

GOING PUBLIC CONSIDERATIONS

<u>Benefits</u>	<u>Costs</u>	<u>Impact</u>
<p>Access to Public Markets</p> <ul style="list-style-type: none"> Increases the ability to obtain capital at a lower cost Valuations are market driven and not as subject to discounts 	<p>Possible Loss of Control by Shareholders</p> <p>Ownership and Control are Separated</p> <p>Management Time Diverted From Operations to IPO Process</p>	<p>New Constituencies</p> <ul style="list-style-type: none"> Institutional Shareholders Public investment Funds Proxy Advisory Firms
<p>Ability to Use Equity as Currency</p> <ul style="list-style-type: none"> Acquisitions Compensation 	<p>Significant Allocation of Resources and Financial Commitment</p> <ul style="list-style-type: none"> Changing Corporate Governance Structure Addressing Accounting Requirements Establishing Continuous Disclosure Processes Upgrading IT Establishing SOX Compliance Processes 	<p>Public Disclosure Requirements</p> <p>Focus on Shareholder Value</p> <p>Heightened Scrutiny on Fiduciary Duties</p>
<p>Liquidity for Investors</p>		<p>Restrictions on sales of shares by insiders</p>
<p>Improved Net Worth</p>		<p>Increased Shareholder Activism and Calls for Transparency</p>
<p>Enhanced Corporate Reputation</p> <ul style="list-style-type: none"> Publicity for products Attract and Retain Personnel 		<p>New Corporate Governance Structure</p> <p>Additional Expenses and Administrative Requirements</p> <ul style="list-style-type: none"> SEC Periodic Reporting Requirements Increased Accounting and Legal Fees
		<p>Analysts Coverage</p> <p>Public and Investor Relations</p>

THE IPO PROCESS

- Planning for an IPO should begin at least 12-18 months prior to the anticipated offering
- The Registration Process will take 4-6 months to complete, or longer

Pre-IPO Considerations

Use of Proceeds

Inclusion of Selling Shareholders

Selecting Underwriter and Assembling Professionals

Adequacy of Management Team

Corporate Governance

Financial Statements and Records

Capital Structure

Executive Compensation Arrangements

Board of Directors Composition

Stock Market Listing Requirements

Identify Transfer Agent and Transfer Stock Ledger Records

Prepare for Due Diligence Review Procedures

Corporate Housekeeping

Registration Process

Due Diligence Process

Emerging Growth Company's "Test the Waters" Meetings

Preparing the Registration Statement/Prospectus

Confidential Submission of Draft Registration Statement by Emerging Growth Company

SEC Filing

Confidential Treatment Request

SEC Review and Comment Process

Stock Exchange Listing Application

Road Show Marketing of the Offering

Underwriting Arrangements

Comfort Letters

Closing

THE IPO REGISTRATION PROCESS

- Companies engaged in the IPO process generally fall into one of three issuer categories which will impact the procedures to be followed and the level of disclosures required to be furnished in connection with the IPO.
 - **Smaller Reporting Companies (“SRC”)**
 - A company will qualify as a SRC for purposes of an IPO if (assuming there is no public float for its equity securities) it had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.
 - If there is a public float (e.g., pink sheet and/or offshore market for its securities), then the public float must be less than \$75 million as of a date within 30 days of the date of the filing of the IPO, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, the number of such shares included in the IPO by the estimated public offering price of the shares.
 - SRC status will continue post-IPO (as well as the scaled-back disclosure benefits afforded to SRCs) until the end of the year in which its public float exceeds \$75 million as of the last business day of the second quarter.
 - **Emerging Growth Companies (“EGC”)**
 - A company will qualify as an EGC for purposes of an IPO if it had total annual gross revenues of less than \$1 billion as of the end of its most recently completed fiscal year. An EGC also may be a SRC.
 - In addition to relaxed offering procedures and disclosure requirements for the IPO, EGCs will be allowed to phase-in its compliance with various disclosure requirements and with certain provisions of the Sarbanes Oxley Act of 2002 (“SOX”) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) or, if also a SRC, delay compliance as long as it qualifies as a SRC.
 - EGC status continues for up to five years unless earlier terminated. EGC status will be earlier terminated if its total annual gross revenues exceed \$1 billion, its worldwide public float exceeds \$700 million as of the last business day of the second quarter, or if it issues more than \$1 billion in convertible debt in any 3-year period.
 - **All other companies are subject to the full disclosure and procedural requirements established under law and by the SEC for going public**

- **The Offering process is comprised of three phases**
 - **Pre-Filing or Quiet Period - the period when the company actively begins IPO preparations (generally when an understanding is reached with underwriter)**
 - **The Waiting Period - the period after filing with the SEC but prior to effectiveness (sale of shares)**
 - **Post-Effective Period - the period during which the shares are offered and sold**
- **During pre-filing period:**
 - **the underwriter and professionals involved in the offering conduct exhaustive due diligence**
 - **an EGC may meet with institutional accredited investors and qualified institutional buyers to “test the waters”**
 - **prepare the registration statement to be filed with the SEC**
 - **EGCs may submit confidential drafts of its registration statement for SEC review prior to filing (such drafts must be subsequently filed at least 21-days prior to commencing any road shows – testing the waters is not a road show)**
 - **negotiate the terms of the underwriting arrangements, and prepare stock exchange listing applications**
 - **make plans for the road show**
 - **no oral or written offers may be made for the securities (no market “conditioning”), other than testing the waters meetings by EGCs**
- **During the waiting period (post-filing):**
 - **oral offers are permitted and road shows are conducted**
 - **written offers may be made only by means of a prospectus (or certain “free writing prospectuses”)**
 - **SEC issues comments to filed materials and the company takes steps to satisfy any issues raised by the SEC comments**
- **During Post-Effective Period**
 - **Sales are made through the prospectus and any accompanying written materials**
 - **The sale of the shares is closed and net offering proceeds paid to the company**

CONSIDERATIONS AFFECTING IPO ADVANCE PREPAREDNESS

- The IPO process requires a great deal of planning, coordination of resources, management and employee time and effort, and the consideration and resolution of numerous business and legal issues.
- When planning and preparing for the IPO, the primary areas of focus are a function of the following concerns:
 - Legal and regulatory obligations imposed on public companies, including:
 - ongoing SEC disclosure obligations
 - compliance with SOX and the Dodd-Frank Act, including the timing of compliance for EGCs (and to a lesser extent, SRCs)
 - satisfaction of applicable stock exchange rules
 - Capital restructuring issues
 - Pre-existing contractual arrangements with existing investors, lenders, management, and other significant third parties, and related party transactions with insiders
 - Public and investor relations demands placed on public companies, including dealings with institutional investors, analysts, regulators, the financial press, and other capital market participants
 - The difficulties and complexities involved in making changes to capital and corporate structures, compensation plans, or taking other actions requiring shareholder approval after becoming a public company
 - The time required to effect various pre-IPO activities
 - The marketing considerations related to the offering

IPO ADVANCE PREPAREDNESS ACTIVITIES

- **Assembling the Management and Professional Team**
- **Identifying and Recruiting Independent Directors with Skills that Improve Company Oversight and have Public Company Board Experience**
- **Establishing Appropriate Corporate Governance Infrastructure**
- **Addressing All Necessary Accounting and Financial Issues**
- **Revising the Capital Structure and Unwinding Private Equity Arrangements**
- **Adopting and Revising Management Compensation Plans, Arrangements, and Policies**
- **Undertaking Various Corporate Housekeeping Activities to Prepare the Company for being Public**
- **Anticipating and Addressing Common IPO Hot Issues**
- **Due Diligence Preparation**
- **Considering Various Offering Issues**
- **EGC Planning for compliance with SOX and Dodd-Frank Act Requirements to be Phased-In Post-IPO, Including Anticipated Duration of EGC Status (or, if also a SRC, SRC status)**

ASSEMBLING THE MANAGEMENT AND PROFESSIONAL TEAM

- **It is important to assemble the team of professionals early in the process so that they can assist in the planning and preparedness for an IPO.**
- **Management Team**
 - **determine members of management to be involved in the IPO process**
 - **evaluate current management team to determine whether any new members should be added to the senior management team**
 - **experienced CFO with ability to understand critical accounting issues and ability to certify as to financial statements and internal controls**
- **Accounting Firm**
 - **registered with the Public Company Accounting and Oversight Board (“PCOAB”)**
 - **experienced in public offerings**
 - **experienced in the Company’s industry**
- **Legal Counsel**
 - **experienced with IPO Process, SEC registration and disclosure requirements**
 - **experience with regulators**
 - **depth in experience to address other pre-IPO needs (employment, tax, corporate governance and state law issues, industry specific, etc.)**
- **Other professionals and consultants with expertise to assist in organizing and managing the process**
 - **industry specific consultants**
 - **consultants to assist in establishing necessary internal financial and disclosures procedures and processes**
 - **advisors and consultants to review and address problems areas in finance, technology, operations, and risk audits**

BOARD OF DIRECTORS COMPOSITION

- Evaluate current Board of Directors to determine the skill sets and areas where additional expertise might be useful or necessary
- Identify potential independent director candidates with skills and experience that will improve oversight of the company
- The Company typically will need a majority of its directors to be independent
 - Independent directors will be needed for the audit committee (SEC rules)
 - Stock exchange rules generally require:
 - NYSE requires a Nominating Committee and a Compensation committee comprised entirely of Independent Directors
 - Nasdaq does not require such committees, but does require in the absence of such committees, a majority of independent directors to approve nominations and CEO's compensation
 - There is a phase-in of the independence requirements for IPO companies
 - majority of the board comprised of independent directors within one year after IPO
 - at least one independent director at time of IPO (serving on Audit, Nominating, and Compensation committees), a majority of independent members on each committee within 90 days of the IPO, and fully independent committees within one year of the IPO
 - Audit committee must have at least one member by the IPO, at least two members within 90 days of the IPO, and at least three members within one year of the IPO
- At least one of the directors should to be able to be designated an “audit committee financial expert”
 - Experienced with reading and preparing financial statements, such as a CPA, former CFO, audit partner, etc.
 - SRCs are not required to disclose whether it has an “audit committee financial expert”
- Consider director compensation for board and committees, including stock and cash payments and whether based on retainer or per meeting attended

CORPORATE GOVERNANCE INFRASTRUCTURE

- **Establish Committee Structure**
 - **Audit, Compensation, and Nominating and Corporate Governance Committees**
 - **Evaluate need for a Risk Committee**
- **Determine whether to separate roles of CEO and Chairman, and whether to designate a Lead Director**
- **Adopt Charters for each Committee, especially for Audit, Compensation, and Nominating and Corporate Governance Committees**
- **Establish Corporate Governance Guidelines**
- **Establish Code of Conduct and Ethics**
- **Adopt Insider Trading Policies (with post-IPO application relating to trading windows for the Company's securities and Rule 10b5-1 Plans)**
- **Prepare for adoption, or adopt with effectiveness after IPO: Whistleblower Policy and policies relating to Regulation FD compliance and Section 16 reporting requirements.**
- **Establish shareholder communication policies and procedures**
- **Evaluate the need for, and the offering market impact on, pre-IPO adoption of various shareholder protection devices**
 - **Classified board of directors**
 - **Shareholder rights plans (so-called poison pill)**
 - **Articles/Certificate of Incorporation or Bylaw provisions (as applicable) - restricting actions taken by written consent of shareholders, prohibiting the removal of directors without cause, limiting the ability of shareholders to call a special meeting, advance notice of matters to be brought before a shareholders' meeting or to submit director nominees, limiting shareholder access to the company's proxy statement, supermajority voting provisions for significant corporate actions, fair price provision, etc.**

ACCOUNTING AND FINANCIAL ISSUES

- **Financial Statement Requirements Generally**
 - **Three years of audited financial statements (or, for the existence of the company if less)**
 - **Five years of Selected Financial Data (or, for the existence of the company if less)**
 - **Unaudited interim financial statements subject to SAS 71 review**
- **Special Rules for SRCs**
 - **Two years of audited financial statements (or, for the existence of the company if less) and no Selected Financial Data are disclosures required.**
- **Special Rules for EGCs**
 - **Two years of audited financial statements (after IPO, phase-in an additional year of audited financial statements to present the traditional three years of audited financial statements)**
 - **Selected Financial Data required for the earliest periods covered by audited financial statements included (i.e., only two years). After the IPO, an EGC is not required to go back further than that included in the IPO, but will phase-in additional years going forward until it has presented the traditional five-year period of selected financial data.**
- **If a SRC or an EGC, determine whether the underwriter will require the full three years of audited financial statements or is willing to market the offering with the scaled-back two years of audited financial statements permitted by the SEC rules**
 - **An EGC is permitted to forego certain of the scaled-back disclosures and phase-in of certain SOX and Dodd-Frank Act provisions and instead decide to comply with some or all of the requirements that apply to non-EGC issuers**
 - **In other words, an EGC may opt-in to certain of the scaled-back disclosures and phase-in of certain SOX and Dodd-Frank Act provisions and, for those that it does not opt-in to, comply with the requirements that apply to non-EGC issuers**

- **Consider whether the company and its outside auditors had or have any accounting disagreements.**
 - **Common areas of disagreement often include revenue recognition, option accounting, and state tax liability**
- **Review and Evaluate Potential Accounting Issues**
 - **Resolution of all previous management letters from auditors**
 - **Adequacy of reserves, issues relating to presentation of predecessor entities, and accounting of recent acquisitions**
 - **Review and discuss with auditors all off-balance sheet transactions**
 - **Determine whether financial statements need to be restated**
- **Identify critical accounting policies and discuss with auditors whether there is any need to change accounting procedures after the IPO**
 - **An EGC is not required to adopt or comply with any new GAAP accounting rules or pronouncements until they are also applicable to privately-held companies**
 - **Although an EGC may opt-in to certain of the scaled-back disclosures and phase-in of certain SOX and Dodd-Frank Act provisions, it is not permitted to selectively opt-in to comply with new or revised GAAP accounting rules or pronouncements**
 - **An EGC must state in its IPO registration statement whether it intends to use the extension of time to comply with any such new or revised GAAP accounting rules or pronouncements, and such determination will not be subject to change.**
- **Prepare narrative disclosure (referred to in the prospectus as Management's Discussion and Analysis of Financial Condition and Results of Operations ("MDA")) explaining the information presented in the financial statements**
 - **Auditors will need to review and provide comfort for financial data included in the narrative**
 - **If a SRC or an EGC, the financial statements and the related MDA may be limited to two years of audited financials which, if so limited, should reduce the costs of any such auditor comfort**

- Review any non-audit services provided by auditor and determine whether to discontinue such services
 - Audit committees of public companies are required to pre-approve audit and permitted non-audit services
- Evaluate whether the company's internal controls over financial reporting are compliant with Section 404 of SOX (establishing and maintaining adequate internal control over financial reporting that document, test and maintain those controls and procedures to ensure their effectiveness)
 - Public companies generally are required to provide a management assessment of the company's internal controls over financial reporting and obtain an attestation report from a registered public accounting firm as to its assessment
 - SRCs are only required to provide the management assessment and are not required to obtain an attestation report from a registered public accounting firm
 - EGCs are only required to provide the management assessment and are not required to obtain an attestation report from a registered public accounting firm for so long as it qualifies as an EGC (i.e., no longer than five years) or as a SRC.
 - Newly public companies may wait until their second annual report before complying with Section 404 of SOX. However, companies preparing for an IPO should commence plans to be ready for compliance when required. Establishing adequate procedures and controls is a time consuming task
- Evaluate whether the company has established adequate disclosure controls and procedures to ensure that it accumulates and communicates to management the information necessary to be disclosed by the company under its SEC reporting obligations.
 - Consider whether to authorize a Disclosure Committee and establish a reporting protocol
- Formulate and implement pre-IPO tax strategies, including use of NOLs
- Estate planning and other tax strategies for executives with equity ownership

REVISING CAPITAL STRUCTURE AND PRIVATE EQUITY ARRANGEMENTS

- **Review corporate structure, including whether to create a holding company structure, creation of subsidiaries, and tax issues (such as use of a technology subsidiary for state tax planning)**
- **Determine number of shares necessary for anticipated IPO and future offerings**
- **Identify target capital structure post-IPO**
- **Determine number of shares to be issued under exiting obligations**
 - **Conversion or exchange rights**
 - **Outstanding options and warrants**
- **Determine the number of shares to be available for post-IPO equity incentive plans**
- **Unwind or Satisfy Private Equity Arrangements prior to IPO**
 - **stockholder agreements**
 - **registration rights agreements**
 - **preferred stock rights (if possible to simplify capital structure)**
 - **voting rights, drag along and co-sale rights, preemptive rights, rights of first refusal, and information rights**
- **Amend Articles/Certificate of Incorporation to authorize sufficient number of shares and/or to authorize other capital structural changes.**
 - **Authorize excess shares for future offerings and issuance in connections with acquisitions**
 - **Approve any necessary stock splits, reverse stock splits, and recapitalization required prior to IPO**
 - **Consider whether to authorize any blank check preferred stock**
 - **Shareholder approval for most capital changes are required and are easier to obtain prior to IPO than after IPO (when subject to the SEC's proxy rules)**

MANAGEMENT COMPENSATION PLANS, ARRANGEMENTS, AND POLICIES

- **Consider whether the Company should enter into employment agreements with senior executives or other key employees**
 - **Severance and golden parachute provisions are easier to implement pre-IPO**
 - **Such provisions are general viewed unfavorably by institutional investors**
 - **Employment Agreements may provide comfort to investors as to the sustainability and stability of current management team.**
- **Approve equity compensation plans (or increase available shares) prior to IPO**
 - **Consider whether to include alternative equity incentives vehicles (e.g., SARs, RSUs, restricted stock, performance stock options or units, etc.)**
 - **Establish any performance award targets for performance-based equity incentives and revise existing arrangement to provide for adjustments as necessary to reflect IPO impact**
- **Determine whether to engage a Compensation Consultant to assist in the review and evaluation of the adequacy and the appropriateness of the management compensation and proposed pre-IPO revisions**
- **Establish a procedure for the review, analysis, and reporting of compensation risks associated with the company's compensation policies (no disclosures required by SRCs and EGCs)**
- **Advise the company's senior management of the disclosure requirements relating to the compensation of the CEO, CFO, and certain of its most highly compensated officers (SRCs and EGCs do not need to automatically include CFO)**
- **Establish a policy for identifying the company's executive officers for Section 16 purposes post-IPO (and filing of Form 3s at time of IPO)**
- **Preparation of narrative analysis of compensation policies and practices as they relate to the compensation payments actually made to executive officers (and CEO) referred to as Compensation Discussion and Analysis ("CDA") to be included in prospectus (not required by SRCs or EGCs)**
- **Consider the tax impact of Sections 162(m) and 409A of Internal Revenue Code on benefits post-IPO**

CORPORATE HOUSEKEEPING AND PREPARATIONS AS A PUBLIC COMPANY

- **Review Articles/Certificate of Incorporation and Bylaws to determine whether any provisions are inappropriate for a publicly-held corporation and whether additional provisions are necessary or desirable**
- **Review corporate minute books to ensure completeness and accuracy**
 - **Consider whether any additional corporate actions are required or necessary to reflect corporate actions taken or other whether corrective actions are necessary**
- **Determine whether any existing contractual arrangements will require third party approval or waiver as a result of IPO**
 - **contracts may contain change of control provisions which include public offerings**
- **Review bank loan documents to determine whether the IPO affects any of the covenants, agreements, or termination provisions, or otherwise triggers any responsibilities, costs, or acceleration of obligations**
- **Terminate any loans between the company and each of its executive officers and directors**
 - **Section 402 of SOX makes it unlawful for any public company, directly or indirectly, to extend credit, maintain credit or arrange for the extension of credit in the form of a personal loan to or for the benefit of any director or executive officer.**
- **Consider obtaining director and officer insurance, with appropriate IPO upgrades**
 - **Evaluate coverage amounts and deductibles, and increased costs at IPO**
- **Review any related party transactions and determine whether such arrangements will continue post-IPO**
 - **Educate such related parties of the disclosure obligations related to such transactions and the requirement of Audit Committee approval post-IPO**
 - **Formalize arrangements**
 - **Consider conflicting transactions and consider fiduciary duties related to consideration and approval of such transactions post-IPO**

COMMON SIGNIFICANT IPO HOT ISSUES

- **Executive Compensation and Disclosures Requirements**
 - **Must determine total compensation paid to CEO, CFO (SRCs and EGCs do not need to automatically include CFO), and certain of most highly compensated individuals**
 - **Must total all compensation received, including value of options and other perks**
 - **Include disclosure of the present value of accumulated benefits under pensions**
 - **The aggregate balance of all deferred compensation must be disclosed**
 - **All compensation paid must be disclosed**
 - **CDA must explain the basis for determining the compensation paid, and how and why each element of compensation was determined and paid (except for SRCs and EGCs)**
 - **Both the SEC and proxy advisors for Institutional Investors have placed greater scrutiny on executive compensation disclosures and policies**
- **Gun Jumping/Company Pre-IPO Communications**
 - **Certain kinds of publicity may be viewed by the SEC as constituting an illegal “offer” made during the quiet or waiting periods (preconditioning the market)**
 - **construed broadly and may include any pre-filing publicity that is not related to ordinary business communications, including press releases relating to certain positive developments (does not include testing the waters by EGCs)**
 - **it is unclear what kinds of pre-filing publicity will continue to constitute “gun-jumping” in view of the recently enacted statutory amendments to the Securities Act which will permit general solicitation and advertising in connection with the private offering of securities pursuant to Rule 506 of Regulation D so long as the purchasers are accredited investors or QIBs**
 - **interviews with senior executives**

- **Safe harbor communications**
 - **ordinary course communications (may not mention offering or provide forward-looking statements)**
 - **communications not relating to the offering which occur more than 30 days prior to filing**
 - **communications between an EGC and institutional accredited investors and qualified institutional buyers to gauge interest in the EGCs securities. Such communications will not be considered a road show for purposes of the requirement to file confidential drafts of a registration statement submitted for pre-filing review at least 21 days prior to a road show.**
 - **after filing, basic limited written notifications and free writing prospectuses**
- **Prior Private Offerings and Cheap Stock**
 - **The SEC may require substantiation for exemption from registration for prior private offerings in proximity to IPO**
 - **if the SEC disagrees, IPO could be delayed while corrective actions are undertaken**
 - **SEC has focused on offers and sales to employees prior to IPO. Rule 701 safe harbor is often relied upon.**
 - **If private offering was completed immediately prior to filing for IPO, the SEC may require substantiation that private offering did not result in gun jumping and that the private offering was consummated**
 - **Cheap Stock Issues related to equity awards pre-IPO**
 - **If pre-IPO equity awards are made at valuations substantially lower than the IPO price, SEC may raise issues relating to the accounting and tax treatment applied to such awards**
 - **If the equity award values are below fair market at the time of grant, they such awards may be treated as compensation expense at time of grant and is taxable to the grantee**
 - **The SEC takes a linear view of increasing equity value and generally presumes that the IPO price provides the best evidence of fair value at the time of the offering. The SEC is often skeptical of valuations occurring**

during the 12 months prior to the offering where the fair value of securities was significantly less than the anticipated IPO price.

- The company must be able to demonstrate that the valuation at the time of grant was reflective of the fair value of the equity
 - Documentation and a detailed explanation of how the fair value of the share-based payments was determined on each date of grant may be necessary. This may include independent appraisals, third party references and transactions, specific milestones since the grant that has increased equity values, and other relevant methodologies used.
 - A well-documented time line, with contemporaneous valuations supporting the grants throughout, may be an important tool for the company to support its judgments and assumptions
- **Management's Discussion and Analysis disclosures**
 - Use of non-GAAP disclosures is limited and subject to reconciliation with required GAAP measures, and some non-traditional non-GAAP measures may not be used at all
 - Required to disclose the reasons why management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the company's financial condition
 - MDA is requires disclosure of information necessary to an understanding of its financial condition, changes in financial condition and results of operations
 - identification any known trends or any known demands, commitments, events or uncertainties that may a material impact on future operating results, including economic or industry-wide factors impacting it
 - identification of trends impacting income, revenues, and expenses
 - description of key performance indicators used by management and its analysis of the opportunities, risks, and contingencies associated with the company's business plan
 - Disclosure is required of internal and external sources of liquidity, and known trends or any known demands, commitments, events or uncertainties impacting liquidity (including amounts available under existing credit lines)

- Description of material commitments for capital expenditures and the general purpose of such commitments, as well as the anticipated source of funds needed to fulfill such commitments.
- Description of all off-balance sheet financing arrangements, hedging activities, and external debt financing
- Revenue Recognition issues
- Related Party Transactions
- Risk Factors
- Segment Reporting
- Industry dependent matters (i.e., financial institutions, REITs)
- Issues relating to the scaled-back disclosure requirements of EGCs for the IPO and the subsequent post-IPO phase-in of certain disclosure requirements and provisions of SOX and the Dodd-Frank Act
 - inclusion of only two years of audited financial statements, selected financial data, and MDA
 - inclusion of scaled-back executive compensation disclosure requirements applicable SRCs:
 - compensation disclosures would be required for fewer persons and the Summary Compensation Table would only require coverage of a two year period (instead of three years);
 - no CDA is required;
 - no disclosures are required with respect to compensation policies and practices as they relate to risk management;
 - reduced disclosures required with respect to post-termination compensation, including no requirement to disclose any numerical amounts.
 - none of the following tables are be required: (a) Grant of Plan-Based Awards, (b) Option Exercises and Stock Vested, (c) Pension Benefits; and (d) Nonqualified Deferred Compensation.

- no requirement to provide an auditor’s attestation report on management’s assessment of internal controls for financial reporting otherwise required under Section 404(b) of SOX until it is no longer an EGC.
 - A SRC is permanently exempted from the requirements of Section 404(b) of SOX. Accordingly, if an EGC also qualifies as a SRC, it will continue to be exempt from the requirements of Section 404(b) of SOX until it no longer qualifies as a SRC (which may exceed the 5-year maximum duration of EGC status).
- no requirement to adopt or comply with any new or revised GAAP accounting rules or pronouncements until they are applicable to private companies.
- EGC is not subject to any future PCAOB rules that may be adopted relating to mandatory auditor rotation, or requiring supplemental auditor discussion and analysis covering additional information about the audit and the financial statements.
- EGC is exempt from the provisions of the Dodd-Frank Act relating to current and future executive compensation related disclosure requirements:
 - shareholder approval of executive compensation: say-on-pay vote, frequency of say-on-pay votes, and advisory vote on golden parachute payments.
 - The shareholder vote requirements of Dodd-Frank do not apply to SRCs until January 20, 2013.
 - With respect to EGCs, the shareholder voting relief under the JOBS Act continues until the later of 3 years after the IPO or one year after ceasing EGC status.
 - comparison of executive compensation and the financial performance of the company (“pay-for-performance”).
 - CEO pay-ratio disclosures
- In addition, if an EGC also qualifies as a SRC, it will also be able to avail itself of all of the scaled-back disclosures applicable to SRCs (not just those relating to executive compensation) for so long as it qualifies as a SRC.

DUE DILIGENCE PREPARATIONS

- **Reasons for due diligence procedures**
 - **Federal securities laws require disclosure of all material information necessary for investors to make an informed investment decision**
 - **All information included in prospectus must be accurate and complete and no material information may be omitted**
 - **Federal securities law liability for material misstatements and omissions**
 - **Companies have strict liability for any misstatements or omissions**
 - **Underwriters, directors, executive officers, and control persons also may be liable, but may be able to avoid liability if they can establish a due diligence defense**
 - **Assemble information necessary to prepare the registration statement/prospectus**
- **Due Diligence Review**
 - **All material contracts, agreements and financing documents**
 - **Litigation matters and contingencies**
 - **Financial and tax information and data**
 - **Intellectual property**
 - **Basic corporate documents, and shareholder records and transfer ledgers**
 - **Regulatory communications and filings**
 - **Interviews with senior management, visit key plants and operations, and interview of key customers, vendors, and other external verification sources**
- **Assemble key documents in a “data room” of key documents**
- **Prepare fact book of supporting materials to support market data**
- **The company should identify persons to be engaged in the due diligence and offering process. A point person should be the due diligence point person.**

OFFERING ISSUES AND CONSIDERATIONS

- **Selecting an underwriter**
 - Interview and seek proposals from prospective underwriters
 - Consider post-IPO analyst coverage, industry expertise, and after market support (pre-offering research reports for EGCs are now permitted and analysts also are now permitted to attend meetings of EGCs and investment bankers)
 - Offering price and underwriting discounts, and other underwriting fees (and sales strategy – institutional vs. retail, domestic vs. international)
 - Reputation, research department, distribution capabilities, and retail infrastructure
 - Consider potential conflicts with Company's competitors
 - Underwriter offering requirements: size of offering, lock-ups required, insider minimum holding requirements, and post-offering commitments
- **Use of Proceeds**
 - Consider and disclose how net proceeds will be used, including a break down of the estimated amounts required for each purpose
 - Estimate the time period during which proceeds will be used
- **Confidential Treatment Requests**
 - Determine whether confidentiality of certain information contained in material agreements and documents is necessary or desirable
 - Consider impact if confidential treatment is denied
- **Directed Selling Efforts (friends and family)**
 - Determine who should be included – vendors, suppliers, existing shareholders, and insiders and the number of shares to be included (5-10%)
- **Selling shareholders**
- **Registration of employee equity award plans (Form S-8)**
- **Appointment of transfer agent, banknote printer and financial printer**



If you have any questions regarding this outline, please contact:

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or the Carlton Fields, P.A. website located at www.carltonfields.com

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