

CAPITAL MARKETS

IPO 101: An Overview of the Initial Public Offering Process

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MIKE BLANKENSHIP, JAMES BROWN, DOUG LIONBERGER

SPEAKERS



**MIKE
BLANKENSHIP**

Managing Partner
Houston
(713) 651-2678
mblankenship@winston.com



**JAMES
BROWN**

Partner
Houston
(713) 651-2796
jrbrown@winston.com



**DOUG
LIONBERGER**

Partner
Houston
(713) 651-2693
dlionberger@winston.com

Overview of Topics Covered

- Structuring Considerations and Indicative Timeline
- Registration Process
- Governance Matters

Structuring Considerations and Indicative Timeline

Pre-IPO Considerations

There are many factors that need to be considered prior to going public, including:

STABILITY AND VISIBILITY OF BUSINESS	<ul style="list-style-type: none"> • Ability to forecast • Growth trajectory • Competitive moats 	CHANGE IN CORPORATE GOVERNANCE STRUCTURE	<ul style="list-style-type: none"> • Director independence • Audit, compensation and other committees
PEOPLE	<ul style="list-style-type: none"> • An experienced executive team • An engaged Board of Directors with public company and industry experience • Must be prepared to meet public company financial reporting timelines and requirements 	ANNUAL SHAREHOLDER MEETING	<ul style="list-style-type: none"> • Proxy statement disclosure (including executive compensation)
CULTURE	<ul style="list-style-type: none"> • Is the company prepared for increased scrutiny resulting from public disclosure of matters such as executive compensation and related party transactions? 	INCREASED LITIGATION PROFILE	<ul style="list-style-type: none"> • Derivative and class actions
SYSTEMS AND FUNCTIONS	<ul style="list-style-type: none"> • Accounting • Compliance and reporting 	DIRECTOR AND OFFICER LIABILITY	<ul style="list-style-type: none"> • Indemnification • Director and officer insurance
ADVISORS	<ul style="list-style-type: none"> • Accountants • Legal • Investor relations 	CORPORATE STRUCTURE	<ul style="list-style-type: none"> • State of Incorporation • Corporate Structure and Capitalization

IPO Critical Tasks And Timeline Overview

Corporate Structure & Reorganization

- Suitability of current corporate organization
- Tax structuring and implications

Corporate Governance & Board

- Composition of board of directors
- Search for independent directors
- Board committees (audit, compensation, and others)
- Compliance with SOX
- Potential management changes/additions
- Executive compensation analysis

Capital Structure

- Use of proceeds
- Optimize capital structure and financing needs
- Dividend policy
- Elimination of any preferred equity and converts

IPO Prospectus

- Key marketing document
- Bookrunners provide outline/investment highlights
- Company counsel drafts prospectus

Roadshow Slides

- Bookrunners craft slides with company

Executive Compensation

- Determine compensation packages for executive management and board (including stock/options)
- Compensation disclosure in Form S-1 (limited disclosure for EGCs)

Pre-Organization Meeting Preparation

Filing Preparation (6-10 Weeks)

SEC Review (8-10 Weeks)

Marketing & Pricing (2 Weeks)

Hire Advisors

- Bookrunners
- Legal Counsel
- Auditors
- IPO advisor/consultant

Financial Statements

- 2 years audited financials (for EGCs)
- 2 years selected financials (for EGCs)
- SOX and internal controls
- Acquisition financials and pro formas

Organizational Meeting

Due Diligence

- Business
- Financial
- Legal
- Accounting
- Research

Financial Projections

- Develop detailed financial projections (typically 5 years)

Testing The Waters Communications

- Limit discussions to QIBs
- Clear communication materials with counsel

SEC Review^{1,2}

- SEC reviews prospectus, including financial statements
- Typically 3-4 rounds of comments for an IPO (8-10 weeks)
- Updated financials
- Add co-managers
- File with \$ price-range

Marketing & Pricing

- Investor targeting
- Management dry-run
- Salesforce presentations and teach-ins
- Roadshow (one-on-ones and group events)
- Bookbuilding
- Pricing and allocation
- Closing

1. SEC Review can take significantly longer.

2. IPO issuers can file confidentially and respond to SEC comments without making a public filing. Public filing is required 15 days before roadshow launch.

Structuring Considerations

- Over 50% of publicly-traded companies and more than 60% of Fortune 500 are Delaware corporations
- LLCs can be publicly-traded, but their unique capital structures and governance mechanics create additional complexity. As a result, most publicly-traded entities are corporations
- Consider converting to a DE corporation, using an “Up-C” structure or other alternatives at an early stage in the planning process

The Registration Process

Preparing for Due Diligence

- The underwriters and their counsel will lead the due diligence process
- The issuer's financial and administrative staff must be prepared for a time-intensive and somewhat distracting process
- The issuer will typically create a virtual data room or use an outside vendor to facilitate the flow of information
- Issuer's counsel will engage in pre-IPO sell-side diligence, including review of material contracts and other key documentation
- Issuer and its counsel must determine which contracts are "material" for SEC purposes and, therefore, are required to be filed as exhibits to the registration statement
- The issuer can redact certain sensitive information from commercial contracts (thus avoiding public disclosure) using a Confidential Treatment Request (CTR)

Registration Statement

- A typical IPO prospectus (Part I of the registration statement) contains:
 - Summary
 - Risk Factors
 - Use of Proceeds
 - Dividend Policy
 - Capitalization
 - Dilution
 - Selected Financial Data
 - MD&A
 - Business
 - Management
 - Executive Compensation
 - Corporate Governance
 - Related Person Transactions
 - Principal and Selling Stockholders
 - Description of Capital Stock
 - Underwriting
 - Legal Matters
 - Experts
 - Financial Statements
- Part II of the registration statement contains information such as expenses of the offering, indemnification arrangements, any sales of unregistered securities, exhibits and undertakings

Confidential Submission

- Companies may confidentially submit initial registration statement to the SEC
 - No filing fee until publicly filed
 - Able to resolve complex issues outside of public spotlight
 - Helps to preserve other strategic alternatives, such as sale or private placements
- If submitted confidentially, must publicly file registration statement (and all previously submitted drafts) at least 15 days before roadshow
- Confidentially submitted registration statement form and content should be substantially the same as one that is publicly filed, except that it does not need the company's signatures or an auditor consent
 - The registration statement must include a signed audit report and all other exhibits that would be required if publicly filed

The Roadshow

- Once the working group is ready to launch the offering, the marketing of the offering begins
- Company executives and underwriters hit the road with the preliminary prospectus and a “road show” presentation to promote the offering, meeting with institutional investors in various cities
- A typical road show for an IPO lasts up to two weeks
- Lead underwriter takes indications of interest and builds “the book”
- At this stage, no shares can be officially sold, so any orders submitted are only indications of interest and are not legally binding

Pricing and Closing

- At the conclusion of the road show, the company and underwriters participate in a bring-down diligence call to confirm no material changes have occurred and then a pricing call to finalize the terms of the offering
 - The company and underwriters agree on the price to the public and the underwriters' spread
- Execute the Underwriting Agreement and deliver comfort letters
- Finalize and print the Prospectus
 - Final prospectus containing pricing information must be filed with the SEC not later than close of business on the second business day after pricing
- Closing will be two trading days after pricing

Emerging Growth Companies (“EGCs”)

- Smaller companies going public through an IPO may qualify as EGCs
- To qualify as an EGC, the company’s annual gross revenues for its most recent fiscal year must be less than \$1,070,000,000.
- EGCs are permitted to go public with somewhat reduced disclosure requirements and can “test the waters” in advance of an offering
 - The disclosure modifications include:
 - Reduced financial statement requirements
 - Scaled down compensation disclosures and tables
 - “Testing the waters” allows companies to gauge investor interest in an offering by communicating directly with qualified institutional buyers or institutional accredited investors both before or after the filing of the registration statement.
 - Underwriters can participate in these communications
 - Investors can be solicited for non-binding indications of interest

Governance Matters

Board of Directors: Independence Requirements

- Independence / Committee Requirements
 - A majority of the board must be independent; and
 - The board's audit, compensation and nominating/corporate governance committees must all be comprised entirely of independent directors
- There are, however, IPO transition rules that delay these requirements:
 - Each committee must have one independent director upon initial listing;
 - A majority of each committee must be independent within 90 days of initial listing;
 - Each committee must reach full independence within one year of initial listing; and
 - A majority of the board must be independent within one year of initial listing
- Private equity designees may be considered independent, although certain special rules apply to the audit committee

Board of Directors for a Controlled Company

- A “Controlled Company” has more than 50% of the voting power for the election of directors held by an individual, a group or another company
 - This can be a single owner or a group of owners who have agreed to vote in concert in connection with the election of director, such as:
 - Voting agreement that gives one or more Sponsors the right to designate directors
 - Voting agreement whereby one Sponsor agrees to vote as directed by another Sponsor
- A Controlled Company is exempt from the following requirements:
 - Majority Independent Board;
 - Independent Compensation Committee; and
 - Independent Nominating & Governance Committee
- A Controlled Company is still required to have an independent Audit Committee
- A Controlled Company relying upon these exemptions must disclose in its annual meeting proxy statement that is a Controlled Company and the basis for that determination

Committee Charters / Governance Policies

- Develop and adopt detailed charters for each Board committee
- Develop and adopt general corporate governance policies, such as:
 - Governance Guidelines
 - Code of Conduct
 - Financial Code of Ethics
 - Audit Committee Pre-Approval Policy
 - Whistleblower Policy
 - Related Persons Transactions Policy
 - Stock Ownership & Retention Guidelines
 - Insider Trading Policy
 - Short-Swing Trading and Reporting Policy
 - Regulation FD Policy
 - Document Retention Policy

Upcoming Winston & Strawn Webinars

- March 9 – Journey from Private to Public with Grant Thornton
- Early April – Communications before, during and after the process
- Late April – Marketing and underwriting process
- Early May – Governance and “Now that you are public”
- Mid-May – D&O Insurance and other post-public items

Initial Public Offering Experience

We view IPOs as a process, rather than an event, and will partner with you and your advisors working in a collaborative way toward a common goal. Our team takes an integrated approach, drawing upon the firm's experience in capital market transactions, corporate governance, executive compensation, and tax planning. Our principal focus is to protect your company's officers and directors by devoting appropriate diligence and attention to required disclosure documents.

CORPORATE GOVERNANCE AND SEC COMPLIANCE

Another critical aspect of our work on IPOs is to prepare our client for the challenges of operating as a public company. These challenges include complying with Sarbanes-Oxley (SOX), satisfying financial reporting obligations in a timely manner, dealing with analysts and investors, developing appropriate employee policies such as insider trading restrictions, and establishing board governance structures and procedures.

Our securities attorneys have extensive experience in counseling clients in all aspects of SEC reporting and compliance (including 10-Q and 10-K filings), securities offerings, board of directors matters, and other corporate governance issues including reviewing and updating corporate governance policies required under SOX, Dodd-Frank, and the 1934 Act.

INDUSTRY EXPERIENCE

We deliver value by seamlessly integrating attorneys with in-depth industry knowledge throughout each phase of a transaction.

We have represented clients across many industries, including energy, insurance, finance, technology, manufacturers, service, healthcare, fashion, restaurant chains, food and beverage producers, packaged food makers, wineries, breweries, distributors, and franchisors in the United States and around the world.

KEY PHASES OF AN IPO

Registration with the SEC. You will need to prepare and file the registration statement on Form S-1, determine stock price range, print the preliminary prospectus, and prepare for the "road show."

Due Diligence. During this phase, you have to ensure that the information in the registration statement is accurate, does not omit any required information, or any information necessary to prevent the statements in the registration statement from being misleading.

Underwriting and "Road Show." This is your opportunity to articulate your story and the investment opportunity face-to-face with potential investors who will buy your company's stock during the IPO.

Analyst Presentations / Model. Prior to and during the registration process, you will develop a model to present to stock analysts. The analyst model is an important indicator to the street about the company's future guidance.

Corporate Infrastructure Evaluation. You will have to select board members, prepare a Certificate of Incorporation and By-Laws, adopt certain corporate policies and create committees, review executive compensation, and obtain director and officer insurance.

Exchange Listing. You will need to select a stock exchange. You should consider where your peers/competitors are listed and determine which exchange has the best terms and branding opportunities.

Capital Markets Practice

Our capital markets and securities attorneys represent U.S. and international issuers, institutional investors, underwriters, and placement agents in a wide variety of public and private offerings of debt and equity securities.

EQUITY OFFERINGS

We represent issuers, institutional investors, underwriters, and selling shareholders in a broad range of equity offerings, including initial public offerings; follow-on offerings; registered direct and confidentially marketed public offerings; exchange and non-exchange traded preferred stock offerings; American depository receipt offerings; Rule 144A components of global offerings; and private investment in public equity (PIPEs). Our clients operate in a broad range of industries including real estate, technology, industrials, media, manufacturing, pharmaceuticals, financial services, energy, and food & beverage, among others.

INVESTMENT-GRADE DEBT OFFERINGS

We have an active practice representing issuers and underwriters (including being designated underwriters' counsel for regular debt issuers) in investment-grade debt offerings. We have experience with a wide range of complex debt products in offerings exceeding \$1 billion as well as in baby bond offerings. We also regularly represent issuers in the drafting and filing of their shelf registration programs with the SEC.

HIGH-YIELD DEBT OFFERINGS

We regularly advise issuers and underwriters in offerings of high-yield debt, both SEC-registered and under Rule 144A/Regulation S. Our experience includes complex global offerings by both domestic and foreign issuers.

CONVERTIBLE DEBT AND OTHER HYBRID SECURITIES OFFERINGS

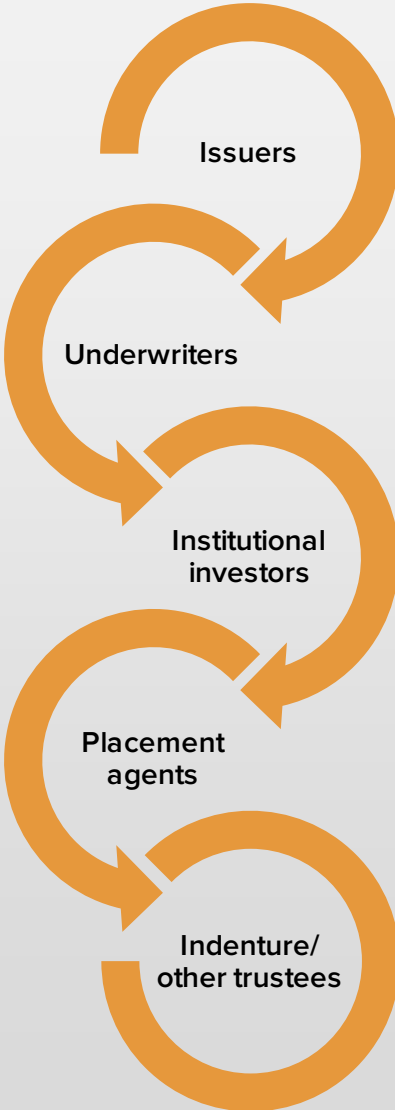
We regularly advise issuers and underwriters in offerings of convertible debt and other hybrid securities. We also advise on related transactions such as call spread and capped call overlays.

DEBT TENDER AND EXCHANGE OFFERS

We have significant experience representing issuers and dealer managers in debt tender and exchange offers ranging from simple make-whole offers to debt tenders that feature complex "any and all" and "capped" waterfall structures. We have also been involved in Rule 144A exchange offers designed to amend the terms of outstanding public debt and where an acquiring company exchanged its public debt for the public debt of an acquired company as part of a merger transaction.

SPIN-OFFS, CARVE-OUTS, AND SPLIT-OFFS

We have significant experience with spin-offs, carve-outs, split-offs, Reverse Morris Trust transactions, and other complex restructurings. Our experience covers the range of issues that arise in these transactions including securities, tax, and transactional advice.



900+
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