for the financial statements, disclosure controls, and internal controls in the company's period reports (quarterly and annual). These certifications open these officers to both civil and criminal liability.

Trading restrictions and fair disclosure rules: There are a variety of trading restrictions dealing with limitations on the sale of unregistered stock, prohibition against trading on inside information, recapture of short-swing profits on securities sales and disclosure of non-public information to selected individuals like analysts. These items are discussed in more detail in Life As A Public Company on page 19.

WHAT ARE THE ALTERNATIVES?

Companies typically consider a variety of financing options prior to making the decision to go public such as: commercial bank loans, asset based financing, private placements, extended terms with suppliers, partnerships, etc. These sources should be explored prior to making the final decision on going public. See Appendix II for further discussion on page 26.

WILL MY PUBLIC OFFERING SUCCEED?

If you conclude that going public is to your company's advantage, the next major question is: will your offering succeed in the marketplace? The climate for IPOs can fluctuate dramatically, both long- and short-term. The climate must be carefully evaluated to project the stock price and number of shares that can best be absorbed by the market at any given time. Underwriters are familiar with what determines the success or failure of an offering in the IPO market and can advise you on timing.

The JOBS Act permits emerging growth companies to initiate the registration process confidentially with the SEC. The confidential submissions would then be filed (and made available to the public) no later than 21 days prior to the IPO road show. Should you decide to abandon the offering for whatever reason, this confidential submission process allows your information to remain private. Additionally, the JOBS Act permits emerging growth companies and their authorized persons (including the underwriters) to communicate with qualified institutional buyers or institutional accredited investors before or after the initial filing of the registration statement. This opportunity to "test the waters" and communicate with potential investors before the traditional IPO road show may help in determining the potential for success of your offering.

Another factor in arriving at your decision is whether the proceeds are fair compensation for relinquishing part of your business to outsiders. The size of the IPO depends on what your business is worth and what percentage is to be sold to the public. The offering price is determined through negotiations with the underwriter and is based primarily on:

- A comparison of your company's price/earnings ratio and other key performance indicators to other companies in the industry;
- An evaluation of your company's future prospects, management team, quality of earnings; and
- Current stock market conditions.

The gross proceeds from the offering are reduced by the underwriter's commission which could reach approximately 7% of the offering proceeds plus out-of-pocket expenses. Other costs of IPOs, including fees to attorneys, accountants, financial printers, and registration and filing fees vary widely, often running into several hundred thousand dollars. In addition, some underwriters will negotiate for warrants to purchase the company's stock, usually exercisable at approximately the public offering price. Although the total underwriter's fee is negotiated, there may not be much room for maneuvering since the range of fees among underwriters may be narrow.

IS GOING PUBLIC THE RIGHT DECISION?

After seriously considering the merits and drawbacks of an IPO and the potential size of an offering, you still need to understand what is involved in the process of going public from the preliminary stages to life as a public company. The balance of this Guide will clarify this often complex process to help you make your final decision with confidence.

GETTING READY

THE PROCESS OF GOING PUBLIC CAN BE A LONG ONE, WITH PERIODS OF ROUND-THE-CLOCK ACTIVITY ALTERNATING WITH SLOW SPELLS DURING WHICH YOU CAN DO YOUR DAY-TO-DAY BUSINESS PLANNING. IT IS IMPORTANT TO SET UP AND FOLLOW A STRATEGY TO HELP YOU ANTICIPATE ISSUES AND PREPARE A VARIETY OF SOLUTIONS. PREPARING FOR THE TRANSITION SHOULD BEGIN EARLY SINCE RESPONSIBILITIES, FINANCIAL STRUCTURE, AND MANAGEMENT POLICIES ARE FUNDAMENTALLY DIFFERENT BEFORE AND AFTER AN IPO.

The following are some of the issues you will need to address during the planning stage:

Audited financial statements and other financial information: You will need audited financial statements, for two or three years depending on your filer status. If you have made significant acquisitions in the past or have significant equity investments, audited financial statements of the acquiree/investee may also be required. Preparing these just before going public can be time-consuming, costly, and sometimes impossible because information is missing or audit procedures (e.g. physical inventory observations) were not performed at the appropriate time. It is best to bring in qualified registered independent public accountants to work with you as soon as going public appears likely. The accountants must be aware of the more stringent independence requirements necessary when dealing with a public company so that they may be independent in fact and in appearance. Providing certain non-auditing services, such as bookkeeping or executive search, for the company precludes the accountant from being associated with the financial statements in an SEC filing. Additionally, the accountants must be registered with the Public Company Accounting Oversight Board.

Timely audit: A timely audit of your financial statements can provide several additional benefits. It lends increased credibility to your financial statements, which can help you obtain credit or bring in more private investors. It will also give you a clearer picture of your company's operating results and how they will appear to investors. The ability to generate accurate and timely information is important not only for your internal accounting function, but also to generate quarterly and annual reports and certifications that are required by the SEC and the Sarbanes-Oxley Act. Such information is also needed by investors and analysts studying your company.

Corporate governance: If you are going to list on a national stock exchange, your company must meet certain corporate governance standards. Your company must have a board of directors comprised primarily of independent outside directors. The governance requirements resulting from the Sarbanes-Oxley Act and the Dodd-Frank Act must also be met. These requirements, including those implemented through the stock exchanges, follow:

- Your audit committee, compensation committee, and nominating committee must be comprised of independent outside directors;
- One member of the audit committee must be a 'financial expert';
- Your CEO and CFO must certify the financial statements; and
- Your external auditors are prohibited from providing certain non-audit services.

The national stock exchanges allow companies going public to phase in compliance with independent committee requirements as follows: (1) at least one director on the nominating, compensation, and audit committees must be independent as of the date of listing, (2) a majority of directors on the audit committee must be independent within 90 days of the registration statement being declared effective, (3) a majority of directors on the nominating and compensation committees must be independent within 90 days of the listing date, (4) the audit committee must be fully independent within one year of the registration statement being declared effective, (5) the nominating and compensation committees must be fully independent within one year of the listing date, and (6) a majority of the board must be independent within one year of the listing date. See Life as A Public Company for additional information on page 19.

Management team: Your management team should appeal to the investing public. Registration statements are required to identify senior executives, including a five-year work history for each individual. The capital markets view a strong management team, one that can maximize a company's potential, as a major selling point. This group should satisfy three basic requirements:

1) They should be professional. Individuals with experience in your industry are essential. Family members without the proper credentials may not be suitable.
2) They should have depth. Key management functions must be adequately covered. One entrepreneur is not enough to run an entire business.
3) They should be sensitive to shareholders' goals. It is important to consider how business decisions will be viewed by investors.

Executive compensation: You will need a sensible executive compensation program. It should be designed to attract and retain executives while avoiding any sign of overcompensation or favoritism. Compensation specialists can help structure compensation packages based on their broad knowledge of the tax, financial, and business implications of various strategies and experience with similar companies.

Public and investor relations: A public and investor relations program for your company should begin at an early stage. For a successful IPO and continued market strength, your company should have a positive image with the financial community and business press. The public relations program should take into account that name recognition takes time to develop and should begin at an early stage.

Capital structure: A suitable capital structure will need to be set up. Certain structures designed to meet the needs of a closely held business and its owners may not be right for a public company. For instance, a small number of outstanding shares with a consequent price per share that is too high for marketability or special voting privileges favoring the entrepreneur's family group may not be appropriate.

Related-party transactions: It will be necessary to clearly document related-party dealings. Arrangements and transactions your company has with affiliates such as officers, directors or major shareholders should be disclosed in the registration statement. Therefore, such dealings should be identified, documented, and reviewed with your attorney and lead underwriter to anticipate problems that could delay the SEC registration process or make the shares unattractive.

Advance preparation: You should consult with your accountants and attorneys to identify any information needed for disclosure that is not readily available. Preparing information such as audited financial statements of any predecessor, acquired companies, or significant equity method investees may be time consuming. By planning in advance to obtain this information, you may avoid costly delays in the IPO process or even a possible termination of the offering.

ASSEMBLING THE TEAM

DURING THE IPO PROCESS, YOU ARE LIKELY TO SPEND MORE TIME WITH THE GROUP OF PEOPLE INVOLVED IN YOUR OFFERING THAN WITH YOUR FAMILY, FRIENDS OR EMPLOYEES. NOT ONLY IS IT ESSENTIAL FOR THIS GROUP TO BE QUALIFIED FROM A PROFESSIONAL STANDPOINT, BUT THERE ALSO NEEDS TO BE A HIGH LEVEL OF TRUST AND COMMUNICATION AMONG THE PARTICIPANTS IN ORDER TO ACCOMPLISH YOUR OBJECTIVES.

Keep in mind that the four major goals in an IPO are to:
1) complete the registration process without major delays;
2) time the offering so it reaches the market at the most opportune moment;
3) obtain the best price; and
4) establish a strong market for the shares after the IPO.

To achieve these goals, you need a team of knowledgeable and experienced professional advisors, including independent accountants, attorneys, and the underwriter and its attorneys.

SELECTING YOUR FINANCIAL AND LEGAL ADVISORS

Your independent accounting firm will play a key role in the IPO process. It will be responsible for auditing the financial statements that will be included in the registration statement, issuing comfort letters to the underwriters, assisting in organizing and participating in any pre-filing conference with the SEC staff on financial statement matters, and reviewing your response to the SEC staff on financial statements issues. It should be selected based on its knowledge of your industry and experience in SEC matters. SEC rules require that your independent accounting firm must be registered with Public Company Accounting Oversight Board to serve as your auditor before you can include your financial statements in an IPO filing. That is, once you plan to file a registration statement, your financial statements must be audited by a registered firm.

Select a law firm based on its experience in meeting the technical and legal requirements of initial securities filings, as well as subsequent reporting. Your lawyers should also be capable of evaluating whether your corporate documents and agreements, such as bylaws, are appropriate for a public company. You should select a firm that has adequate resources to perform the tasks required by you and the managing underwriters. Your law firm should have experience in your industry and understand your business.

CHOOSING THE UNDERWRITER

The lead underwriter is one of the most important elements of a successful offering. The underwriter will help you prepare your offering, create a market for your stock, provide support in the "aftermarket" to ensure that the price of your stock remains strong, and keep you informed of how your company and industry are perceived by the market.

Furthermore, the underwriter is the primary source of advice on marketing and pricing your shares and deciding when to approach the market. Look for a respected lead underwriter, one who is knowledgeable in your industry and has handled IPOs for similar companies. Your accountants, consultants, and attorneys are good referral sources, as are other companies in your industry which have recently gone public. Ask the following questions in the selection process:

Letter of intent (LOI) – a non-binding letter from the underwriter to the company confirming the intent to proceed with an offering and stating the general terms of the underwriting.

Reputation: Does the firm have a strong reputation in the financial community? The degree of confidence investors have in your stock is affected by the underwriter's reputation.

Distribution network: Does the firm have the kind of distribution network you are interested in? Match your needs with the firm's ability to manage your offering. For example, if yours is a regional company looking for individual long-term investors in your geographic area, you probably would not need an investment banking firm with a worldwide client base of institutional investors and speculators.

Industry experience: Does the firm have experience with companies in your industry? This experience bears directly on the underwriter's ability to price your stock accurately and identify the best time to approach the market.

Aftermarket support: Will the firm provide support in the "aftermarket"? This includes supporting the price of your company's shares after the IPO by making a market in the stock and advising you on how the market views your company and its industry. For larger offerings, consider whether the underwriter has respected analysts on staff to generate research on your company and its industry.

Pricing record: Does the firm have a good track record in pricing IPOs? Having the right price when you reach the market is crucial to the success of an offering and the strength of the aftermarket. It may be tempting to select the underwriter with the highest preliminary pricing estimate. But, an unrealistically high initial price may weaken in the aftermarket, which could negatively affect the investing public's perception of your company.

WHAT THE UNDERWRITER WILL LOOK FOR

The lead underwriter will study your company closely before agreeing to take it public and will carefully examine the following key areas.
- The health of your industry, the quality of your products or services, and the strength of your market position and potential for growth.
- Your sources of supply, distribution channels, and types and number of customers.
- The stability of your company's financial position, including its capital structure and asset utilization.
- Your earnings record and prospects for future growth.
- The strength of your business plan.
- Your ability to plan and control operations, including your ability to prepare and meet budgets.
- The experience and leadership of your management team and board of directors.
- Your reputation with customers, suppliers, and competitors.

In assessing your company, the underwriter will interview your top management, independent accountants, and attorneys. You can expect this interview process to be fairly rigorous, because the underwriter assumes substantial risk in taking your company public. This assumption of risk necessitates a certain amount of skepticism on the part of the underwriter during the investigation.

Underwriters will also be concerned if the existing shareholders intend to sell a significant portion of their shares in the offering. From a marketing standpoint, underwriters generally prefer that the IPO consists primarily of newly issued shares, with the proceeds going to the company. Otherwise, there may be a perception that the sale of a substantial number of shares by current shareholders reflects their lack of faith in the company.

TYPES OF UNDERWRITING ARRANGEMENTS

Once you have chosen an underwriter, you will ordinarily sign a letter of intent outlining the terms of the underwriting agreement, such as compensation and estimated price. The draft underwriting agreement contains these terms in detail. It also may require your independent accountants to perform a variety of special procedures for the benefit of the underwriter. Therefore, it should be reviewed by both your accountants and attorneys. The final underwriting agreement itself usually is not signed until just before the stock can be sold to the public. So, the underwriter can change its mind if the stock market declines or the company's fortunes change.

The two basic types of underwriting arrangements are: the firm commitment, in which the underwriter agrees to buy all the stock offered and resell it to the public at the underwriter's own risk; and the best efforts agreement, where the underwriter has no obligation to purchase any shares that the public does not buy. In a best efforts offering, the underwriter may agree that if all or a minimum number of shares are not sold, the offering will be cancelled. From the company's standpoint, the firm commitment is the most desirable arrangement. However, in small initial offerings, a best efforts agreement is sometimes used.

You can also structure your offering using the Dutch auction process in which the underwriter bases public offering price and the allocation of shares on an auction. Investors, both large and small, receive their "place in line" to buy shares based on the number and price they bid in an auction conducted by the underwriters. That is, the investors with the highest bids for the greatest number of shares receive the best place in the buying line. The underwriters then determine the actual public offering price based on the clearing price which is the highest price at which all shares in the offering can be sold.

Underwriting agreement – an agreement by which an underwriter, generally a brokerage firm, agrees to purchase an issue for resale to the public.

THE REGISTRATION PROCESS

ONCE YOUR TEAM IS ASSEMBLED, THE REGISTRATION PROCESS CAN BEGIN. THE TIMETABLE, FROM THE FIRST ALL HANDS MEETING WITH THE IPO TEAM TO THE DAY YOUR SECURITIES CAN BE SOLD TO THE PUBLIC, THE EFFECTIVE DATE, USUALLY COVERS FROM FOUR TO SIX MONTHS.

Broadly speaking, your company becomes "public" when the SEC permits it to sell securities by means of a registration statement. The process towards this goal is complex and often exasperating. This section provides an overview of what you can expect.

FEDERAL SECURITIES LAWS AND THE ROLE OF THE SEC

The IPO process itself is strictly regulated by the federal securities laws. Specifically, the Securities Act of 1933 regulates the sale of securities to the public, and the Securities Exchange Act of 1934 regulates the public securities markets and financial reporting of public companies.

The 1933 Act is intended to prevent fraudulent or misleading representations in the sale of securities in interstate commerce or through the mail. But there is also a broader purpose. The public must have confidence in the integrity of the capital markets so that investment funds can be channeled to business enterprises from a wide range of sources. By keeping the market for publicly traded securities open and competitive, the SEC helps promote the ideal of an efficient capital market, where the public can make investment decisions rationally on the basis of all available information.

The SEC has the authority to bar the sale of securities if fraud or misrepresentation is involved in the offering, but the Commission will not refuse to clear an IPO solely because it might be a poor investment. The philosophy underlying federal securities regulation is to require full disclosure and let investors evaluate the quality of an investment. The SEC review process is designed to ensure that the buyer is provided with all material information necessary to make an investment decision.

THE FIRST ALL HANDS MEETING

The registration process begins with the first all hands meeting. The participants include company officials as well as the independent accountants, the attorneys, and the lead underwriter and its attorneys.

All hands meeting – a meeting attended by representatives of those involved in preparing a registration statement (i.e., management, company's counsel, underwriter, underwriter's counsel, independent accountants).

Time is of the essence in the registration process. An IPO must reach the market under favorable conditions. A drawn-out process may result in major alterations to the registration statement to explain any material changes in the company's operations.

To ensure that the registration progresses smoothly, a detailed timetable should be prepared for discussion at the first all hands meeting. Its focal point is the targeted effective date. Tasks should be programmed to meet that deadline. Close coordination among team members is critical, so the registration statement can be quickly amended to reflect SEC comments or changes in the company's circumstances.

DRAFTING THE REGISTRATION STATEMENT

Throughout the process, the registration statement is continually modified and thoroughly analyzed to determine whether company information is presented factually, fairly, and meets all SEC disclosure requirements. Each member of your team is responsible for providing specific information during the drafting process. Some of that information includes the following.

Attorneys: Your attorneys are often in charge of preparing the nonfinancial sections of the registration statement.

Company management: The CFO and other key personnel provide detailed financial and analytical information about the company, with the CEO providing an overview of the company's business plans.

Prospectus – a part of a registration statement, generally describing the company issuing the securities and the securities being sold.

Underwriter: The underwriter and its attorneys critique the registration statement.

WHAT IS IN THE REGISTRATION STATEMENT?

The registration statement consists of a prospectus, distributed to potential investors, and supplemental information. The supplemental information is available for public inspection at the SEC's main office in Washington, D.C., but is not distributed to potential investors. Registration statements can also be accessed on line at both the SEC's

website: *http://www.sec.gov/edgar/searchedgar/webusers.htm* and the company's website.

Although the prospectus is a selling document, it is also a legal disclosure document, so it requires a delicate balance in the drafting process. From a marketing standpoint, you will be eager to show how you enjoy unique advantages over the competition, and that your future prospects are bright. From the legal standpoint, however, you are required to fully disclose all important negative information and give a complete picture of the major risks of investing in your company. Consequently, the registration statement should not contain any laudatory phrases that could mislead the investing public.

IPOs are generally filed on the SEC's Form S-1, including IPOs for smaller reporting companies and emerging growth companies. Companies that qualify as smaller reporting companies or emerging growth companies require only two years of audited financial statements instead of three, and some of their other disclosure requirements are less extensive than those of larger registrants.

Small reporting company – a company that has less than $75 million in public equity float.

Emerging growth company – a company with less than $1 billion of revenue in its most recently completed fiscal year. Refer to Appendix I for disqualifying provisions.

Form S-1 provides investors with a broad view of the company, its operations, and its finances. Some of the key disclosures in the registration statement include the following information:

Information about your business: This could include information about products, market factors, competition, industry trends that may influence your company's future prospects, significant business segments (i.e., separate lines of business) and financial information about operations in geographic areas. Segment information may be troublesome for some companies if the information is considered confidential. If your company has to disclose financial information about segments, your accounting systems should be capable of generating the required information. Specific information should also be included on the availability of raw materials; patents, trademarks, and licenses; seasonal cycles; concentration of customer base; government contracts; factors influencing working capital requirements; backlog; employees; foreign operations; and historic growth factors.

Company background: Information about predecessor companies and mergers should be incorporated as part of this section.

Risk factors: Both business and financial factors need to be covered. Some of these risk factors encompass: volatile industry conditions, an unproven product line, a highly leveraged capital structure, dilution in book value per share to public shareholders, or the lack of operating history.

Public float – the market value of shares held by non-affiliates. Affiliates are generally officers, directors, and owners of 10 percent or more of the company's stock. In an IPO, the market value is based on the estimated IPO price.

Offering proceeds: How the proceeds of the offering will be used when shares are to be sold by the company itself (in a "primary" offering) is a key factor. Examples of how proceeds will be used are: repayment of debt, expansion of product lines, purchase of additional facilities, etc. The use of proceeds is not relevant, of course, for any shares to be sold by shareholders (in a "secondary" offering).

Company officers and directors: Details about the identity and experience of the company's directors and officers will also need to be disclosed. Specific information will include their compensation, business experience, family relationships among them, and any involvement in legal proceedings. A compensation discussion and analysis that analyzes material factors underlying compensation policies and decisions for company officers is also required.

Related-party transactions: Any related-party transactions between the company and its officers, directors, or major shareholders and their immediate families should be disclosed in the registration statement.

Shareholders: The identity of principal shareholders and management who own stock and the number of shares owned also need to be disclosed.

Management's discussion and analysis (MD&A): Management's discussion and analysis of financial condition and results of operations for the number of years covered by the financial statements is a critical element of the registration statement. MD&A should summarize in plain English by business segments and in total, the trends in important financial areas such as the company's liquidity, operating results, capital structure, commitments, and future sources and use of capital.

Financial information: This includes selected financial data for five years and three years of audited financial statements, supporting schedules, timely interim financial information, and audited financial statements of significant acquired companies, joint ventures/equity investees, or predecessors. If a company qualifies as a smaller reporting company, only two years of audited financial statements are required, and the five year summary of financial data and financial statement schedules may be omitted. If a company qualifies as an emerging growth company, only two years of audited financial statements and summary financial data are required.

Dilution – generally, the amount by which the offering price exceeds the company's tangible net book value per share after an offering.

Dilution: The dilution to public shareholders, which will occur because the IPO price per share is higher than the book value per share, must also be disclosed.

DUE DILIGENCE

Under the Securities Act of 1933, the company and its expert advisors, including independent accountants, attorneys, and underwriters, are generally liable for any material omissions and misstatements in the registration statement. While the liability standard differs for each group, it generally follows the following guidelines.

Company: The company's liability is absolute and cannot be avoided with defenses such as good faith error. Historically, companies insured their officers and directors to protect them from being personally liable for actions taken on behalf of the company, although the premiums for this insurance may be expensive or difficult to obtain.

Team of advisors: The liability of the team of independent accountants and the underwriter can be avoided with the defense that they exercised due diligence. This means they acted responsibly in attempting to ensure that the registration statement contained appropriate information.

Attorneys for the company and the underwriter will normally require officers and directors to complete written questionnaires confirming information in the registration statement. They will also interview them to ensure that they understand the questionnaires. This also serves to verify business-related disclosures, such as product descriptions, manufacturing, distribution, and marketing activities.

Due diligence – the process in which those involved in the preparation of the registration statement make a reasonable investigation to ensure accuracy and completeness of disclosures.

Independent accountants perform subsequent events procedures after the report date through the filing date. This is done to determine whether their report on the financial statements is still appropriate, or whether the financial statements or disclosures need to be changed. They will also review the registration statement for any inconsistencies between the financial and nonfinancial portions.

The underwriter relies on the independent accountants to help ensure the adequacy of financial disclosures, and may request comfort letters at various stages of the IPO process. A comfort letter in draft form is issued early in the offering process. Once the underwriting contract is signed but before the point of sale, the first comfort letter, covering the preliminary prospectus, may be issued. After the final prospectus is filed, an updated comfort letter is issued covering the final prospectus. This letter is updated at closing when the net proceeds are remitted to the company (the closing date). The comfort letter discusses the results of the accountants' inquiries regarding financial information that became available after the last audit; highlights certain adverse developments such as declines in working capital, sales, net income, or other financial trends; and describes the results of special procedures that the underwriter requested them to perform on other data in the prospectus.

Comfort letter – letter written by the independent accountants for the underwriters which serves to give them "comfort" and helps them establish that they have performed a reasonable investigation of certain financial and accounting data.

THE QUIET PERIOD

The SEC does not define the term "quiet period" that historically extended from the time a company begins substantive discussions with investment bankers regarding the offering until the SEC staff declared the registration statement effective. During that period, SEC rules limited what information the company and related parties could release to the public. However, all companies have a 30-day safe harbor before filing a registration statement in which they can communicate information regarding anything other than the securities offering. Additionally, if a company qualifies as an emerging growth company, the JOBS Act permits communications between the company and certain potential institutional investors before and after the filing of the initial registration statement. Regardless, during the quiet period, it is generally advisable for all communications to be reviewed by your attorneys.

SEC REVIEW

When the team is finally satisfied with the draft of the registration statement, it is filed with the SEC. Companies that qualify as emerging growth companies are able to submit their IPO registration statements on a confidential basis with the SEC.

Registration statements are generally reviewed by the staff of the SEC's Division of Corporation Finance, which includes accountants, financial analysts, valuation experts, attorneys, and engineers. The review of the initial filing generally takes approximately 30 days. The SEC's review focuses on whether the registration statement contains adequate disclosures and complies with the rules. The filing is analyzed, not only for the information it contains, but also in the context of current business developments, business practices and accounting policies prevailing in the company's industry and specific economic environment.

Closing date – the date on which the underwriter or escrow agent releases the cash received from subscribers, and the company issues securities to the underwriter for delivery to the subscribers.

At the end of the review process, the company receives a comment letter from the SEC requesting changes in, or explanations of, the registration statement. If extensive changes are required, it can seriously delay the offering. The extent of SEC comments can be

minimized if potential accounting, disclosure, or other problems are anticipated and dealt with in advance of the filing.

The SEC staff's comments generally are resolved through a response letter that provides supplemental information to the staff. You may find a telephone conference or a face-to-face meeting with the SEC staff helpful in resolving more complex issues. The SEC staff offers advice on interaction with the SEC staff at: *http://www.sec.gov/info/accountants/ocasubguidance.htm*. The staff is usually cooperative in discussing its comments, and if you respond with sound arguments, the staff may modify the original comment. You and your counsel usually prepare responses to the SEC comments on legal and other matters. You, in consultation with your independent accountants, generally respond to the comments on accounting and financial reporting matters. All SEC comments ultimately require a written response.

Your response to the SEC comments will be either to change the filing or to obtain the staff's acceptance of your written response. (The staff informally acknowledges acceptance by letting your filing proceed.) If you change the filing as a result of the comment letter, the registration statement will be amended and resubmitted or refiled. Minor changes will generally not result in changes to the registration timetable, however, extensive changes may delay the offering.

After the SEC staff's final review, the registration statement will be declared effective. SEC's rules allow the registration statement to become effective without the actual price of the shares to the public, the expenses of the offering, and the net proceeds to the company. This information is then inserted when the final prospectus is printed.

Proxy statement – a statement required to be submitted to shareholders in connection with the solicitation of their vote on a proposed transaction or course of action. If the proxy statement solicits votes on matters other than the election of directors or the appointment of auditors, preliminary proxy materials must be submitted to the SEC for review before being sent to the shareholders. The final proxy statement, mailed to the shareholders, is called the "definitive proxy."

THE "RED HERRING"

After the initial SEC review, the prospectus is distributed to the members of the underwriting syndicate as a preliminary prospectus and then distributed to interested potential investors.

However, since the prospectus has not yet been declared effective by the SEC, the securities can be offered for sale, but not sold. So, the SEC requires a "subject to completion" statement on the preliminary prospectus cover. At one time, the SEC required that the warning be printed in red ink which resulted in this document being referred to as the "red herring."

If you need to make extensive changes to the registration statement as a result of SEC review comments, recirculation of the red herring may be considered necessary. The decision to recirculate is made by you, your attorneys, and the lead underwriter.

Declared effective – when the SEC has cleared the registration statement and indicated that the prospectus may be used to offer and sell the securities.

STATE "BLUE SKY" LAWS

The SEC is not the only regulatory agency to review your filing. Public offerings also must qualify under the so called "Blue Sky" laws governing the sale of securities in every state where they are to be sold. The purpose of these laws is to prevent the sale of securities that have no more basis than "blue sky." Blue Sky qualification is generally handled by the company's attorneys when you file with the SEC. Companies that list on a national securities exchange are exempt from Blue Sky laws.

The requirements of Blue Sky laws vary from state to state. While the regulations of individual states vary, almost half the states have adopted the Uniform Securities Act or have based their laws on that Act. In some states, notifying state regulatory authorities of the intention to sell securities in that state is sufficient; in others, it is necessary to file a separate registration statement. Unlike the SEC reviews, Blue Sky reviews consider the merits of the offering, and states have their own acceptance parameters about such matters as dilution, voting rights, and cheap stock sold to corporate insiders.

LISTING THE SECURITIES

While you are registering your securities with the SEC, you must also decide where you would like them to be traded after the offering and submit a listing application. This decision should be based on several factors, including comparing the access and visibility your securities will need to that provided by each market, and considering the relative costs. You should consult with your underwriter in selecting a market.

Final prospectus – a document that must be circulated to all prospective purchasers of an initial offering disclosing material facts about the company's operations, its financial status, and the details of the offering. It is preceded by a preliminary prospectus or red herring.

The largest U.S. securities trading markets are the New York Stock Exchange LLC (NYSE) and The Nasdaq Stock Market LLC (Nasdaq). The stock exchanges each have requirements that a company must meet for its securities to be listed. These include both quantitative and other requirements. The basic requirements for initial listing in these markets are illustrated in Appendix IV beginning on page 30.

THE ROAD SHOW

While the registration statement is under review by the SEC, the underwriter may decide to arrange a "road show." This is a tour of various target cities and is designed to give financial analysts, major investors, and others the opportunity to question management. Emerging growth companies who elected to submit their registration statement confidentially with the SEC must publicly file their registration statement, any of its amendments, and related exhibits no later than 21 days prior to the road show.

Your presentation to the financial community at road show meetings is critical to generate interest in your company. You work closely with your attorneys, the lead underwriter, and possibly a public relations advisor to prepare your presentation and anticipate the nature of questions that will be asked. This presentation should help create a favorable impression for financial analysts and prospective investors. You should guard against making misleading statements, which could later result in litigation. You should be just as cautious about what you say in public as you are in drafting the registration statement.

Cheap stock – common stock sold before a public offering at a price which is less than the public offering price. Often, the stock is sold to company insiders.

THE FINALE

Just after the registration statement becomes effective, the underwriting agreement is signed. After that, the following sequence of events occurs. The final prospectus which indicates the actual offering price of the securities is printed and distributed to the members of the underwriting syndicate for distribution to prospective investors who received a copy of the red herring. In addition, a tombstone ad is published, usually in The Wall Street Journal and other newspapers in targeted markets, to let investors know where they can get a copy of the prospectus.

The closing takes place a week or so after the effective date. At the closing the underwriters receive funds from their customers, and the company in turn receives the net proceeds after the underwriters' compensation. However, if the underwriting agreement required a minimum level of shares to be sold and that level was not reached, the offering period may be extended or the offering withdrawn.

Tombstone ad – a newspaper advertisement or other form of communication related to a securities offering. The content of these tombstone ads is strictly regulated by the SEC.

PUBLIC COMPANY ACCOUNTING

A PUBLIC COMPANY FILES REGISTRATION STATEMENTS WITH THE SEC THAT INCLUDE FINANCIAL STATEMENTS. A NEWLY PUBLIC COMPANY'S FINANCIAL STATEMENTS FACE THE SCRUTINY OF ITS AUDITORS AND THE SEC STAFF. NINE PARTICULARLY CHALLENGING PUBLIC COMPANY ACCOUNTING TOPICS THAT ARE THE SOURCE OF NUMEROUS SEC STAFF COMMENTS ARE DISCUSSED BELOW.

The nine accounting topics discussed below may be applicable to all registrants, regardless of their filing status. However, you should be aware that the JOBS Act provided registrants that qualify as emerging growth companies with temporary relief from new accounting standards by allowing them to adopt any new accounting standards using the effective dates applicable to nonpublic companies (if the standard applies to nonpublic companies). The extended phase-in period will provide these companies in the registration process and newly public companies additional time to comply with new standards that may be complex or require additional compliance personnel.

Earnings per share – A public company is required to disclose its basic and diluted earnings per share (EPS) calculations. EPS is a metric that is reviewed by the financial community when analyzing a public company. In this calculation, the company needs to consider common shares plus all its securities that are potentially convertible to common shares including financial instruments such as options, warrants, convertible debt, and convertible preferred shares. Basic EPS is computed by dividing income available to common shareholders by the weighted-average number of common shares outstanding for the period. Diluted EPS is computed by dividing adjusted income available to common shareholders by the weighted-average number of potential common shares outstanding for the period computed as if convertible securities and contracts to issue common shares were converted into common shares. A company with a complex equity structure that includes multiple classes of securities will find it challenging to calculate EPS.

Revenue recognition – Revenue recognition is central to many of the metrics evaluated by financial analysts and investors. Registrants are required to make significant estimates and judgments to determine when revenue can be recognized. The accounting rules are complex and changes to arrangements can have a material impact on the timing of

revenue recognition. Consequently, revenue recognition errors are one of the leading causes of restatements and a key focus area of the SEC staff.

Particularly challenging revenue recognition issues include: bill and hold arrangements, gross vs. net presentation of revenues, customer acceptance provisions, long-term contracts, performance obligations, warranty obligations, nonrefundable up-front fees, multiple deliverables arrangements (transactions that include the sale of more than one product or service), refunds and discounts, and the shipment method (e.g., FOB, CIF).

Liability vs. equity classification – Registrants that are in the development stage or early operating state and have capital needs can be challenged by the liability vs. equity classification. These companies are more likely to raise funds from venture capital funds, investment companies or "angels." These instruments may legally be equity instruments but might be classified as liabilities for accounting purposes. The features that could drive such instruments into liability classification include redemption features, net settlement in cash features, or other features that cause equity-linked instruments not to be considered indexed to the company's own stock. The classification as liabilities will lead to the recognition of changes in the fair value of these instruments in the income statement.

Business combinations – Registrants have always been challenged by business combination accounting that requires companies to recognize the assets acquired (both tangible and intangible assets), the liabilities assumed, and any noncontrolling interest in the acquiree at their fair value at the acquisition date. Further, under the rules, acquisitions costs and many restructuring costs are expensed, in-process research and development costs are capitalized as an indefinite-lived asset, and even development stage entities are scoped into the business combination rules.

Registrants should expect the SEC to scrutinize accounting and disclosure of business combinations.

Fair value measurements – Registrants can have a difficult time determining valuation techniques and inputs and developing valuations for fair value measurements. When relying on third party valuations, companies still need to understand, validate, and "own" the valuation. It can be challenging for a company to determine valuations when market participants are difficult to identify or if the market is distressed. In these circumstances, registrants should use reasonable judgment and document their assumptions and conclusions.

Consolidation issues – Certain registrants or potential registrants are operating companies that rent real estate or equipment from leasing entities owned by related parties. Typically these leasing entities are structured as partnerships, trusts, limited liability companies, or corporations. Current U.S. accounting standards potentially require operating companies to consolidate the affiliated leasing entities. The SEC staff may challenge registrants to provide support for their conclusion as to why such an entity is or is not consolidated. The consolidation requirements can be complex, and final conclusions depend heavily on each registrant's specific facts and circumstances.

Derivatives and hedge accounting – Registrants can have a difficult time accounting for derivatives and hedging transactions. Consequently, this area has been the source of numerous registrants restatements. Derivatives accounting requires companies to test to see if certain embedded financial instruments must be accounted for separately at fair value. In order to avoid separate fair value accounting that includes reporting changes of fair value in the income statement, companies must meet strict conditions. Companies can encounter problems because the financial instruments, the transactions, and the accounting are all complex. Furthermore, in order to meet the criteria for hedge accounting the registrant has to meet very strict conditions, which if not met prohibit the use of hedge accounting.

Share-based compensation – Registrants are required to measure and report all share-based compensation at fair market value. The calculations necessary to measure this compensation include assumptions about the company's share price volatility, interest rates, future dividends, and option life. As a result, many registrants are using appraisal advisors to calculate the value of the stock compensation grants.

Segment reporting – Registrants are required to report financial and descriptive information about operating segments and to disclose information about operations by geographic area and by products or services based on their internal reporting structure. The SEC staff has repeatedly stressed in comment letters and speeches the importance of avoiding improper aggregation of operating segments into reporting segments and appropriate, consistent segment disclosures. The staff's comments have focused on consistency of the reportable segments and the way management reviews the operations internally and discusses those operations elsewhere in the document.

LIFE AS A PUBLIC COMPANY

LIFE AS A PUBLIC COMPANY VERSUS A PRIVATE COMPANY IS DRIVEN BY FOUR NEW CONCERNS: SHARE PRICE, FEDERAL SECURITIES LAWS, CORPORATE GOVERNANCE, AND PUBLIC SCRUTINY.

FOCUSING ON SHARE PRICE

Once a company is publicly held, management must become sensitive to the shareholders' expectations of higher share prices. Their expectations usually depend on a consistently improving earnings trend, backed by a well-planned investor relations program. The latter keeps investors aware of the company and its prospects for the future.

Public companies are required to make timely disclosures related to material events. This disclosure goes beyond financial data and includes information such as entry into or termination of material contracts, creation of material direct or off balance-sheet debt, disposal of or exit from a business, material charge for impairment of assets, material acquisitions and dispositions, and key management changes. In addition, a successful investor relations program establishes a policy for communications with investors. Under Regulation FD, publicly traded companies are required to disclose material information to all investors at the same time.

There is nothing the stock market likes less than surprises, particularly when they are negative. This means you need reliable information to direct and control the business and to use for reliable forecasting and timely communication with investors. An understanding of the company's business planning and resiliency in coping with changing conditions can help the financial community better interpret facts and figures contained in required disclosures. For example, the impact of one poor quarterly earnings report may be cushioned when the public already has a clear understanding of the company's business cycle and its future plans.

COPING WITH THE FEDERAL SECURITIES LAWS

Complying with SEC regulations is a fact of life for public companies. Once a company is public, it is required to comply with numerous legal and reporting provisions of the federal securities laws, particularly the Securities Exchange Act of 1934. The more significant reporting requirements include the following.

Form 10-K: The annual report is filed with the SEC within 90 days for nonaccelerated filers (see above for due dates for accelerated

ACCELERATED FILERS – DUE DATES AND DEFINITIONS

A registrant is considered an "accelerated filer" if it has:

- Common equity public float of $75 million or more as of the end of its second fiscal quarter;
- Been subject to the Exchange Act reporting requirements for at least 12 calendar months;
- Filed at least one annual report; and
- No eligibility to use the requirements for smaller reporting companies.

Accelerated filers are divided into two groups:

- Large accelerated filers with market float of $700 million or more; and
- Accelerated filers with market float of $75 to $700 million.

	Form 10-K due date	Form 10-Q due date
	days after period end	
Large accelerated filer	60 days	40 days
Accelerated filer	75 days	40 days
Nonaccelerated filer	90 days	45 days

filers) after the company's year-end. Much of the content is similar to that in the initial registration statement, including audited financial statements. If the company continues to qualify as a smaller reporting company or emerging growth company, it may use the scaled financial and non-financial disclosures available to such companies.

Form 10-Q: These reports are filed within 45 days for nonaccelerated filers (see below for the due date for accelerated filers) after the end of each of the first three quarters of the company's fiscal year. The financial statements in this report do not have to be audited but must be reviewed by the company's auditor.

Form 8-K: This form is used to report special events, within 4 business days of their occurrence, including entry into or termination of material contracts; creation of material on or off-balance sheet debt; occurrence of an event that accelerates or increases the on or off-balance sheet debt; disposal of or exit from a business; material charge for impairment of assets; changes in control of the company; acquisitions (required financial statements for significant acquired entities have extended due dates); dispositions; auditor changes; resignations of directors; sales of unregistered securities; change in fiscal year end; changes in articles of incorporation or bylaws; inability to rely on previously issued financial statements or the associated audit report; and bankruptcy.

Financial statements of other entities potentially including: Predecessors, businesses or real estate operations acquired or to be acquired, significant unconsolidated subsidiaries or 50%-or-less owned entities, guarantors, affiliates whose securities serve as collateral for the company's securities, and the parent company.

Proxy solicitations: A proxy statement is mailed to shareholders in connection with the annual shareholders' meeting. It includes descriptions of the matters to be voted on (including the reasons why management seeks approval of the matter), the identification of officers and directors, and extensive information regarding the compensation of the CEO and other top officers. The proxy statement is accompanied or preceded by an annual report to shareholders.

Proxy statements are also required when shareholders' votes are needed for mergers and changes in capital structure.

Tender offers: The procedures for making tender offers are regulated, as are the steps a company may take to resist the offer. Complex disclosure requirements must also be met.

Insider stockholdings: Officers, directors and holders of more than 10% of the company's registered stock are required to report their holdings and any changes in them within prescribed time limits.

Internal control over financial reporting: SEC rules mandated by the Sarbanes-Oxley Act require the registrant's CEO and CFO to provide certain certifications in annual and quarterly reports on disclosure controls and internal control over financial reporting. The rules also require the independent public accountant for accelerated registrants that are not emerging growth companies to report on an annual basis on the company's internal controls over financial reporting. Emerging growth companies are exempt from an audit of internal controls for up to five years.

In addition to these reports, a public company must disclose material developments, favorable or unfavorable, as they occur on Form 8-K. This information must be made publicly available to all investors at the same time.

A public company and its shareholders also have to deal with a number of other regulations, including those relating to the following.

Sale of unregistered stock: For shares to be publicly tradable without restrictions, they must have been issued in a registered offering or meet other requirements. Shares held by controlling shareholders and stock acquired in private placements may only be sold in small quantities on the open market subject to meeting Rule 144 restrictions, including holding period and volume limitations.

Short swing profits: Any profits earned by officers, directors, or holders of 10% or more of the company's stock in buying and selling (or selling and then buying) a company's stock within any six month period may have to be turned over to the company. This harsh rule is intended to prevent trading on inside information and is invoked even when the shareholder does not actually have this knowledge.

Prohibition against insider trading: Federal securities laws prohibit insider trading, and the penalties can be severe, even resulting in prison sentences in egregious cases. As a corporate insider, you will always be privy to company information before it is released to the public. Consequently, corporate insiders may be accused of trading on inside information any time their stock transactions are followed by a major change in share price.

Regulation FD: The Fair Disclosure rules require that whenever a registrant discloses material nonpublic information that may influence investment decisions, the company must make that information publicly available.

Auditor independence: External auditors are prohibited from providing certain non-audit services such as internal audit, valuation, financial system implementation, services associated with certain types of potentially abusive tax transactions, and other nonaudit services.

CORPORATE GOVERNANCE

The SEC's rules require audit committees to:

- Appoint, compensate, retain and oversee the work of any public accounting firm engaged to audit the registrant. The public accounting firm must report directly to the audit committee;
- Approve all audit and nonaudit services performed by the public accounting firm.

Under national stock exchange rules, registrants are required to disclose whether they have at least one "audit committee financial expert" serving on their audit committee. Registrants must disclose the name of the expert and whether the expert is independent of management. If registrants do not have an audit committee financial expert, they must disclose this fact and explain why they have no such expert.

Under the SEC's rules, compensation committees are required to state whether they have reviewed and discussed Compensation Disclosure and Analysis (CD&A) with company management and whether they recommended to the board of directors that the CD&A be included in the company's annual report on Form 10-K and, if applicable, the company's proxy or information statement.

Public companies subject to the SEC's proxy rules are required to provide their shareholders with an advisory vote on executive compensation and golden parachute arrangements. The outcome of this vote must then be disclosed in a Form 8-K and the registrant's consideration of the vote's results must be disclosed in CD&A. While smaller reporting companies are exempt from providing CD&A disclosures, they are not exempt from the requirement to hold the votes. Those companies that qualify as emerging growth companies benefit from a provision in the JOBS Act which exempts them from the shareholder advisory votes for up to five years.

Disclosures are required regarding the company's code of ethics:

- Whether they have adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer, controller, or persons performing similar functions; and
- If they have not adopted a code of ethics, they must disclose this fact and explain why they have not done so; and
- Any amendments to or waivers of the code of ethics.

Another aspect of corporate governance as a new public company is identifying and managing risk across the entire organization. Risk management is the process by which management, subject to board oversight, assesses the nature and scope of risks applicable to the company, designs and applies appropriate controls to minimize risks and monitors the controls to ensure that they are working effectively. Some of the major categories of risk are: operational risk around infrastructure; financial risk around high quality financial reporting; strategic risk around executing new initiatives and reinforcing good governance; and compliance risk with respect to following new rules and reinforcing effective controls.

LIVING IN THE PUBLIC EYE

The most dramatic change in the nature of your company's life after the IPO will be a feeling that you are acting before a much larger audience. This new awareness will pervade virtually all aspects of your activities, from drawing up new employment contracts to planning mergers to considering R&D projects. You will be concerned not only with achieving your goals for the company, but also with how the means to achieve those goals and even the goals themselves will be viewed by your shareholders and the investment community at large.

IT'S YOUR MOVE

THE DECISION TO TAKE YOUR COMPANY PUBLIC WILL BE AMONG THE MOST DIFFICULT IN YOUR BUSINESS EXPERIENCE. IT IS A HIGHLY PERSONAL DECISION, REQUIRING AN EXHAUSTIVE ANALYSIS OF ALL RELEVANT FACTORS, INCLUDING THE OPPORTUNITIES AND DRAWBACKS OF A PUBLIC OFFERING AND WHETHER YOUR COMPANY IS ABLE TO FULFILL THE RESPONSIBILITIES OF A PUBLIC COMPANY AND THE EXPECTATIONS OF THE MARKET.

Because preparation is the key to a successful IPO, we at BDO hope this Guide gives you a clear overview of this process and places some of the more significant factors in proper perspective. Regardless of your ultimate decision, we would be pleased to assist you during this most critical time for you and your company.

APPENDIX I

GLOSSARY

ACCELERATION
A procedure where the SEC may declare a registration statement effective before waiting the normal 20 days after the final amendment is filed.

ALL HANDS MEETING (page 12)
A meeting attended by representatives of those involved in the registration statement process (i.e., management, company's counsel, underwriter, underwriter's counsel, independent accountants).

ALL OR NOTHING UNDERWRITING
See UNDERWRITING AGREEMENT

BEST EFFORTS AGREEMENT (page 11)
An arrangement where the underwriter is under no obligation to purchase the securities but must use its best efforts to complete the sale of the securities.

BLUE SKY LAWS (page 15)
State laws which govern the registration and sale of securities within that state.

CAPITALIZATION TABLE
Sometimes called a "cap table." This table presents, in tabular form, the capital structure of the company both before the offering and after, assuming all the securities being offered are sold. Generally, cap tables are included in registration statements at the request of the underwriter.

CHEAP STOCK (page 16)
Common stock sold before a public offering at a price which is less than the public offering price. Often, the stock is sold to company insiders.

CLOSING DATE (page 15)
The date on which the underwriter or escrow agent releases the cash received from subscribers, and the company issues securities to the underwriter for delivery to the subscribers.

COMFORT LETTER (page 14)
Letter written by the independent accountants for the underwriters which serves to give them "comfort" and helps them establish that they have performed a reasonable investigation of certain financial and accounting data.

COMMENT LETTER (page 15)
A letter from the SEC to the company which communicates the SEC's comments regarding a registration statement, proxy statement or 1934 Act filing. This letter may also be referred to as a deficiency letter.

CONDENSED FINANCIAL STATEMENTS
Financial statements in which only major captions are included without a complete set of footnotes. Generally, quarterly financial statements on Form 10-Q and pro forma financial statements are presented in a condensed format.

CONSENT
A written document signed by the independent accountant or other experts and filed with the registration statement indicating that the experts consent to the use of their reports and to the use of their names in the registration statement.

CORPORATION FINANCE (CORP FIN)
The Division of Corporation Finance at the SEC is responsible for reviewing the filings of registrants and issuing comment letters.

DECLARED EFFECTIVE (page 15)
When the SEC has cleared the registration statement and indicated that the prospectus may be used to offer and sell the securities.

DILUTION (page 14)
Generally, the amount by which the offering price exceeds the company's tangible net book value per share after an offering. Dilution also refers to the decline in ownership percentage that occurs to existing shareholders when a company issues shares of stock to new shareholders.

DUE DILIGENCE (page 14)
The process in which those involved in the preparation of the registration statement make a reasonable investigation to ensure accuracy and completeness of disclosures.

EDGAR
The SEC's Electronic Data Gathering, Analysis and Retrieval system. Registrants are required to make SEC filings using this system. Users can easily retrieve the reports at *www.sec.gov*.

EFFECTIVE DATE (page 15)
The date the securities are permitted to be sold.

EMERGING GROWTH COMPANY
Companies with less than $1 billion of revenue in their most recently completed fiscal year. Filers will maintain their emerging growth company status for five years following their IPO unless they have annual revenues that exceed $1 billion, become a large accelerated filer (see page 20), or issue $1 billion or more of non-convertible debt in a three-year period. Users of this Guide can refer to the SEC's website for a series of frequently asked questions or Topic 10 of the Division of Corporation Finance's Financial Reporting Manual for additional guidance on the emerging growth company status and reporting requirements.

ESCROW ACCOUNT
An account in which all funds received from subscribers are deposited.

EXPERTS
Independent accountants, lawyers, engineers, valuation experts, and others who, because of their expertise in a particular matter, may be relied on as experts in their fields.

FINAL PROSPECTUS
See PROSPECTUS

FIRM COMMITMENT (page 11)
An agreement where the underwriter agrees to purchase the entire block of securities being offered.

APPENDIX I
GLOSSARY continued

GREEN SHOE
The name for the underwriter's option to acquire and resell additional securities at the offering price to cover overallotments to customers. This feature received its name from the Green Shoe Company, the first company to have an overallotment option.

INCORPORATION BY REFERENCE
A method by which, under certain circumstances, certain materials previously filed with the Commission may be referred to rather than repeated verbatim.

INSIDER
Officers, directors, and holders of more than 10% of any class of equity security registered under the Securities Exchange Act of 1934.

INTRASTATE OFFERING
An offering of securities made within only one state which may, therefore, be exempt from the SEC registration requirement.

LETTER OF INTENT (page 10)
A non-binding letter from the underwriter to the company confirming the intent to proceed with an offering and stating the general terms of the underwriting.

LETTER STOCK
Unregistered, and therefore restricted, stock. The name is derived from the fact that generally in a sale of this kind of security the issuer receives a letter from the purchaser indicating that the purchase is for investment only, not for resale.

LISTING APPLICATION (page 15)
An application to be listed on a national securities exchange. These generally contain information similar to that contained in a registration statement.

LOCK-UP AGREEMENT
An agreement by company directors, officers and major shareholders to refrain from selling securities of the company for a defined time-period after the IPO.

MARKET MAKER
A broker/dealer that stands ready to buy and sell a company's stock.

"NO ACTION" LETTERS
Letters requested from the SEC staff indicating that the staff would not object to the company's proposed course of action (e.g., an approach for complying with a filing requirement).

NON-GAAP FINANCIAL MEASURES
A numerical measure of historical or future financial performance, financial position, or cash flows that:
- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet, or statement of cash flows (or equivalent statements); or
- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable GAAP measure.

OCA
The Office of the Chief Accountant of the SEC (OCA), is responsible for establishing accounting policy in the preparation of financial statements filed with the SEC. Registrants, auditors, as well as the other divisions of the SEC consult with the OCA regarding the application of accounting standards and financial statement disclosures.

OFFERING CIRCULAR
A document substantially similar to a prospectus used for offerings that are exempt from registration.

OVER ALLOTMENT OPTION
An option, also called Green Shoe, granted to the underwriters to purchase additional securities to cover overallotments to customers.

POST-EFFECTIVE AMENDMENT
An amendment to a registration statement that is filed after its effective date.

PREFILING CONFERENCE
A conference scheduled by a registrant with the SEC staff (OCA and Division of Corporation Finance) to discuss the staff's views on an accounting or disclosure matter prior to the filing of a registration statement.

PRIMARY OFFERING
A registrant's offer to sell newly issued securities to the public. Primary securities can be offered either by a company that is already public or in an initial public offering.

PRIVATE PLACEMENT
An offering which is exempt from the registration provisions of the 1933 Act.

PRO FORMA FINANCIAL STATEMENTS
Financial statements intended to provide investors with information about the continuing impact of a transaction by illustrating how the transaction might have affected historical financial statements.

PROSPECTUS (page 13)
A part of a registration statement, generally describing the company issuing the securities and the securities being sold.
- Bring-up Prospectus: The Securities Act of 1933 provides that when a prospectus is used for more than nine months after the effective date of the registration statement, the information contained in it should be as of a date not more than 16 months prior to such use. This often requires an updated prospectus which is referred to as a "bring-up" prospectus, "nine-month" prospectus, or a " Section 10(a)(3) " prospectus.
- Final Prospectus (page 16): A document that must be circulated to all prospective purchasers of an initial offering disclosing material facts

APPENDIX I
GLOSSARY continued

about the company's operations, its financial status, and the details of the offering. It is preceded by a preliminary prospectus or red herring.
- Preliminary Prospectus: A prospectus relating to a registration statement which has not yet become effective, also known as a " red herring."

PROXY STATEMENT (page 15)
A statement required to be submitted to shareholders in connection with the solicitation of their vote on a proposed transaction or course of action. If the proxy statement solicits votes on matters other than the election of directors or the appointment of the auditors, preliminary proxy materials must be submitted to the SEC for review before being sent to the shareholders. The final proxy statement, mailed to the shareholders, is called the "definitive proxy."

PUBLIC FLOAT (page 13)
The market value of shares held by non-affiliates. Affiliates are generally officers, directors, and owners of 10 percent or more of the company's stock. In an IPO, the market value is based on the estimated IPO price.

QUIET PERIOD (page 14)
The SEC rule that restricts publicity about a company and its offering during a certain time period.

RATIO OF EARNINGS TO FIXED CHARGES OR PREFERRED DIVIDENDS
A ratio required to be presented in a registration statement covering debt securities or preferred stock that provides a measure of the registrant's liquidity.

RED HERRING (page 15)
See Preliminary Prospectus

RELEASES
A method by which the SEC communicates information to interested parties. There are various forms of releases; however, the ones ordinarily of greatest concern are Financial Reporting Releases, 1933 Act releases, and 1934 Act releases.

SECONDARY OFFERING
An offering by a selling securityholder of a company, the proceeds from which go to the selling securityholder.

SELECTED FINANCIAL DATA
A table that presents five years of financial data of the registrant that is generally found in the front part of the registration statement. This information is required by SEC rules.

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

SMALLER REPORTING COMPANY (page 13)
A company that has less than $75 million of public equity float.

STOP ORDER
An order issued by the SEC suspending the effectiveness of a registration statement.

SUMMARY FINANCIAL DATA
Financial data that summarizes financial data of the registrant that is generally found in the front part of the registration statement. The summary financial data is requested by the underwriters and is not required by SEC rules.

TENDER OFFER
An offer made to the securityholders of a company to purchase their securities.

TOMBSTONE AD (page 16)
A newspaper advertisement or other form of communication related to a security. The content of tombstone ads is strictly regulated by the SEC.

UNDERWRITING AGREEMENT (page 11)
An agreement by which an underwriter, generally a brokerage firm, agrees to purchase securities for resale to investors.
- All Or Nothing Underwriting: A form of "best efforts" underwriting where interim proceeds of sales are generally placed in escrow pending the final results. If the sales do not meet a specified amount, they are cancelled and the funds returned to the buyers. In some instances, the specified minimum amount is less than the total amount of securities being offered - called a "min/max" underwriting.
- Best Efforts Underwriting (page 11): An arrangement where the underwriter is under no obligation to purchase the securities.
- Firm Commitment Underwriting (page 11): An agreement where the underwriter agrees to purchase the entire block of securities to be offered.

UNDERWRITING DISCOUNT
The commission received by the underwriter as compensation for services.

UNIT
A combination of two securities sold for one price, usually consisting of common stock and warrants or common stock and debt.

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

APPENDIX II

ALTERNATIVES TO AN INITIAL PUBLIC OFFERING

THIS GUIDE FOCUSES ON ONLY ONE MEANS OF FINANCING – AN IPO THAT IS REGISTERED WITH THE SEC. DECIDING WHETHER THIS COURSE OF ACTION IS BEST FOR YOUR COMPANY, THOUGH, SHOULD ONLY BE MADE AFTER CAREFULLY EVALUATING ALTERNATIVE MEANS OF FINANCING. SOME OF THESE ARE NOT ONLY ENDS IN THEMSELVES, BUT ALSO INTERIM STEPS ON THE ROAD TO AN IPO. THE VARIETY OF FINANCING TECHNIQUES IS LIMITED ONLY BY THE INGENUITY OF THE FINANCIAL COMMUNITY. SOME OF THE POSSIBLE ALTERNATIVES ARE BRIEFLY DESCRIBED BELOW. YOU SHOULD CONSIDER THE ADVANTAGES AND DRAWBACKS OF EACH AND THE EFFECTS THEY COULD HAVE ON YOUR COMPANY.

Bank Loans

Bank loans are by far the most widely used means of financing. For mature companies, this type of funding is usually the most flexible and easiest to obtain. It also allows you to retain control over your company and to maintain substantial confidentiality of company information. However, bank loans do not provide the long-term equity base your company may need as a foundation for growth since repayment of principal and interest will put pressure on future cash flow. Moreover, depending on your company's financial history and prospects, bankers may require substantial pledging of company assets; various operating restrictions, such as limitations on dividends, capital expenditures, and business acquisitions; maintenance of specific financial ratios; and, in many instances, your personal guarantee.

Regulation A Offerings

Regulation A, the small issues exemption, governs public offerings not exceeding $5 million. Although Regulation A is technically an exemption from registration under the 1933 Act, an offering statement which is less extensive than most 1933 Act filings still must be filed with and "qualified by" the SEC. In addition, an Offering Circular, which is an abbreviated version of a prospectus, is distributed to investors. Although financial statements are included in an Offering Circular, they are not required to be audited. However, underwriters or state securities laws may require audited financial statements or more detailed disclosures than would be required under Regulation A.

In December 2013, the SEC proposed rule amendments required by Title IV of the JOBS Act. The proposed rule amends Regulation A to establish a streamlined process by which a private company could offer and sell up to $50 million of securities in a 12-month period if it complies with certain reporting requirements. The proposed amendments would create two tiers of offerings:

- Tier 1 – A revised version of the current Regulation A, Tier 1 would permit offerings of up to $5 million in a 12-month period.
- Tier 2 – This new tier would permit offerings of up to $50 million in a 12-month period. Investors in Tier 2 offerings would be limited to purchasing no more than 10% of the greater of their net worth or annual income. State securities law requirements would be preempted for these offerings.

Further information on the proposal can be found in a BDO SEC Flash Report available at: *http://www.bdo.com/download/3002*. If you are interested in pursuing an offering under Regulation A, you should stay tuned to the SEC's website for further developments on the proposal.

Private Placements

Private placements of debt or equity securities are exempt from registration if they are offered in small issues or to a limited number of specially defined investors. Regulation D provides a safe harbor; companies that meet its requirements have certainty that an offering is a private offering that is exempt from registration. The various underlying rules are complex and you should consult your independent accountants and attorneys in considering this financial alternative.

A private placement is generally less expensive than an IPO and does not require as much disclosure or preparation time. It also does not require periodic reporting to regulatory agencies. However, there are restrictions on subsequent resale of the securities sold, so the proceeds will typically be at a lower value than in a registered offering.

Different levels of disclosures to investors are required by Regulation D, based on the size of the offering and the nature of the purchasers, as follows.

- Rule 504: relates to offerings not over $1 million in a 12-month period. No specific disclosures are required by the SEC, although they may be required by state law.
- Rule 505: relates to offerings up to $5 million in any 12-month period to an unlimited number of "accredited investors" (e.g., institutional investors, wealthy individuals) and no more than 35 other purchasers. Disclosures are generally the same as would be required in an IPO. However, if only accredited investors are involved, there are no SEC required disclosures, although, again, state laws may require certain information.

APPENDIX II

ALTERNATIVES TO AN INITIAL PUBLIC OFFERING continued

- Rule 506: permits offerings of an unlimited amount to no more than 35 purchasers meeting various financial "sophistication" standards, and an unlimited number of accredited investors. Disclosures generally would be similar to those in an IPO. However, if only accredited investors are involved, there are no SEC required disclosures, although, again, state laws may require certain information.

Venture Capital

For those companies seeking funds during their development stage, venture capital financing may be particularly appropriate. This is designed to give investors the possibility of significant appreciation in their investment, often in the form of an eventual IPO, in return for taking the high risk of investing in a new company. Venture capital can be expensive since it requires giving up a substantial part of your company's equity. Furthermore, venture capital comes at the price of a certain amount of control, as venture capitalists will want an influential voice in the company's affairs. They usually require membership on the board of directors and will closely monitor the company's progress.

Intrastate Offerings

Rule 147 of the 1933 Act exempts from registration offerings restricted to residents of the state in which the company is organized and does business, provided:

(1) the company has at least 80% of its revenues and assets within the state; and

(2) at least 80% of the net proceeds of the offering are used within the state. This exemption is available regardless of the size of the offering or the sophistication of the investors. There are no specific disclosure requirements in this type of offering. A substantial disadvantage of an intrastate offering is the risk of the entire sale being rescinded if the stock limitation on resales to nonresidents is violated.

Crowdfunding

In October 2013, the SEC proposed a rule required by Title IV of the JOBS Act that would permit "crowdfunding." Under the crowdfunding proposal, private companies conducting public offerings of $1 million per year or less would be exempt from the standard SEC registration process. The intent is to allow limited-size offerings, principally via the internet, to enable small amounts to be sold to a large number of investors. Participating investors need not be accredited but would be subject to specific purchase limits. Companies interested in this type of offering should stay tuned to the SEC's website and rulemaking schedule for updates.

Other Possibilities

Other possible financing alternatives include: leasing, government loans (e.g., Small Business Administration), research and development partnerships, joint ventures, and convertible debt.

In addition, the securities markets are becoming more global in nature, spawning new opportunities to obtain financing overseas. For example, an increasing number of U.S. companies have undergone IPOs in foreign countries.

APPENDIX III

SAMPLE TIMELINE OF EVENTS

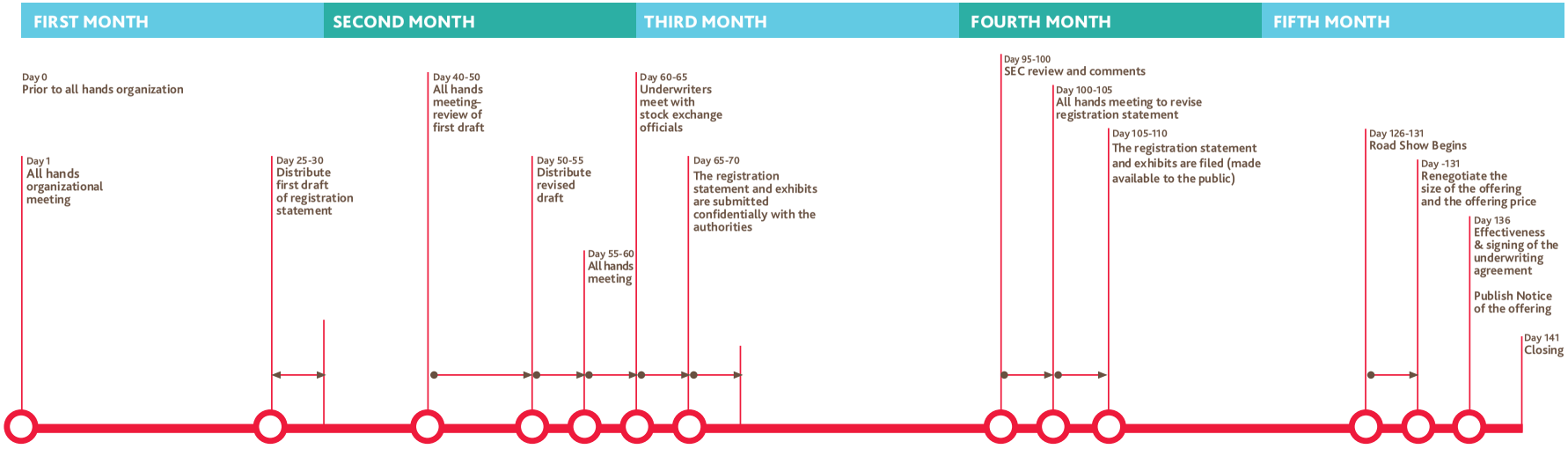
SAMPLE TIMELINE OF EVENTS

Prior to all hands organizational meeting, the following should be completed:

- Feasibility study
- Audit of financial statements
- Selection of underwriter
- Selection of public relations firm/investor relations

The length of the process of going public depends on numerous factors, including the size the of the company, the complexity of its organization, the number of comments and letters that the company receives from the SEC staff, the number of drafts that it confidentially submits and/or files, and renegotiations with underwriters. Therefore the time period between the first all hands organizational meeting and the "closing" of the IPO may run from four to seven months and possibly even longer. The following timeline assumes that the Company qualifies as an emerging growth company and has elected to submit its registration statement confidentially with the SEC before it is officially filed. The timeline also assumes that the company going public is an average company with no complex accounting issues that will finish the process in five months.

THE IPO TIMETABLE BY MONTHS



APPENDIX III

SAMPLE TIMELINE OF EVENTS continued

THE IPO TIMETABLE BY MONTHS – COMPREHENSIVE EXPLANATION

DAY	ACTIVITY	PARTICIPANTS
Prior to all hands organizational meeting firm/ investor relations	• Feasibility study • Audit of financial statements • Selection of underwriter • Selection of public relations	Management or board of directors, consultants and independent auditor
Day 1	All hands organizational meeting that includes the company's representatives, underwriters, legal counsel and independent accountants. Review Officers' and Directors' questionnaires and SEC requirements and begin draft of registration statement.	Everyone, specifically management, the legal counsel and the independent accountant
Days 25-30	Distribute first draft of registration statement for reviews.	
Days 40-50	All hands meeting – The first draft is reviewed. Additional drafts are circulated to the working group. Due diligence sessions are held. Meet with printer to plan printing of the registration statement.	Everyone
Days 50-55	Distribute revised draft of registration statement	
Days 55-60	All hands meeting – final revisions to registration statement. Discuss and draft comfort letter	IPO team Underwriters, management and independent accountant
Days 60-65	If appropriate, the underwriters meet with stock exchange officials to discuss listing requirements and procedures.	Underwriters
Days 65-70	The registration statement and exhibits are confidentially submitted with the SEC, state securities commissions, and the National Association of Securities Dealers.	Underwriters and management
Days 95-100	Usually within 30-45 days after the registration statement has been filed, the SEC issues its comments.	
Days 100-105	All hands meeting to revise registration statement and respond to SEC comments.	Everyone
Days 105-110	The pre-effective registration statement and exhibits are filed with the SEC. At this time, all information is a matter of public record. Red Herring (the preliminary prospectus) is distributed. (In most situations, there will be a second round of comments from the SEC, which might defer the rest of the timetable.)	Underwriters and management
Days 126-131	Road Show begins.	Management, PR firm, and underwriter
Around day 131	The company and the underwriters might renegotiate on the size of the offering as well as the offering price.	Management and underwriters
Around day 136	The SEC declares the registration "effective," the independent accountants issue the draft "comfort letter," the company and the underwriters execute the underwriting agreement (and agree on the size of the offering as well as the offering price), and the public offering begins.	
Around day 137	A published notice of the offering is placed in U.S. financial newspapers and journals (tombstone ads).	Management
Around day 141	Issuance of the final comfort letter. A "closing" takes place at which time the proceeds of the offering are transferred to the company.	Independent accountant Management, underwriter, and legal counsel

APPENDIX IV

INITIAL LISTING REQUIREMENTS

NEW YORK STOCK EXCHANGE ORIGINAL LISTING STANDARDS			
Domestic Issuer Listing Requirements	**Alternative One**	**Alternative Two**	**Alternative Three**
Holders of 100 or more shares Total shareholders	400 N/A	400 or 2,200	400 or 500
Average monthly trading volume (for most recent 6 months) (for most recent 12 months)	 N/A N/A	and 100,000 N/A	and N/A 1 million
Public shares	1.1 million	1.1 million	1.1 million
Market value of public shares[1] Public Companies IPOs, Spin-offs, Carve-outs	 $100 million $40 million	 $100 million $40 million	 $100 million $40 million
Stock price at time of listing	$4	$4	$4
Pretax earnings[2]: (a) Aggregate earnings over last three years and minimum for the two most recent years OR (b) Aggregate earnings over last three years, minimum for the most recent year, and minimum in the next most recent year OR (c) Aggregate operating cash flows for last three years[3] (all three years must report a positive amount), minimum global market capitalization, and minimum revenues for the most recent 12 month period OR (d) Global market capitalization (and minimum revenue or total assets and shareholders' equity)	 $10 million and $2 million OR $12 million, $5 million, and $2 million OR $25 million,[4] $500 million, and $100 million OR $750 million $75 million	 $10 million and $2 million OR $12 million, $5 million, and $2 million OR $25 million,[4] $500 million, and $100 million OR $750 million $75 million	 $10 million and $2 million OR $12 million, $5 million, and $2 million OR $25 million,[4] $500 million, and $100 million OR $150 million $75 and $50 million
Corporate governance[5] and going concern	yes	yes	yes

1 In an IPO, the NYSE will rely on a written commitment is required from the underwriter to determine compliance with the public market value requirement.
2 The NYSE permits certain adjustments to U.S. GAAP earnings, see the NYSE Listed Company Manual.
3 This alternative measure is only available to companies with $500 million or greater in market capitalization and $100 million or greater in revenues in the most recent twelve months.
4 The NYSE here defines operating cash flows as net income, adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude certain changes in operating assets and liabilities. See the NYSE Listed Company Manual.
5 Corporate governance requirements include (1) an annual shareholders' meeting, (2) shareholder approval for certain corporate actions, (3) an internal audit function, and (4) certain audit, compensation, and nominating committee requirements.

NASDAQ CAPITAL MARKET			
Domestic Issuer Original Listing Requirements	**Standard One**	**Standard Two**	**Standard Three**
Shareholders' equity	$5 million	$4 million	$4 million
Market value of listed securities[1]	N/A	$50 million	N/A
Net income from continuing operations (in latest fiscal year or two of last three fiscal years)	N/A	N/A	$750 thousand
Publicly held shares[2]	1 million	1 million	1 million
Market value of publicly held shares	$15 million	$15 million	$5 million
Bid price OR Closing price	$4 $3	$4 $2	$4 $3
Holders of 100 or more shares	300	300	300
Market makers	3	3	3
Operating history	2 years	N/A	N/A
Corporate governance[3]	Yes	Yes	Yes

1 Listed securities include securities listed on a national securities exchange. Companies qualifying only under the market capitalization requirement must meet the market value of listed securities and the minimum bid price requirements for 90 consecutive trading days prior to applying for listing.
2 Publicly held shares are defined as shares that are not held directly or indirectly by any officer or director of the issuer and by any other person who is the beneficial owner of more than 10 percent of total shares outstanding.
3 Corporate governance requirements include (1) an annual shareholders' meeting, (2) shareholder approval for certain corporate actions, and (3) certain audit committee requirements.

APPENDIX IV

INITIAL LISTING REQUIREMENTS continued

NASDAQ GLOBAL SELECT MARKET				
Domestic Issuer Original Listing Requirements	**Standard One**	**Standard Two**	**Standard Three**	**Standard Four**
Pre-tax earnings[1] (income from continuing operations before income taxes)	Aggregate in prior three fiscal years > $11 million and Each of the two most recent fiscal years > $2.2 million and Each of the prior three fiscal years > $0	N/A	N/A	N/A
Cash flows[2]	N/A	Aggregate in prior three fiscal years > $27.5 million and Each of the prior three fiscal years > $0	N/A	N/A
Market capitalization[3]	N/A	Average > $550 million over prior 12 months	Average > $850 million over prior 12 months	$160 million
Revenue	N/A	Previous fiscal year > $110 million	Previous fiscal year > $90 million	N/A
Total assets	N/A	N/A	N/A	$80 million in the most recently completed fiscal year
Stockholders' equity	N/A	N/A	N/A	$55 million
Bid price[4]	$4	$4	$4	$4
Market makers[5]	4	4	4	4
Corporate governance[6]	Yes	Yes	Yes	Yes

To go public, companies must have 2,200 beneficial shareholder or 450 holders of 100 or more shares; 1,250,000 publicly held shares; and either $45 million of publicly held share market value.

1 In calculating income from continuing operations before income taxes, Nasdaq will rely on an issuer's annual financial information as filed with the SEC in the issuer's most recent periodic report and/or registration statement. If an issuer does not have three years of publicly reported financial data, it may qualify if it has (i) reported aggregate income from continuing operations before income taxes of at least $11 million and (ii) positive income from continuing operations before income taxes in each of the reported fiscal years.

2 In calculating cash flows, Nasdaq will rely on the net cash provide by operating activities reported in the statements of cash flows as filed with the SEC in the issuer's most recent periodic report and/or registration statement, excluding changes in working capital or in operating assets and liabilities. A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the issuer's publicly reported financial statements.

3 In the case of an issuer listing in connection with its IPO, compliance with the market capitalization requirements will be based on the company's market capitalization at the time of listing.

4 The bid price requirement is not applicable to a company listed on The Nasdaq Global Market that transfers its listing to The Nasdaq Global Select Market.

5 If certain income or equity standards are met, only 3 market makers are required. An electronic communications network is not considered a market maker for purposes of these rules.

6 Corporate governance requirements include (1) an annual shareholders' meeting, (2) shareholder approval for certain corporate actions, and (3) certain audit committee requirements.

APPENDIX IV

INITIAL LISTING REQUIREMENTS continued

NASDAQ GLOBAL MARKET			
Domestic Issuer Original Listing Requirements	**Standard One**	**Standard Two**	**Standard Three**
Shareholders' equity	$15 million	$30 million	N/A
Market value of listed securities or Total assets and Total revenue	N/A N/A N/A	N/A N/A N/A	$75 million[1] OR $75 million AND $75 million
Pretax income from continuing operations (in latest fiscal year or two of last three fiscal years)	$1 million	N/A	N/A
Publicly held shares[2]	1.1 million	1.1 million	1.1 million
Market value of publicly held shares	$8 million	$18 million	$20 million
Bid price	$4	$4	$4
Holders of 100 or more shares	400	400	400
Market makers	3	3	4
Operating history	N/A	2 years	N/A
Corporate governance[3]	Yes	Yes	Yes

1 Listed securities include securities listed on a national securities exchange. Companies qualifying only under the market capitalization requirement must meet the market value of listed securities and the minimum bid price requirements for 90 consecutive trading days prior to applying for listing.

2 Publicly held shares are defined as shares that are not held directly or indirectly by any officer or director of the issuer and by any other person who is the beneficial owner of more than 10 percent of total shares outstanding.

3 Corporate governance requirements include (1) an annual shareholders' meeting, (2) shareholder approval for certain corporate actions, and (3) certain audit committee requirements.

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