



Going Public

KPMG LLP

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Introduction

Are you thinking of taking your company public?

Taking your company public is an exciting and challenging process for leaders like yourselves—the entrepreneur, the chief executive officer, the chief financial officer—and for all the other stakeholders involved in the process. For some, going public may be the culmination of one long-term strategic goal and the beginning of a new life in the public spotlight. For others, it may be the achievement of a major business and financial reward. Being public brings prestige and visibility with all the players in the market—customers, suppliers, employers, and the financial community.

Like any other initiative that brings high long-term rewards, the going public process is not without its challenges: complex accounting rules and reporting requirements, pressures on time and resources, and managing new stakeholders—the board, shareholders, and, possibly, new management. But you can confidently face these by managing their impact if you are well informed and prepared for the challenges that lie ahead.

At KPMG, we work with our clients to help them examine whether going public is the right choice for them. Then, if they decide that they want to follow this route, we can help them through the IPO process and beyond, as they operate in the public company environment.

Some people who have been involved in the IPO process describe their experiences as follows:

“We had been thinking about our strategy for growth and value creation for quite some time and considered a number of other options—but then going public was the best option that brought together multiple business goals. We committed to the process as a team, listened to our advisers, maintained control of the process, and it worked out more smoothly than we had expected.”

“I think very few people truly appreciate how demanding the IPO process is, and how critical it is to understand what you’re getting into before you begin the process. Planning is key... it took longer than we expected and we were surprised at how much behind-the-scenes work was required at every stage of the process.”

So, before you make the decision, be sure that you understand what is involved.

We have developed this publication to help you gain that understanding. By providing you with a practical, realistic perspective of what is involved in this process, we want to help you make an informed decision. We review factors to consider before you make the decision. Then, if you decide to take your company public, we discuss how you can plan and execute your IPO, and, ultimately, what you might expect from life as a public company. We hope you find this book to be a useful source of reference as you embark upon this exciting journey.

Going Public — An Exciting and Challenging Process

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DECIDING

WHY GO PUBLIC?

EVALUATE COMPANY READINESS

ASSESS MARKET ACCEPTANCE

ASSESS IMPACT ON YOUR COMPANY

MAKE YOUR DECISION



PREPARING

THOROUGHLY REVIEW YOUR COMPANY

DECIDE ON CORPORATE AND MANAGEMENT STRUCTURE

ASSEMBLE YOUR TEAM

PLAN TIMELINE AND PROJECT MANAGEMENT

DEVELOP THE OFFERING



EXECUTING

PREPARE PRELIMINARY PROSPECTUS

UNDERWRITERS' DUE DILIGENCE

APPLY FOR STOCK EXCHANGE LISTING

REGULATORY REVIEW

MARKETING

PRICING

FINALIZE DOCUMENTS

THE CLOSING



CONTINUING

TRANSITION

IMPLEMENT STRATEGIC OPERATING PLANS

GOVERNANCE

CONTINUOUS DISCLOSURES

OTHER REGULATORY ISSUES

INVESTOR RELATIONS

Overview

1

Going public is a major project for both you and your company.

In this section, we provide an overview of four principal phases of this project.

Deciding

Why go public?

Your decision to go public should follow from your longer-term strategic objectives—seeking opportunities for growth, value creation, or an exit strategy. It’s a big decision. You will need to have a clear understanding of the process and assess the impact it will have on you and your company.

Is your company ready?

You must step back and evaluate your company and its future potential from an investor’s perspective. Public companies that are successful invite investor confidence, have the “right stuff” and structure to provide for profitable growth, and have a solid core business to generate shareholder value over the longer term.

Are the markets ready for you?

Assess how the markets will receive the offering. The timing of the offering is critical. Timing decisions depend on economic factors, market conditions, and pricing considerations—right up to the day the securities are offered for sale. Your underwriters will play a vital role in advising you on market readiness.

Assess the impact on your company

Before going public, assess the impact that this change will have on you and your company’s infrastructure, and decide whether you are ready to make the necessary commitment—before, during, and after the IPO process.

Make your decision!

DECIDING

WHY GO PUBLIC?

EVALUATE COMPANY READINESS

ASSESS MARKET ACCEPTANCE

ASSESS IMPACT ON YOUR COMPANY

MAKE YOUR DECISION



2

Preparing

Perform a thorough review of your company

Presenting the market with a well-prepared company not only provides investors with a more attractive investment alternative, but also gives a strong indication of how you do business. This investor confidence will be a significant factor in determining the effort required to sell your offering. Performing a thorough review of your company now will also facilitate its transition to life as a public company.

Decide on the corporate and management structure

Analyze your existing corporate and capital structure with your advisers. Select structures that are simple and flexible, and can be adapted to the changing needs of a public company over time. In addition, re-examine your management structure, including management roles, responsibilities, authorities, and reporting structures.

Assemble the teams: internal and external

You cannot do it alone! Going public is a big decision. The process involved requires specialized skills and experience. Bringing together a talented team from the inside—members of your board and company management—and from the outside (e.g., underwriters, lawyers, auditors, financial or tax advisers, investor relations) is a key element of a successful offering.

Develop a timeline and framework for project management

The execution phase, from preparing the preliminary prospectus to finalizing the documents, is an intensive period of about three months. Many related activities also occur during this phase involving your advisers, management, and the regulators. You will want to maintain control throughout this process. A person on your team experienced in project management can help to manage and coordinate these activities.

Develop the offering

In developing the offering, build on the research done when assessing whether the market is ready for you. This step involves making preliminary decisions about

- the type of securities to be issued
- the number of securities to be issued
- the price at which they will be issued
- the exchanges where the securities will be traded—options available in Canada, and whether you would consider listing in the US or the more recent option of AIM in the UK.

PREPARING

THOROUGHLY REVIEW YOUR COMPANY

DECIDE ON CORPORATE AND MANAGEMENT STRUCTURE

ASSEMBLE YOUR TEAM

PLAN TIMELINE AND PROJECT MANAGEMENT

DEVELOP THE OFFERING

Executing

Prepare your preliminary prospectus

Your team accumulates business, financial, and other information that provides potential investors with full, true, and plain disclosure of all material facts related to the securities to be issued, and presents this information in a prospectus document.

Underwriters' due diligence

Your underwriters will conduct a thorough review of your company and its operations to ensure that your prospectus provides full, true, and plain disclosure. This in-depth process includes discussions with senior management, inspections of significant operating facilities, and reviews of the company itself, financial information, and material agreements.

Apply for a stock exchange listing

You will need to complete the appropriate documentation and provide the information required by the stock exchange to apply for a listing. Generally, this process runs parallel with the preparation of the preliminary prospectus and the underwriters' due diligence.

Regulatory review

Your preliminary prospectus is filed with securities regulators in the jurisdictions in which you wish to sell securities. The securities commissions will coordinate the review of your prospectus and provide you with a letter describing any deficiencies noted in their review (referred to as a comment letter). Once the securities regulators receive satisfactory responses to these concerns, you will be in a position to file your final prospectus.

Marketing

Your prospectus is, in part, a marketing document, but it is important to augment it with other marketing tools. Once the preliminary prospectus is filed, securities legislation permits the company to commence limited selling efforts. During this period, your underwriting syndicate distributes marketing materials to potential investors and solicits expressions of interest. This process typically involves developing a road-show presentation and working with your underwriters to develop a green sheet (a summary of the proposed offering containing prospectus and other information). On the road show, you sell your story to potential investors.

Pricing

Since pricing reflects the market's valuation of your company, monitor market conditions, comparable companies, and your offering's potential pricing throughout the process of going public. This activity will culminate in a round of final negotiations with your underwriters in the day or two prior to filing your final prospectus. At this point, you are reasonably certain you can complete your public offering.

Finalize documents

With the final terms of the offering now complete, you update your prospectus to reflect the pricing information and address changes required to satisfy regulatory bodies. When your team is satisfied with the final prospectus, you file it, along with certain other information, with the relevant securities commissions. Once you obtain receipts from these commissions, your underwriters are able to sell your securities.

The closing

The closing meeting signifies the successful completion of your offering. You receive the proceeds of your offering in exchange for shares of your company. The closing also concludes the going public process. You begin your life as a public company and assume the increased accountabilities that exist in the public domain.

EXECUTING

PREPARE PRELIMINARY PROSPECTUS

UNDERWRITERS' DUE DILIGENCE

APPLY FOR STOCK EXCHANGE LISTING

REGULATORY REVIEW

MARKETING

PRICING

FINALIZE DOCUMENTS

THE CLOSING

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Continuing

Transition

As you go through the IPO process, the experience of your board, management team, and professional advisers, as well as your readiness to operate as a public company, will be the major factors in determining how smoothly you will make the transition to operating as a public company.

Implement strategic operating plans

Going public was a strategic decision. Funds were raised to help accomplish those strategic plans. Now that you have the money, you are expected to follow through.

Regulatory matters

As a public company, you are required to comply with securities legislation and the rules of applicable stock exchanges. Regulators do focus on the governance of public companies, and their expectations of boards of directors as well as board committees continue to evolve. Public companies must meet extensive continuous disclosure requirements, including filing annual and quarterly financial statements, MD&A, the AIF, quarterly and annual CEO and CFO certifications, and the information circular.

Investor relations

With your offering completed, your new shareholders, potential shareholders, and the investment community at large all have an ongoing interest in the affairs and results of your company. Developing a proactive and ongoing investor relations strategy is a critical component in sustaining an active aftermarket interest in your company.

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Deciding Whether to Go Public

1

DECIDING

WHY GO PUBLIC?

EVALUATE COMPANY READINESS

ASSESS MARKET ACCEPTANCE

ASSESS IMPACT ON YOUR COMPANY

MAKE YOUR DECISION

Why go public?

Growing companies constantly search for new capital. Going public is one way to obtain that capital, but it takes time and money—and a lot of both!

Typically, this decision is the culmination of a longer term strategic plan for your company.

You may be an entrepreneur who started a business around a good idea. A successful strategic formula has created shareholder value and now your company is ready for the next step. Reaching where you are today may have stretched your internal operational and external borrowing capacity. You are seeking access to the public equity markets for additional investors.

You may have founded a successful business and want to crystallize the value you have built up in the company. Or, you may be an investor in the private equity sector, looking for an exit strategy or to receive a return on your investment. You may have a succession plan, involving you, your family, or your employees.

Think about the time and money. Remember that going public is only one of a number of financing options. Before making your decision, it is not unusual to spend some time determining whether going public is the best option for your company.

What are the advantages and disadvantages for your company?

Some of the advantages

Access to capital

Going public provides opportunity for growth and expansion of your business by offering a wider range of sources to raise capital. You may want to finance key acquisitions, retire existing debt, buy out existing shareholders, invest in research and development, or move into larger and more diverse markets.

Improved financial status

Going public increases your company's equity base and creates more leverage for financing growth. It can also improve your debt to equity ratio, which can help you borrow additional funds as needed, and may allow you to renegotiate your existing debt on more favourable terms.



Higher visibility

An IPO and distribution of shares to a wider, more diverse investor base can create greater public awareness of your products and services. The visibility may give you a competitive advantage over privately held companies in the same industry. This profile may make it easier for you to expand nationally or internationally.

Increased employee motivation and retention

A public company can provide an enhanced stock-based compensation strategy for attracting and retaining managers and key employees. A stock-based compensation plan is a way to give employees an opportunity to share in the financial success of the company through an equity compensation component.

Enhanced wealth and liquidity for the owner

Creation of a public market for your shares increases liquidity, and provides a market guide to calculate your wealth and net worth. Subject to certain restrictions, you may sell your shares in an IPO or sell your shares into the market at a later date. Publicly traded shares may also be more acceptable as collateral for personal loans.

The disadvantages

Increased scrutiny and accountability

As a public company, you lose privacy in matters related to your company's business operations, competition, executive officers' compensation, material contracts, and customers. Extensive public disclosure rules require details in public offerings and continuous disclosure documents, such as the MD&A. As a public company, the information you must provide to the public is also available to your competition. Some of this information may be sensitive (e.g., operating results for the company or geographic segments, compensation of senior officers).

You are also under constant pressure to meet market expectations and explain the decisions made and actions undertaken to your shareholders and different players in the market.

Increased demands on time and resources

Going public creates extensive new reporting requirements, including preparing and filing annual and quarterly financial statements, MD&A, the AIF, and CEO/CFO certifications on disclosure controls and procedures as well as internal control over financial reporting. These requirements demand a significant commitment of time and

“Consider what your life will be like afterwards. Don’t think the IPO is an end in itself—when you go public you are dealing with investors and the press and will face more public scrutiny.”

resources by senior management and other personnel. You may also need to make changes to your existing accounting and reporting systems in order to meet these reporting requirements.

Reduced flexibility in decision making

Corporate decision making for major activities, which may have been informal and flexible, will now require approval of the board of directors or shareholders. Obtaining director or shareholder approval can be a lengthy process. For example, if a special shareholder meeting must be convened, appropriate advance notice must be provided to all shareholders and proxy-filing requirements must be satisfied. Your management team must consider the public shareholders' rights in any major decisions. An experienced board, with outside directors, can be an invaluable ally in meeting expectations.

Loss of control

An IPO dilutes the ownership of the company. At the IPO stage, the owners can make certain that they maintain control after the completion of the IPO by ensuring they continue to hold the majority of the voting shares. Future public financings or issuing shares for acquisitions will dilute their ownership percentage, and create the possibility that the original owners will lose future control.

Potential for increase in income taxes

Current income tax laws provide for special credits and deductions to Canadian-controlled private corporations. These deductions and credits will not be available to the company once it has gone public, and may result in an increase in taxes.

Costs

Being a public company is costly. Costs are incurred during the planning stage and for the initial offering. Underwriters' commissions are negotiated based on the size of the offering. Other costs vary, depending on the structure and complexity of each offering. Subsequently operating as a public company, you will incur further costs.

Is your company ready?

Successful public companies invite investor confidence, have the right stuff and structure to provide for profitable growth, and maintain a solid core business to generate shareholder value over the longer term.

When considering whether your company is ready to go public, consider the following questions:

- Do you have a clear picture of the formula that your company uses to make money? Can you communicate it? Can you provide investors with a proven track record? Do you have a strategic vision and business plan for the future? Can you demonstrate the strength of your competitive positioning—now and in the future?
- Is your core business solid and capable of sustaining growth and shareholder value in the future?

“Establish clearly realistic objectives and plan very carefully.”

- Are your processes aligned with your direction?
- Do you have the appropriate infrastructure to provide relevant, timely, and reliable information about your performance?
- Is your management team strong, well-rounded, and experienced in applying and supporting your company’s goals and objectives?
- Do you have an experienced board, including outside, independent directors? Do you have an experienced audit committee? Do your board and audit committee meet the regulatory independence requirements? Are the board members well informed and willing to assume the responsibilities and personal liabilities taken on by directors of a public company?
- Are you and your management team ready to commit significant time—probably more than you anticipate—to the process of going public and managing the aftermarket effects?
- Have you considered the impact of going public on the company’s tax status? on your compensation? on the compensation of your management team and employees?
- Are you willing and able to live in the public spotlight? to relinquish significant control? to live with the risks and rewards of continuous pressure of growing shareholder value? to deal with regulators?
- Have you obtained an independent assessment of your company’s potential as a public company?

You can perform your own assessment of readiness by starting to manage as a public company before you actually go through the offering process—from putting appropriate management teams, reporting systems, and governance structure in place, to assessing whether you can live under the constant pressure of meeting investor and regulator demands. This exercise will highlight areas that need attention. Preparing early, before you face undue time pressures from the offering process, will help you to be well-prepared, reduce your risks, and avoid significant surprises.

Are the markets ready for you?

The next critical step is considering the timing and preliminary pricing for the offering. Your underwriters play a key role here. Most companies select more than one underwriter, with one who manages or leads the offering.

The right underwriters

The better the reputation your underwriters have for successful public offerings in your company’s industry, the more readily your offering is likely to be accepted. Experience with IPOs is also an asset. Underwriters who can assemble a strong underwriting syndicate can help the sale and distribution of the offering. Since underwriters have different distribution capabilities, you want to match the underwriters with the size of the offering.

Timing

Your timing decision should consider economic factors, market conditions, and pricing. You want to minimize the risk of going public at a time when the market is not ready for your company.

Economic and market factors

The stock market experiences cycles: it reacts to business and political news and events, suffers technical corrections, or can run hot on certain issues or industries and cold on others. Because IPOs generally take the form of common shares, the market for going public is influenced by inflation, economic growth, interest rates, and general stock market conditions.

Judging timing in a cyclical market is both a science and an art. Your objective is to enter the market as it crests in your favour. You and your financial adviser will undertake several actions.

Research capital markets for the industry sector

Information of this nature is readily available and can be gathered early in the process. Most investment firms specialize in certain industries and technologies. It is important to have underwriters who can understand your company's products and your company's position in the industry.

Compare stock exchanges

To support the stock price, provide liquidity to investors, and increase the profile of the company, you want your stock to be actively traded. Different stock markets perform differently. Think about the characteristics of your particular company when you assess your options. The chapter "Markets and Forms of Going Public" provides information on some of the exchanges frequently used by Canadian companies

Consider the market for a secondary issue

If you are seeking some personal liquidity, you may wish to offer some of the existing shares as a secondary offering along with the initial offering. Such an offering may help obtain a broader distribution. It may, however, be viewed as a bail out by the investing public if the percentage of secondary shares is high.

Pricing considerations

You and your financial adviser will conduct a preliminary investigation and arrive at a range of prices at which your shares could be sold to the public.

This price range can change, sometimes considerably, throughout the process. Economic and market conditions up to the day the securities are offered for sale will significantly affect the offering price. In the end, however, both the company and underwriters agree to the offering price.

In reaching your decision you and your underwriters assess the market's predisposition to new shares. The market for IPOs will vary. In periods of low IPO activity, you may not achieve the full potential value of your company.

You will also conduct research into comparable companies for pricing indicators. Your company's value is determined, in part, by comparing it to similar public companies in your industry or closely related sectors.

The underwriters project the capital to be provided from the offering on your company's financial position and the results of operations. They then use projected financial statements and key financial ratios, such as leverage ratios, earnings multiples, and efficiency ratios, to compare your company with similar public companies. They consider differences, review price earnings ratios, and obtain a valuation.

The next step is to consider the number of shares to be issued and the issue price. Your underwriters will suggest the number of shares that should be enough to obtain a broad distribution, provide liquidity and a sufficient public float in the aftermarket, and interest institutional investors.

A combination of good underwriters, timing, and an effective pricing strategy can help you to manage the timing and pricing risks associated with going public.

Assess the impact on your company

Compliance with these requirements demands a level of commitment of time and resources across the business segments of a public company. In essence, you are selling a part of your company to the investing public through an intermediary—the underwriters. The price you receive for the company will be determined by your track record, the company's future potential, and the market into which you are selling.

The public invests funds in search of growth and a return consistent with or better than other investment opportunities. This expectation puts pressure on you and your management team to continue building shareholder value through profitable growth, even after you have gone public. While you may not know most of the new investors in your company, you have significant responsibilities and accountability to them.

After your company goes public, investors and securities regulators will expect to have extensive timely and relevant information about the company and its prospects. Be prepared for this scrutiny. For this reason, determine whether your company is able to deal with this additional stress on its governance, value chain, and infrastructure. Often, corporate information systems are neither designed for nor capable of providing the volume and variety of information required.

Assuming you perform well, however, the good news is that access to the public capital markets should continue to become easier.

Before deciding to go public, assess the impact this change will have on you and your company. Determine whether you are ready to make the necessary commitment—before, during, and after the IPO process.

“The key is to control the costs without sacrificing the quality of the process and the public information produced. It doesn’t take much to lose control of costs. The best way to control ‘cost creep’ is to understand the process, be prepared, and manage the process with clear accountabilities.”

Costs of going public

Underwriting

The underwriters’ commission is the largest initial cost of going public. For IPOs, the commission typically ranges from 6 to 10 percent of the size of the offering, and is negotiated between the parties. Factors that affect the percentage negotiated include the size of the offering, the type of security being sold, the nature of the underwriting commitment, the nature of the company’s business and its state of development, current market conditions, and the going rate for similar types of offerings.

The underwriters are also often provided with an over-allotment option, allowing them to subscribe for additional shares from the company if they are able to sell more shares than originally planned. The over-allotment option is a way to allow the underwriters to participate in the offering. Underwriters use it as a tool to generate stability in the aftermarket trading.

Legal

Legal fees are incurred for preparing the listing or offering document, and drafting and reviewing material contracts. Again, the costs will vary depending on the complexity of the public offering, the structure of the company, the level of restructuring required, and comments from the regulatory authorities.

Both the company’s legal counsel and the counsel for the lead underwriter will be involved throughout the process. Typically, the underwriter’s agreement will require that the company reimburse the underwriter’s legal counsel fee.

Auditing and accounting

Fees are incurred for audits of financial statements required to be included in the listing or offering document, the auditors’ review of the related documents, including comment letters from securities regulators and for providing consents to the regulatory authorities and to the company, and comfort letters to the underwriters.

The costs will vary depending on the incremental information required to be audited, the nature of the accounting issues encountered, whether financial forecasts and pro forma financial statements are included, and the nature of comments received from the regulatory authorities.

Marketing, translation, and printing

Expect to incur costs for preparing marketing and presentation material for the road show to the investment community. If the prospectus will be filed in Quebec, you will also incur costs for translating all the required documents. Printing costs will vary, depending on the size of the documents and whether any amended versions of the documents are filed.

Other costs

Other costs include securities commissions’ filing fees, listing fees, directors’ fees, travel expenses, costs for preparing any valuation, environmental or engineering

reports, and indirect cost of the time commitment required from management and staff involved in the IPO preparation process.

It would be prudent to consult with your tax advisers on the related tax considerations for different types of costs. Refer to the chapter “Tax Considerations.”

Costs need to be weighed against the strategic advantages of being public. Make a strategic assessment of your company and use a team-based planning process to produce a well-articulated business plan. This process and the resulting plan will help you judge the soundness of your reasons to go public. The business plan can also serve as valuable input to your advisers if you decide to go public.

Duration of the process

The length of the IPO process—from the time you make the decision to go public to the day you close the IPO transaction—can vary significantly. Your timeline will depend on several factors, including how well you plan the process, how well positioned your company is in the market, the experience of your underwriters, your management team, and your professional advisers, as well as other factors not within your control, such as market conditions and regulatory changes.

Make the decision

“Make sure you understand that this process and the life that you have to get used to after the process might be very different, not bad, just different – with lots of opportunities for growth and creating value, but also challenges of being in a world of close scrutiny and always remembering that your decisions have a pervasive impact on your stakeholders.”

At this point, you should have sufficient understanding of the process, the level of commitment of time and resources required, and the costs involved. You have also considered the advantages and disadvantages of taking your company public and the alternative methods of financing available to you. You have assessed the market, considered the impact of going public on your company, and assessed whether you are ready to manage as a public company.

By this point, you should have incurred only a small fraction of the total time and costs of going public. Given all the information available and assessments made to date, ask

- Does going public fit into your strategic objectives?
- Are you and your team committed to this process?
- Do you have the resources to execute your plan, bring the process to completion, and continue as a public company?

And then make the decision.

Preparing to Go Public

2

PREPARING

THOROUGHLY REVIEW YOUR COMPANY

DECIDE ON CORPORATE AND MANAGEMENT STRUCTURE

ASSEMBLE YOUR TEAM

PLAN TIMELINE AND PROJECT MANAGEMENT

DEVELOP THE OFFERING

You have concluded that your strategic decision to go public is a sound one. Now you can begin to prepare your company for the transition to public life and develop a game plan for going public.

The steps involved in preparing to go public include

- performing a thorough review of the company
- deciding on the corporate and management structure
- assembling the team
- developing a timeline and framework for project management
- developing the offering.

In creating this publication, we have focused on the perspective of a company that is planning to list on a Canadian stock exchange and file a prospectus in every province.

Perform a thorough review of your company

The objectives of this review are to improve the likelihood of a successful offering, and to enable the company to prepare for ongoing life as a public company.

This review takes time. Consider the following aspects of your company:

- business definition
- strategic assessment
- value chain activities (e.g., core operations)
- infrastructure (e.g., business information systems, compensation plans, and redundant assets)
- governance (e.g., board of directors, contracts, litigation, audited financial statements, and taxation).

You will need to communicate the story of your business and vision to the underwriters and potential investors. It is essential to clearly define the business and perform a detailed strategic assessment, establishing the vision and shaping the future direction. Formalize the results of this review in a business plan.

Business definition

Markets

Review your current position in the industries in which your company operates and in the markets that it serves. Consider future trends. Decide which markets you want to operate in going forward. Develop exit plans for segments that you no longer want to pursue.

Potential investors often favour a focused company with a strong position in a few markets over a company that dabbles in many markets. If your company operates more than one distinct business, you may decide to take only certain segments of the company public.

Products

Assess your product line to identify products with good potential and those with more limited prospects.

The investment community focuses particular attention on your company's products and services as drivers for the growth potential to sustain shareholder value. Your company may have opportunities to grow through product-line extensions, expanding



geographic coverage, improving quality, or planning for product succession. Consider eliminating the losers and look closely at marginal products.

Strategic assessment

Strategic positioning of the company

Establish the vision for your company and the primary objectives that will shape the future direction, in both the short term and the long term.

Define the formula that your company uses to make money and build shareholder value. Describe your strategic vision and business plan for the future.

Be involved in developing the story of your company. You are the best person to tell this story.

Management

Assess the strength of your management team. The investment community places considerable focus on a company's management team and its ability to deliver shareholder value.

In addition to fulfilling its routine responsibilities, management will be required to devote time to the information gathering, due diligence, and reporting required in the process of going public. Once the company is public, these additional responsibilities continue—under a higher degree of scrutiny.

Recruiting additional talent can bring strength to your management team and can help improve the chances of a successful public offering. For example, a CFO who has previously undergone the going-public process can be a valuable addition to your management team.

Financial plans

Refine or develop your financial plans, taking into account your business strategy and the effect of the public offering on your company. Describing what you intend to do with the money raised from the sale of your securities to the public is an important part of telling the story of your company.

Be realistic in your financial plans. If underwriters or potential investors believe that your plans are unrealistic, they can quickly lose interest in your company.

"Find time to reflect on the multitude of decisions being made."

Value chain activities

Review core operations to ensure that they are consistent with your future direction and that they are efficient. Underwriters look closely at your core operations. Value-chain processes focus on activities that add value to the customer and, ultimately, to the shareholder.

You may want to analyze your value-chain processes in several ways: improving the efficiency and effectiveness of the process; helping to control support costs; managing both cost and value; or finding additional sources of differentiation.

Infrastructure

Business information systems

Assess whether your systems will be adequate to provide relevant, reliable, timely, and appropriate information to meet the continuous disclosure requirements of being a public company (e.g., quarterly and annual financial statements, press releases, and financial and non-financial information contained in the MD&A and the AIF).

Information systems should be capable of producing both financial and operational information. They should also have the flexibility to accommodate new developments in accounting standards and regulatory pronouncements.

Compensation plans

Review the appropriateness of compensation and employment arrangements for principals (owner-managers) and other key employees. In a closely held company, your compensation arrangements may have been primarily tax-driven. These arrangements will likely no longer be appropriate as your company goes public.

Consider base compensation, incentives such as bonus and option plans, employment contracts, and conditional arrangements.

Being a public company can give you greater flexibility to introduce a stock-based compensation strategy for attracting and retaining key employees. Refer to Appendix 3 for some of the options available to you, and their accounting and tax implications.

Redundant assets

Identify any non-core assets in your company (e.g., idle facilities or equipment, undeveloped real estate) and consider alternatives, such as disposing of the assets or putting them into a separate company owned by the current shareholders.

Generally, it is preferable to remove non-core assets from the company when going public to help ensure that the appropriate valuation is applied to core assets.

A properly supported infrastructure that is adequate for your needs will provide management with the flexibility to focus their attention on growing the company and creating shareholder value, instead of their spending time on the routine administrative and financial reporting matters required of a public company.

Governance

Board of directors

Assess the strength and capabilities of your board, and recruit new members if you need to enhance its strength or address any weaknesses.

In a public company, your board assumes an enhanced stewardship role and should assume oversight responsibility for the following matters:

- determining the company's approach to corporate governance, including developing a set of corporate governance principles and guidelines that are specifically applicable to the company.
- adopting a strategic-planning process and approving, on at least an annual basis, a strategic plan that takes into account, among other things, the opportunities and risks of the company
- identifying the principal risks of the company's business and ensuring the implementation of appropriate systems to manage these risks
- succession planning, including appointing, training, and monitoring senior management
- adopting a communication policy for the company
- developing the company's internal control and management information systems
- to the extent feasible, becoming satisfied with the integrity of the CEO and other executive officers, and ensuring that the CEO and other executive officers create a culture of integrity throughout the company.

Directors recruited from outside the company can bring experience, excellent business contacts, specialized expertise, and an independent perspective to your board. In particular, directors having previous experience with IPOs can be a valuable resource. Where possible, the board of directors should be in place before closing. Any changes made to the board's composition after going public require shareholder approval.

A CSA policy provides that a company should maintain a majority of independent directors on the board.

As a public company, you are required to establish an audit committee in accordance with specific guidelines provided by the securities regulators. You may also need to establish other committees, such as nomination and compensation. The roles of the board and the audit committee are discussed in more detail on pages 47 and 48.

Contracts

With the assistance of your legal counsel, analyze the appropriateness of contractual obligations by performing a review of significant contracts, including shareholder agreements, employment and compensation contracts, debt and lease agreements, shareholder or management loans, management agreements, and major supply contracts.

Arrangements with shareholders and officers who served your company well when it was private may not be appropriate as your company goes public. For example, agreements between a limited number of shareholders in a private company regarding matters such as rights of first refusal or buyouts, may become inoperable in the public world of numerous shareholders and minority rights.

Under certain regulatory requirements, the company will have to file copies of material contracts on SEDAR. Such contracts are required to be disclosed, even if they contain information that is of interest to your competitors.

Litigation

Review outstanding litigation involving your company. Outstanding litigation can create uncertainty in potential investors' eyes. If possible, resolve outstanding litigation before going public.

Audited financial statements

Have your annual financial statements audited. Your prospectus document must generally include audited financial statements for up to three years immediately prior to the date of your prospectus. These financial statements must conform to Canadian GAAP. Reviewing your existing accounting policies now may reduce questions from securities regulators later.

Particularly with larger multiprovincial or cross-border offerings, many underwriters and investors are more comfortable with the offering if the financial statements have been audited by a national firm of public accountants. If you conclude that a change in auditors is appropriate, doing it early may simplify the offering process.

Taxation

Review the tax impact of being a public company.

Some advantages of going public include the ability to have shares of your company more easily qualify for deferred income plans, such as RRSPs. In contrast, shares of private corporations generally qualify only in limited circumstances. Further, publicly held shares can be donated to registered charities without the donor having to realize a capital gain.

Going public also carries some tax disadvantages. Examples include the loss of the small business deduction, reduced ITCs, and loss of the "capital dividend account" used to pay tax-free dividends to shareholders. The loss of the small business deduction when the company goes public is somewhat equalized by the enhanced dividend tax credit that applies to dividends paid out of income not subject to preferential tax rates enjoyed by CCPCs. Refer to the chapter "Tax Considerations" for more information.

Deciding on the corporate and management structure

Corporate structure

Analyze the company's existing corporate and capital structure with your legal and tax advisers. Structures created to facilitate tax and estate planning arrangements as a non-public company may not be appropriate for a public company. Investigate opportunities to simplify the existing structure.

Consider making the appropriate changes to incorporating documents to remove any private-company clauses and pre-emptive rights, eliminating conflicts of interests, reviewing the existing ownership and share structure, and making any required corporate reorganizations.

A public company offers limited liability protection to its investors, and is governed by the *Canada Business Corporations Act* or a provincial corporations act. These acts outline the major rights of corporations and the obligations of the company toward shareholders.

Structuring transactions and assessing their impact on the company should be ongoing considerations. Actions such as purchasing shares versus assets, or purchasing interest in a limited partnership versus a corporation, can have differing implications from tax, cash-flow, and accounting perspectives. Structuring considerations can therefore be critical, and should be done at the right time, in consultation with your advisers.

Management structure

The company should also decide on the management structure it will adopt going forward. Management roles, responsibilities, authorities, and the reporting structure for all levels of management should be clearly defined and laid out in a formal document. The structure should be flexible enough to adapt to the changing needs of the company over time. Establish performance benchmarks that are realistic and achievable, yet challenging. Management should be assessed against those benchmarks.

"Accept that the process is complex and that it is important to have sufficient resources and advisers to undertake the exercise effectively and efficiently."

Assembling the team: internal and external members

You cannot do it alone! Going public is a monumental decision. The process involved not only is extremely demanding, but also requires specialized skills and experience. A talented team, consisting of members of your board, company management, and external advisers (e.g., underwriters, lawyers, auditors) is a key element of a successful offering.

“Never underestimate the workload. Share the burden early before the complexity makes this difficult.”

This section examines the roles of the following team members:

- chief executive officer
- chief financial officer
- board of directors
- management team
- financial advisers
- underwriters
- lawyers
- auditors
- tax advisers
- valuation specialists and appraisers
- investor relations firm
- financial printer
- share registrar and transfer agent.

Chief executive officer

The CEO is the team leader. Although the CEO will likely delegate significant portions of the project to the management group and external advisers, he or she should remain in the driver’s seat. The actual role can vary based on the circumstances, but the CEO typically

- drives the strategic decision to go public
- evaluates the company’s readiness
- works with the underwriters to assess market acceptance
- recruits the team
- monitors progress, including achievement of key milestones
- participates in key decisions throughout the process
- is actively involved in the marketing of the company to the investment community
- ensures that the company is in a position to follow through with the offering and make an effective transition into a public company.

Performing this role will be demanding, exhausting, and exhilarating. The CEO must be prepared to be flexible in responding to market changes as the offering is developed and priced. The CEO should also have the vision and the ability to be prepared to step back periodically, as the deal evolves, and ensure that going public continues to make sense from a business perspective.

Chief financial officer

Over time, the role of the CFO has become more prominent in the eyes of the regulators. For the most part, CFOs are under more intense scrutiny and have greater responsibilities than ever before, shoulder to shoulder with the CEO.

The CFO should be strategic, skilled in building relationships, with a drive to focus on risks across the company to ensure that they are being measured and managed. The CFO serves as a bridge between the business units, management, board, and shareholders.

During the IPO process, the CFO will assume a key role in executing the process. Typically, the CFO

- serves as the key representative of the company in matters relating to the financial information content of the prospectus, and as a liaison between the external advisers, regulatory authorities, and underwriters
- assists the CEO in project managing the IPO process—from setting and monitoring timelines, to marketing and closing the transaction.

The CFO has overall responsibility for the financial reporting process that includes both internal and external reporting. Internal reporting involves reporting to the CEO and the board on budgets, forecasts, and other areas as needed. External reporting includes preparing and filing the annual and interim financial statements, the MD&A, annual reports, the AIF, management circulars, and subsequent prospectus offerings. As part of his or her external reporting, the CFO is required to make regulatory certifications on such areas as the effectiveness of internal control. As a result, various subcommittees that are set up internally to perform these functions also report directly to the CFO.

Additionally, the CFO holds responsibility for financing decisions, including managing the debt-to-equity leverage, managing the cash flow, including preparing forecasts and budgets, and arranging for appropriate financing through issuance of debt, equity, or other securities.

Board of directors

The board of directors participates as part of the company's team. It will conduct its own due diligence through the process. The board can be an invaluable source of experience, advice, and counsel throughout the process—especially if a director has previously participated in taking a company public.

The audit committee is appointed by the board of directors to assist it in fulfilling its oversight responsibilities. Refer to pages 47 and 48 for a detailed discussion on the role of the board of directors and the audit committee.

Management team

The company's executives play a central role in taking the company public and in its ongoing success as a public company.

During the planning phase, management is typically involved in

- implementing changes to prepare the company to be public
- helping to select professional advisers as the company goes public, negotiating the advisers' fees, and ensuring delivery of service
- helping to manage the prospectus process, closing, sale of the securities, and aftermarket activities.

The management team works with the financial advisers, underwriters, auditors, and lawyers to schedule the offering process, prepare materials related to the offering (e.g., the prospectus, marketing materials), respond to regulators' comments, and finalize documents related to the offering.

After the public offering, the management team is involved in investor relations activities and regulatory filings that are part of life as a public company.

In short, significant demands will be made on management's time before, during, and after the public offering. Management must be prepared for these responsibilities and be capable of executing them.

Financial advisers

Financial advisers experienced in the process can help the company prepare for the offering by

- coordinating the preparation of a corporate profile that incorporates all the necessary prospectus requirements (this profile can help to facilitate the preparation of the prospectus later on)
- providing assistance in determining the information required for the audited historical and interim financial statements for inclusion in the prospectus
- coordinating the presentation of any forecasts and related disclosures
- developing a model to assist in identifying the valuation parameters for the company, funds to be raised, equity stake to be sold to the company, and number of shares to be issued
- providing strategic direction and assisting in the selection of the underwriters, including attending all the meetings, discussions, and negotiations that management considers appropriate throughout the offering process.

Often, the lead underwriter plays the role of primary financial adviser and works closely with the other advisers.

Underwriters

The experience of underwriters in the company's industry and in IPOs can make a significant contribution toward the goal of a successful public offering. Underwriters are the vehicle through which your company's securities will be sold to the public.

Various firms actively underwrite IPOs. These firms range from major national investment bankers to smaller regional brokerage firms. Many of the smaller firms specialize in specific industries. Appendix 2 provides additional information on how to select the right underwriters and the steps involved in working with the underwriters.

Lawyers

Lawyers play a critical role in helping you prepare and execute your public offering. Their primary responsibilities are to ensure that you comply with all applicable securities laws and regulations, and to advise you of any exemptions for which you may be eligible.

Because of the highly technical and complex nature of securities law, look for a legal team with broad experience in securities law and in handling IPOs. If your external counsel does not have the necessary securities law expertise, they may recommend a firm that does. The auditors or underwriters can also provide recommendations.

"Get the right advisers. Don't rely solely on management. Plan your strategy clearly."

The lawyers can assist with the pre-public planning stages. They can

- review your existing contractual arrangements and suggest any necessary changes and revisions
- help you amend your articles of incorporation and bylaws, as necessary
- recommend and help implement any changes to your capital structure that may be required to facilitate the public offering
- assist in structuring stock options and other stock compensation plans.

Your lawyers will often assume a coordinating role in preparing your prospectus and stock exchange listing application(s), working closely with your management team and your other professional advisers. They will review the entire prospectus and listing application(s) and advise you on which information is legally relevant. They will also advise on the form of presentation and the procedures necessary to verify its accuracy.

Auditors

The auditing firm can play a significant and varied role in the complex process of helping you go public. Consequently, your auditing firm should be experienced and well qualified to provide both the audit and specialized services required for your IPO.

Most companies select a firm that is experienced in securities offerings and in dealing with securities commissions, and that is well known in the investment community. The right firm will also provide continuing counsel and assistance in dealing with the many financial reporting and other obligations of a public company.

To audit public companies, the auditing firm has to be registered with the Canadian Public Accountability Board. The audit files related to your accounts may be subject to that Board's inspection. Your auditors must be independent. For public companies, the assessment of independence requires the consideration of specific factors. Review these requirements to ensure that any potential independence issues are addressed early.

The auditors of many private companies have worked closely with the company over the years on a wide variety of issues, and will continue to do so in the future. Their involvement in the going-public process is part of their ongoing association with the success and growth of your company.

Your auditors can assist by

- advising on what financial statements are required in your prospectus
- auditing the required financial statements
- reviewing any required interim financial statements
- advising you on appropriate accounting principles
- responding to questions raised by the securities regulators
- supporting the underwriters in their due diligence activities, including issuing a comfort letter to the underwriters.

The resources and experience of your auditors should help you better manage the risks associated with becoming and being a public company.

Tax advisers

The tax advisers should be an integral part of the team for two main reasons. Firstly, the advisers will assess the potential implications on the new corporate structure. Secondly, since certain tax provisions are applicable only to private companies, they will help you minimize any adverse tax consequences of going public.

Involving tax advisers from the initial stages is critical.

Valuation specialists and appraisers

During the IPO process, the services of valuation specialists or appraisers can be useful by providing an independent opinion on the value of your company or the assets being acquired or divested by your company. On an ongoing basis valuation specialists can assist you in valuing ongoing acquisitions, long-term compensation plans, or convertible securities offered by your company. These professionals can also help you determine the fair values of certain items required to be reported on a fair value basis on the financial statements, under current Canadian GAAP and under IFRS in the future.

Investor relations firm

Engaging investor relations professionals is becoming an increasingly popular means of acquiring certain skills and expertise that can help to better market your company—both during the process of going public and afterward to help increase ongoing investor interest. Smaller public companies that want the benefits of a professional investor relations program, but cannot justify the cost of employing investor relations professionals, may find that outsourcing some or all of their needs can be an effective alternative. Larger public companies often augment their internal resources with the skills and market awareness of such individuals.

Financial printer

Selection of a financial printer for the prospectus is a seemingly mundane issue. However, due to the highly specialized nature of prospectus preparation, an experienced financial printer can contribute significantly to the timeliness and efficiency of the public-offering process. Furthermore, significant time demands are placed on the printer in the final stages of the prospectus preparation process. Revised drafts are often required within 24 hours or less, and the final prospectus is often printed only the night before it is to be filed.

Your financial printer should have an up-to-date knowledge of the requirements with respect to paper size, format, size of type, and related technical matters, as well as the specialized facilities to deal with the accuracy, timing, and security needs of a public offering. The printer should also be able to prepare materials in a form appropriate for electronic filing (e.g., SEDAR) as required by the CSA. If you are filing your prospectus in the US, you must file electronically with the SEC for inclusion in the EDGAR database.

Share registrar and transfer agent

An important aspect of the going-public process involves preparing for future relations with the investing public and the new shareholders. The task of coordinating the distribution of corporate communications to this important audience generally rests with the transfer agent, acting on behalf of the company.

When the investing public is buying or selling shares, the share registrar and transfer agent handle the paperwork involved, as directed in the various corporations acts. Particularly if you intend to offer shares in more than one province, select a transfer agent with appropriate national representation.

The share registrar also maintains an accurate list of shareholders for the prompt distribution of dividends, as well as notices of shareholders' meetings, annual reports, and other corporate communications that are important to maintaining the company's corporate image in the investment marketplace.

Developing a timeline and framework for project management

"If you manage the process properly, you create a win-win situation – everyone knows what to expect, you limit the number and impact of surprises, you can control the costs, and deliver on your promises."

Now that you have performed a thorough review of the company and assembled a strong team, it is time to develop the road map for going public. This entails developing a timeline and a framework for managing the process. Now it is time to chart the details you will need to address.

All team members should be actively involved in the process. Seek input from team members with previous IPO experience. Ask for their insights into the process, the time and effort required at each stage, and potential roadblocks that could be encountered; then, build these factors into your timeline.

The execution phase, from preparing the preliminary prospectus to finalizing the documents, is an intensive period of about three months. Many parallel activities occur, involving advisers, management, and regulators. The CEO should maintain control throughout this process. An experienced CFO on the team can help manage and coordinate these activities.

Develop the timeline with specific benchmarks. Identify and assign specific responsibilities, and put in place a process to monitor progress against the specific timeline.

Developing the offering

Developing the offering builds on the research done when assessing market acceptance, and involves making preliminary decisions about

- the type of securities to be issued
- the number of securities to be issued
- the price at which they will be issued
- where the securities will be traded
- marketing plans.

Type of securities

Most IPOs consist of common stock, although an IPO could consist of units that include both common stock and warrants to purchase additional shares of common stock. Other possibilities are available. Some companies issue debt, preferred stock, multiple voting shares, or units that include common stock and convertible debentures. A company cannot, however, issue only convertible securities in the absence of an established public market for the common stock that would be obtained on conversion.

In determining the types of security to be issued, consider such factors as the cash-flow consequences of interest and dividend requirements for debt and preferred stock, your resulting debt-to-equity ratio, the potential dilution introduced by stock warrants, and income tax implications.

Number of securities

You must decide how many shares will be offered. Underwriters follow general rules on the number of shares necessary to support active trading in the aftermarket. These rules relate to

- the minimum shares necessary for a sufficiently broad distribution. Many companies are therefore advised to split their stock to establish an appropriate number of shares for the offering.
- the appropriate price range for the shares. Many underwriters prefer that the offering price be within a range typical for the industry in which you operate.

The number of shares offered and the offering price are directly related; the offering price can therefore be moved into the range by splitting or consolidating your company's shares.

Price of securities

Determining an appropriate offering price for your securities is perhaps one of the most difficult and subjective decisions that you and your underwriters must make. The lead underwriters typically determine a price range for the securities being offered at the beginning of the road show. Refer to the information on developing marketing materials for details on the road show on page 40.

The final pricing decision is not made until just before the underwriting agreement is signed—generally, the day before or early on the day the final prospectus is filed. But the background research, comparisons, analysis, and discussions begin well before that date.

Offering prices are often referred to and compared on the basis of price-earnings ratios. One of the most important considerations is comparing a proposed price to other current public offerings or existing public companies in your industry.

Various other factors are also considered. Many factors can affect the price that your shares can command, including the projected impact on your company's earnings resulting from the proposed use of the new funds, your past and projected rate of growth, the quality of past earnings (e.g., whether they include extraordinary or non-recurring gains or losses), balance sheet strength and tangible asset backing, potential dilution (e.g., through outstanding warrants), vulnerability to competition, relative management strength, planned acquisitions, size of the offering, and being in a glamour or hot industry.

In short, pricing your stock is more of an art than a science, and your underwriters' experience qualifies them to advise you in estimating an appropriate price. Although establishing as high a price as possible may hold considerable appeal, particularly if a secondary offering of existing shareholders' stock is included, avoid overpricing.

Underwriters typically advise a company to set a price that will encourage an active aftermarket in the shares. By pricing to allow for a modest price rise in the immediate aftermarket, investor interest can be quickly stimulated. A new issue will occasionally realize substantial price increases in the early weeks of the aftermarket, leading some people to conclude that the offering price had been seriously understated. In most cases, however, it reflects public optimism more than underwriting error, and within a relatively short time the stock price generally returns to the more realistic levels anticipated by the underwriters.

Markets where securities will be traded

Realistically, the process of going public involves two components: becoming a public company by obtaining regulatory approval from the securities commissions, and finding a market or exchange for your company's shares to trade. Although these two processes are distinct, they often occur simultaneously so that a company is in a position for its shares to trade as soon as possible after it receives regulatory approval.

The equity markets comprise numerous stock exchanges. These exchanges vary in nature based on their prestige and reputation; their liquidity—the volume and dollar amount of trading activity; their breadth (regional, national, or international); their listing and maintenance requirements; the nature of the companies that are attracted or listed (i.e., size, industry, nature); and the fees they charge.

Some of the more popular stock exchanges include

POPULAR STOCK EXCHANGES

| CANADA | US | UK |
|--|---|--|
| Toronto Stock Exchange www.tsx.com | New York Stock Exchange www.nyse.com | Alternative Investment Market of the London Stock Exchange (AIM) www.londonstockexchange.com |
| TSX Venture Exchange www.tsx.com | American Stock Exchange www.amex.com | |
| Canadian Trading and Quotation System www.cnx.ca | National Securities Dealers Automated Quotation System www.nasdaq.com | |

The chapter “Markets and Forms of Going Public” provides information on some of these markets.

You must consider many factors in making your listing decision. Each exchange or market has differing characteristics that may influence your decision. If your company does not meet the listing requirements for certain exchanges, it would be precluded from these markets until it meets their listing requirements. Your underwriters are well positioned to advise you on the relative merits of each exchange.

Since obtaining a listing on a particular stock exchange may be a precondition of the investment dealer’s underwriting your offering, it is important to ensure that your company meets the listing requirements of your preferred exchange.

Over-the-counter markets

Two markets in the above table are over-the-counter markets, created as alternatives to listing on an exchange—the Canadian Trading and Quotation System or the CDN System, and the National Securities Dealers Automated Quotation System or NASDAQ. They were set up to facilitate capital formation by junior issuers. Such OTC markets may appeal to junior companies because the fees and costs of compliance are much lower.

Whether in anticipation of an immediate listing or simply to consider the available options, all new public companies should consider the following relative advantages of an exchange listing:

- Marketability and collateral value are generally considered to be enhanced by a stock exchange listing because market values are readily determinable, and transactions can be consummated more quickly.
- Prestige and respectability are typically associated with companies listed on a securities exchange. The extent to which these perceptions influence decisions by investors, analysts, creditors, and others is debatable.

- Published security prices in major newspapers and exchange and other finance-related Web sites focus principally on listed companies. Together with published comments in the financial press concerning the company's annual report and future earning prospects, this provides a vehicle to bring the company's name to the attention of the investing public.
- Some institutional investors are restricted to investing only in listed securities, and others may be more attracted to a listed security. Moreover, to the extent that a stock exchange listing increases the marketability of large blocks of shares, institutional investors may be more likely to invest in listed securities.
- Reporting and corporate conduct rules are imposed by the major exchanges. Note, however, that many of the exchange rules represent good corporate practice equally advisable for unlisted companies.

Marketing plans

Your pre-prospectus marketing efforts should be well planned, and they should begin as soon as you decide to go public. Increasing or building the investing public's awareness of your company will not happen overnight. All other factors being equal, pre-prospectus positioning can make your offering easier to sell.

Note that no sales may be made, and no offers to buy may be accepted before you obtain a receipt from the securities regulators for your final prospectus.

Your marketing activity during the pre-prospectus period will likely include

- defining your target market and developing your strategy. In other words, identifying the potential buyers of your stock, and their characteristics (e.g., institutional or retail, speculator or long-term investor, regional or national)
- identifying and selecting an investor relations firm to help develop and implement marketing plans
- beginning to meet with the investment community and the financial media to develop contacts and communicate company activities
- developing a Web site that will meet the needs of your investors once you go public.

Executing Your IPO

3

| EXECUTING |
|----------------------------------|
| PREPARE PRELIMINARY PROSPECTUS |
| UNDERWRITERS' DUE DILIGENCE |
| APPLY FOR STOCK EXCHANGE LISTING |
| REGULATORY REVIEW |
| MARKETING |
| PRICING |
| FINALIZE DOCUMENTS |
| THE CLOSING |

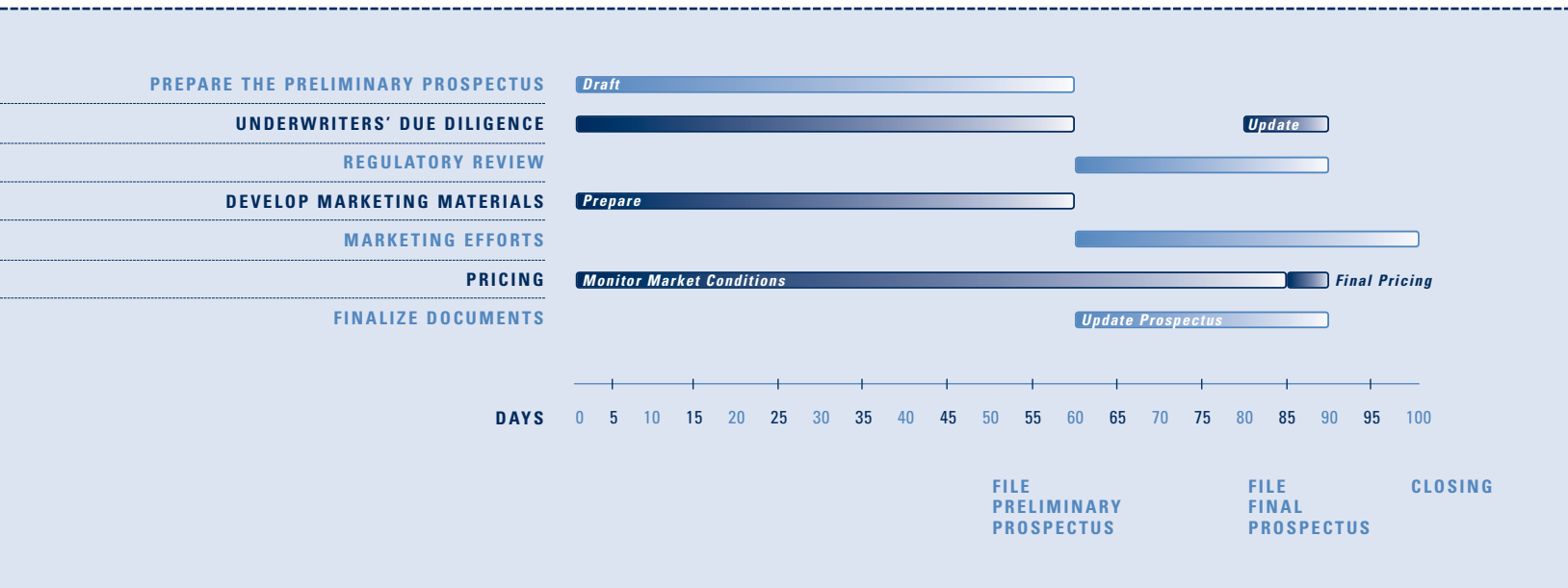
To this point, you and your company have devoted considerable time and effort ensuring that your strategic decision to go public is soundly based.

Having made this decision, you have prepared your company for the transition to public life and have developed a good game plan for the next phase—the execution.

The execution phase of going public is an intense part of the process. Much will happen in a fairly short period and many different people will be involved.

The following diagram provides an overview of the major activities of the execution phase. The timing in the diagram is illustrative. The entire execution phase typically takes two to three months to complete.

EXECUTION PHASE





Preparing your prospectus

A prospectus is a legal document containing

- information about your company's business
- a description of the securities to be issued
- information about the principal purpose for which the proceeds from the sale of the securities are intended.

The prospectus is a public offering document intended to ensure that potential investors receive "full, true and plain disclosure of all material facts relating to the securities issued" [*Ontario Securities Act*, Sec 56 (1)].

Accordingly, your prospectus should contain a balanced view of both the positive and negative factors affecting your company and the securities being offered.

To facilitate the acceptance of a prospectus in more than one province, and to provide for uniformity of administration, provincial regulators have developed procedures for the underwriters or a company to follow in order to qualify a prospectus in more than one province. For offerings that will be made in more than one province, a company must qualify its prospectus in each province.

In most provinces, the prospectus is prepared in two stages: a preliminary prospectus and a final prospectus. The principal difference between these two stages of the prospectus is the exclusion in the preliminary prospectus of certain information not yet available. The excluded information typically includes the final offering price of the securities (or interest rate, or dividend rate in the case of debt securities or preferred shares); the underwriting discount or commission; any other information dependent upon or relating to the price and underwriting discount; and the signed auditors' report on the financial statements. All other information contained in the preliminary prospectus must, however, comply with the requirements of the relevant acts, regulations, and policy statements respecting the form and content of a prospectus. The preliminary prospectus should be viewed by the team as the final offering document other than the excluded information discussed above.

EXECUTION PHASE

PREPARE PRELIMINARY PROSPECTUS

Draft

FILE
PRELIMINARY
PROSPECTUS

- Initial working group meeting of team
- Collect and assemble material for inclusion in preliminary prospectus
- Prepare first draft of the preliminary prospectus
- Circulate draft to team
- Make revisions and prepare additional drafts (will likely involve team in several drafting sessions)
- Finalize preliminary prospectus
- File with securities commission
- Receive receipt from securities commission

Preliminary prospectus

One of the main purposes of the preliminary prospectus is to enable the underwriters to assess the extent of public interest in the securities being offered. In certain instances, you may need to file an amended prospectus, for example, when there is a material change in the facts included in the preliminary prospectus. If the prospectus is being filed in Quebec, make arrangements to ensure that all the contents of the prospectus, including the financial statements, are being translated into French on a timely basis to avoid delays or problems in meeting the filing dates set out in the timetable.

Preparing your preliminary prospectus

Preparing the preliminary prospectus is a detailed and time-consuming process. The first step is generally the initial working group meeting—your company executives meet with your lawyers, auditors, underwriters, and your underwriters' lawyers. At this meeting, responsibility is assigned for gathering information and preparing various parts of the prospectus. This meeting is a good time for your team to review your strategic goals and vision for future direction so they are appropriately reflected in the prospectus. Typically, the lawyers play a coordinating role in this team effort, and deadlines are agreed upon for providing the required information and drafts to the lawyers. Often, for reference, this group looks at prospectuses of similar companies previously filed on SEDAR (www.sedar.com).

Once the components of the preliminary prospectus have been drafted, they are brought together in a first draft and circulated to team members for their review. Your preliminary prospectus usually undergoes several revisions before all team members are satisfied with the final document.

Filing the preliminary prospectus

When all outstanding issues have been resolved, the preliminary prospectus is ready for filing. As required by securities legislation, the company must prepare a certificate and file it with the preliminary prospectus. The company's certificate would be in substantially the following form:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [applicable jurisdictions].

The certificate must be signed by the CEO, CFO, two directors on behalf of the board, and all promoters of the company.

Similarly, the underwriters must include a signed certificate in the following form:

To the best of our knowledge, information, and belief, this prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [applicable jurisdictions].

At this stage, the prospectus is essentially complete, except for certain information that will not be finalized until the day or two before the date the final prospectus is filed and qualified. The final prospectus includes the price at which the securities will be offered, the underwriters' commission, the net proceeds, and any required final revisions to the preliminary prospectus.

Further, any auditors' communications included in the prospectus would typically not be signed until the final prospectus is issued. At the time the preliminary prospectus is filed with the unsigned auditors' communications, securities regulators generally require a letter from the auditors providing a status report on the auditors' work to that date.

The preliminary prospectus is then filed with the securities commissions and a receipt is obtained.

Copies of the preliminary prospectus, also known as a "red herring," are concurrently provided to the underwriting syndicate for distribution to prospective investors. The preliminary prospectus is known as a red herring because it must include the following statement printed in red ink on the front cover:

A copy of this preliminary prospectus has been filed with the securities regulatory authority(ies) in [each of/certain of the province/provinces and territories of Canada] but has not yet become final for the purpose of the sale of securities. Information contained in this preliminary prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the prospectus is obtained from the securities regulatory authority(ies).

“The prospectus rules and information requirements in the document are extensive, but fighting them only delays the process and increases costs. My advice to anyone going through this process is: follow the rules, work with your team, consult with your advisers and, most important of all, don’t take shortcuts—sooner or later, they catch you off guard.”

If a material adverse change occurs during either the period after the filing of the preliminary prospectus and before the final prospectus, or after a receipt is obtained for the final prospectus but before distribution under the prospectus is completed, an amendment must be filed as soon as possible, but at least within ten days.

Preparing and filing an amended prospectus require you to follow procedures similar to those for other filings, and include costs such as those related to the underwriters’ updating due diligence procedures, and reprinting and redistribution.

Content of a prospectus

Securities legislation provides guidance on the information content, sequence, and form of a prospectus. Information requirements vary depending on several factors, including the nature of the securities to be offered, the type and size of the company issuing the securities, and the industry in which the company operates.

Various forms of prospectus are specified or allowed in different circumstances. For example, certain forms of prospectus are prescribed specifically for companies in specialized industries, such as finance, natural resources, or mutual funds.

In preparing your prospectus, note that the required content may come from various sources, including

- the related securities act
- National Instrument 41-101, *General Prospectus Requirements*, including Form 41-101F1, which specifies the contents of a prospectus (this form harmonizes the prospectus requirements across all provinces and provides for uniformity of administration of interprovincial offerings)
- the related regulations under the securities act
- national policies developed jointly by the provinces to facilitate the acceptance of a prospectus in more than one province, and to provide for uniformity of administration of interprovincial offerings
- the *CICA Accounting Handbook*, which prescribes GAAP for purposes of financial statements included in a prospectus or other filing.

These requirements are highly technical and ever-changing. Consequently, companies work closely with their auditors and lawyers for support in interpreting and applying the requirements.

Although prospectuses may be referred to by form numbers, they are in fact prepared in a narrative and reasonably flexible format. The form specifies certain minimum disclosures, and a standardized sequence and style has evolved over time.

Nevertheless, a significant degree of subjectivity and judgment is required in drafting these disclosures.

Appendix 1 summarizes the specific content requirements.

Underwriters' due diligence

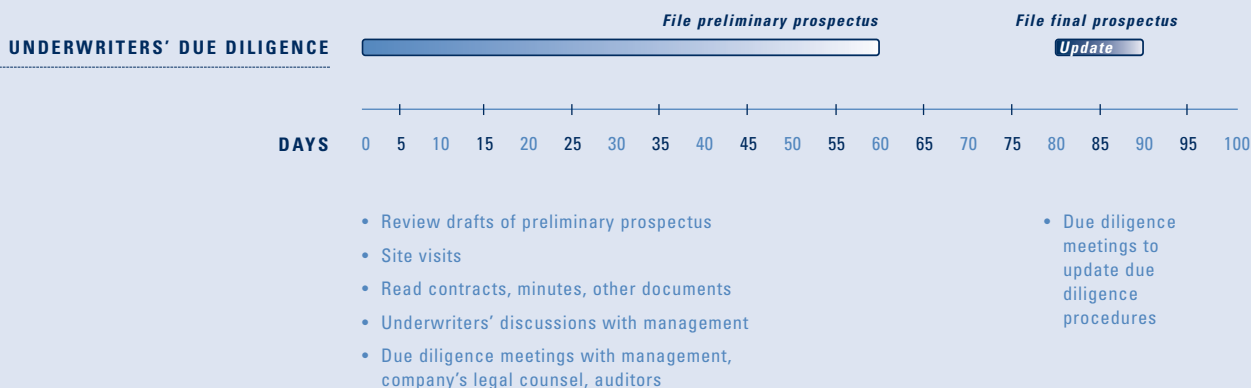
Your underwriters and their legal counsel will thoroughly review your company and its operations. This in-depth due diligence process will include conducting discussions with senior management, inspecting significant operating facilities, conducting background checks on board and senior management members, and reviewing material agreements as well as business and financial information.

Why underwriters perform due diligence procedures

Underwriters perform due diligence procedures to improve their understanding of your company to facilitate marketing your securities to potential investors.

Underwriters also need to mitigate their potential liability under securities legislation for misrepresentations in prospectuses. Securities legislation outlines civil liability provisions for underwriters with respect to misrepresentations in prospectuses. Underwriters can mitigate this potential liability by performing a "reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation." This reasonable investigation is commonly referred to as due diligence.

EXECUTION PHASE



What is involved in underwriters' due diligence?

Expect that this process will be demanding and require the company to devote considerable resources preparing for, and participating in, due diligence. You can expect your lawyers (on behalf of the board and the company) and your underwriters' lawyers to probe deeply into your company and its affairs. Their procedures will likely involve conducting in-depth discussions with senior management, inspecting the company's more significant operating facilities and other assets, and reviewing material agreements as well as business and financial information. Your company's officers and directors should be prepared to answer candidly numerous questions on

- all aspects of the company
- statements made in the prospectus about the company and the offering
- management's experience, compensation arrangements, and contracts or transactions with the company.

In carrying out their due diligence procedures, your underwriters may request a comfort letter from your auditors. This letter outlines the procedures specified by the underwriters and carried out by your auditors for certain information contained in the prospectus, and sets out your auditors' findings. Generally, the letter is dated as of the date of the final prospectus. A draft of the letter is typically provided to the underwriters at an early stage to ensure that all parties agree with the specified procedures to be conducted by the auditors.

Finally, due diligence meetings are generally held shortly before the dates of the preliminary and final prospectuses. These meetings bring together your lead underwriters, CEO, financial executives, company lawyers, auditors, and the underwriters' lawyers. The meeting is held primarily to allow the underwriters to raise any questions about the offering and your company. It also allows others to ask any remaining questions to establish their individual due diligence defences.

Applying for a stock exchange listing

Most companies apply for a conditional listing on one or more stock exchanges even before their shares are sold to the public; others may allow their shares to trade initially on the unlisted or OTC market.

Companies intending to list on a stock exchange must complete the appropriate listing application and provide any additional information as required by the exchange, such as information to support the future viability of the company.

Companies listed on an exchange are subject to the provisions of their listing agreement as well as the exchange requirements and policies that deal with such matters as timely disclosure, insider trading, and founder stock.

Once the listing is granted, any condition of the listing must be fulfilled and the security posted for trading within 90 days of receiving the listing approval. Listing fees differ significantly depending on the exchange, but they generally include an initial application fee, an original listing fee payable when the listing application is approved, and an annual sustaining fee. These fees depend on the number of shares issued or, on some exchanges, the market value of the shares.

Regulatory review

EXECUTION PHASE

REGULATORY REVIEW



- File preliminary prospectus in all jurisdictions, including the French version in Quebec
- Receipt issued for preliminary prospectus
- First comment letter (primary jurisdiction)
- Second comment letter (other jurisdictions)
- Written responses to comment letter

Each province and territory has a separate securities act. Provincial securities administrators and their staff review all prospectuses for adequacy of disclosure in accordance with their regulations and other pronouncements. While levels of review intensity vary, IPOs receive thorough reviews by an accountant, a lawyer, and sometimes a specialist for an offering in a specialized industry, such as natural resources.

After the preliminary prospectus is filed, the principal regulator and, possibly, a non-principal regulator review it. A non-principal regulator will use its best efforts to advise the principal regulator of any significant concerns within five working days of the filing. The principal regulator will then use its best efforts to send a first comment letter within ten working days of the filing, outlining all required revisions, additional information, or questions. The principal regulator may provide further comments at a later date, for example, as a result of the issuer's response letter.

The securities administrators may require that certain disclosures of adverse business conditions or other weaknesses in the offering be given increased prominence by cross-referencing to the cover page, supplying more information, or simply moving the relevant disclosures to the front sections of the prospectus. They may ask you to support certain claims or statements made in the prospectus or to remove them if they consider the support inadequate. They may also take issue with a particular choice of accounting policy or request additional disclosures in the financial statements.

Few first-time prospectuses complete the review process without any comments.

The experience of your professional advisers in identifying those sensitive areas and anticipating potential problems can help reduce the number of comments received. Depending on the nature of the deficiencies noted, your IPO team can assist in addressing and rectifying them.

Developing marketing materials

EXECUTION PHASE

DEVELOP MARKETING MATERIALS

Prepare

DAYS 0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100

- Prepare “green-sheet” and road-show materials (e.g., slides)
- Rehearse road-show presentation
- Make logistical arrangements for road show

Your prospectus is a public offering document and contains a large amount of information about your company, its directors, and its officers. Typically your preliminary prospectus is supported by two other sources of information about the company: a green sheet and a road show. The prospectus is typically developed first and provides the content for these other communications.

Under your direction, your underwriters prepare the green sheet, summarizing certain key information extracted from the prospectus, together with other information such as data on comparable stocks.

The road show is a series of presentations, typically 60 to 90 minutes in length, with the company’s prepared presentation lasting approximately 30 minutes. These presentations are generally made over a five-to-ten-day period to institutional investors and investment dealers. Because the road-show presentations feature key members of the management team, they provide the investment community with an opportunity to meet and assess these executives.

The road show typically will cover your company’s

- vision and strategy
- competitive position in the industry
- relationships with its customers, suppliers, and other key parties
- financial results and performance.

“You’ve got to have a story—and a track record. The combination of people and the story, I think, makes one able to raise the funds.”

This presentation is normally followed by a question-and-answer period. During the road show, your company will be judged on not only content but also style and presentation. Your goal is to make an excellent impression in a relatively short period of time. Consequently, your road show should be well rehearsed and well orchestrated, without being perceived as too slick. In many respects, the key members of the management team are being judged on the perception they create about their integrity, ability to lead, and vision of the company's future.

Many companies engage an investor relations firm to help develop the message, prepare the presentation that delivers it, and coach the presenters. This firm can also handle the logistical arrangements for the presentation.

Marketing efforts

EXECUTION PHASE

MARKETING

Marketing and selling efforts



- Obtain receipt for preliminary prospectus
- Conduct road show
- Underwriters obtain expressions of interest from potential investors
- Obtain receipt for final prospectus
- Orders from potential investors confirmed

After the company receives the regulators' receipt for the preliminary prospectus, the underwriters begin their selling efforts.

The road show, as discussed above, provides an opportunity for registered salespersons, institutional investors, and industry analysts to meet your company's management team and ask questions about your offering and your company. The tour may cover several cities, particularly those where the major underwriters are located and where investor interest is expected to be high. The team must ensure that selling efforts deal only with information already made public through the prospectus.

A copy of the preliminary prospectus is provided to each prospective investor, who may then express interest in your shares based on the expected price range. No sales may be made, however, and no offers to buy may be accepted before the company receives the receipt for the final prospectus from the securities regulators.

Pricing

EXECUTION PHASE



“Consult widely, do lots of pre-marketing and listen to what the market is telling you.”

In developing the offering, you made preliminary decisions about the number of shares you are intending to sell and the desired price range for those shares. However, market conditions change and, accordingly, the final pricing typically does not occur until a day or two before the final prospectus is filed.

Pricing is affected by changes in general market conditions (e.g., stock market levels and interest rates). Staying attuned to market conditions can reduce the surprise factor when making the final pricing decision.

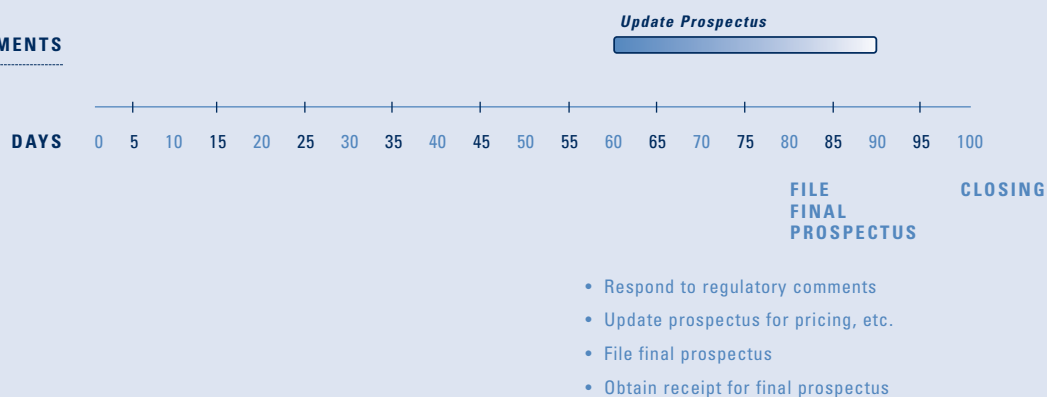
The level of interest in your company and its offering also affects the final pricing. The interest expressed during road shows and the limited selling efforts of underwriters during the period between filing your preliminary prospectus and filing the final prospectus may be higher or lower than anticipated when the offering was developed. Accordingly, the underwriters may indicate that the market will not support the planned price or size and may recommend revising the terms of your offering. Alternatively, conditions may suggest that a higher price or larger offering may be possible.

Pricing is subjective and based on input from various sources and parties. The players in this process all have differing interests. Recognize, therefore, that there is always room for negotiation—and be prepared for it. There is a fine line between overpricing your offering and leaving too much on the table. Proper pricing can help to encourage an active aftermarket for your company’s stock, thereby building confidence in your company.

Filing final prospectus

EXECUTION PHASE

FINALIZE DOCUMENTS



When all the securities commission comments have been cleared, the company negotiates the number of securities to be offered and the price with the underwriters, and signs the underwriting agreement. You are now in a position to revise and finalize your prospectus.

The final prospectus is filed when all regulatory deficiencies have been dealt with, and your company and advisers are satisfied that no material undisclosed developments have occurred since the preliminary prospectus was originally filed. Once the company receives a receipt from the appropriate securities commissions, the sale and distribution of securities may begin. Investors that have expressed an interest in your offering during the marketing stage must receive a copy of the final prospectus before they can purchase shares.

The complexity of your offering and other events that occur in the period around your closing will determine the nature and extent of legal agreements and other documents that must be executed in conjunction with your offering. These can include

- amalgamation of entities
- secondary offerings
- share redemptions
- redemption of debt
- revision of banking agreements
- asset sales
- option arrangements
- employment contracts
- employee incentive programs.

Although it is preferable to deal with many of these matters as you prepare to go public, it is not always possible. The need for these agreements and other documents may arise from the unique characteristics and structuring of your offering.

The closing

The final settlement, or closing, generally occurs one to three weeks after the signing of the underwriting agreement. The closing meeting is generally attended by all parties involved in the process. At this meeting, the net proceeds of the offering are provided to the company, the securities sold are provided to the underwriters, and various documents are signed and exchanged as necessary to the legal process.





Now You're Public— What's Ahead?

4

“Transition is immediate. We did not really expect the grind that accompanied the first few reporting periods that immediately followed the IPO. And by that I mean complying with all the financial and non-financial reporting requirements and meeting the expectations of a public company board.”

CONTINUING

TRANSITION

IMPLEMENT STRATEGIC OPERATING PLANS

GOVERNANCE

CONTINUOUS DISCLOSURES

OTHER REGULATORY ISSUES

INVESTOR RELATIONS

Transition

The closing of the offering marks the beginning of your life as a public company. The first challenge involves making a successful transition. You change the way you do things: the process of making decisions, assessing the impact of those decisions on the much wider base of stakeholders and on the stock price, ensuring regulatory compliance, and so on.

The transition period will trigger a change in attitude on the part of senior management, as they become accustomed to operating under constant direct and indirect scrutiny. This shift can require considerable time and effort. The team that was developed during the planning stages of the initial offering will play a key role in helping the company adjust to its new life.

You will also need to spend time and resources to maintain and grow your market position and investor interest. This change will involve putting in place an effective investor relations program and ensuring that you get support from your underwriters to maintain good distribution and support of your stock, and stimulate continuing interest from the analyst community.

Implement strategic operating plans

One of your fundamental reasons for going public was that you had identified a strategic need for capital. You developed and sold your business case to the market, and investors have now rewarded you by providing this capital. In assessing your business case and in making their purchase decision, investors evaluated, among other things, the planned use of proceeds. Now that they have provided you with the required capital, your investors clearly expect you to implement the plan.

Obviously, the timing of the achievement of these objectives will vary. Using proceeds to retire debt or pay for a recent acquisition can be easier to accomplish in a relatively short time. On the other hand, using proceeds for extracting and processing a proven mineral reserve will occur over a longer period.



Regulatory matters

The securities commissions publish rules, policies, and notices that are updated from time to time. As a public company, you are required to stay current on changes to the legislation and to comply with securities legislation and the rules of the applicable stock exchanges. Certain corporate activities pertaining to shareholder meetings, insider trading, and the sale of shares will also be governed by legislation and regulation. Regulatory issues affecting your company can broadly be categorized as

- governance
- continuous disclosure requirements
- other issues.

Governance

Board of directors

The board of directors is elected by the shareholders. Its primary role is to assume overall responsibility for the stewardship of the company, overseeing the activities of management in order to ensure that the company and the investors' long-term interests are being served. In recent years, the role of the board has become more visible, and the board has more accountability to investors and regulators.

To help the board fulfill its mandate, the CSA has issued *Corporate Governance Guidelines*. Companies are encouraged to consider the guidelines while developing their own policies and practices. The guidelines seek to achieve a balance between providing protection to investors and fostering fair and efficient capital markets and confidence in those markets. These guidelines take into account the impact of corporate governance developments in the US and around the world.

The CSA recognizes that corporate governance is under constant evolution.

The current policy recommends that a majority of the directors, including the chair or a lead director, should be independent. In general, a person is considered independent if he or she has no direct or indirect material relationship with the company.

The board should adopt a written mandate in which it acknowledges its responsibilities for stewardship of the company. Such a mandate should include things such as clear position descriptions for the chair of the board, CEO, and subcommittees. The board should also adopt a written code of business conduct and ethics designed to promote integrity and deter wrong-doing.

Board committees

To fulfill their responsibility to provide risk oversight, most boards appoint committees to oversee the common risks faced by the company. Risks can be wide ranging and include, for example, financial reporting, reputation, litigation, ethics, technology, or health, safety, and the environment.

Board committees should have written mandates establishing their purpose, responsibilities, member qualifications, member appointment and removal, structure and operations, and manner of reporting to the board.

The securities legislation requires every public company to have an audit committee, and also recommends that a company consider appointing a nominating committee and a compensation committee. The role of these committees is discussed below.

Audit committee

All public companies are required to have an audit committee to focus, on behalf of the board, on oversight of the financial reporting process.

The audit committee's primary duties and responsibilities are to

- identify and monitor the management of the principal risks that could affect the reliability of financial reporting
- oversee the integrity of the company's financial reporting process, the system of internal control over financial reporting and accounting compliance
- be directly responsible for overseeing the work of the external auditors including monitoring the independence and performance of the external auditors
- be directly responsible for overseeing the internal audit processes
- oversee the company's compliance with applicable legal and regulatory requirements affecting financial reporting
- provide an avenue for effective communication among the audit committee, external auditors, management, internal auditors, and the board of directors.

Canadian securities legislation requires every public company to have an audit committee composed of a minimum of three independent members of the board of directors. The audit committee members must also be financially literate. The external auditors must report directly to the audit committee. Required disclosures regarding the audit committee must also be included in the company's AIF.

The audit committee rules are sensitive to the unique characteristics of Canada's capital markets. Smaller companies, including those listed on the TSX-V, are exempt from certain requirements, including audit committee composition and reporting obligation requirements.

Nominating committee

The board should consider appointing a nominating committee composed entirely of independent directors.

The nominating committee identifies individuals qualified to become new board members and recommends to the board the new nominees for the next annual meeting of shareholders. In making its decisions, the committee should consider the competencies and skills that the board considers to be necessary for it to possess as a whole, the appropriate size of the board, as well as the skills and competencies of the current board members, and the skills and competencies each new member will bring into the boardroom. Before making recommendations, the board should ensure that each new nominee will be able to devote sufficient time and resources to his or her board duties.

Compensation committee

The board should consider appointing a compensation committee composed entirely of independent directors.

The compensation committee reviews CEO compensation in the context of relevant corporate goals and objectives, evaluates the CEO's performance in light of those goals and objectives, and determines an appropriate level of compensation for the CEO based on this evaluation.

The committee should also make recommendations to the board on non-CEO officer and director compensation, incentive compensation plans, and equity-based plans, and should review disclosures related to executive compensation before the information is made public.

Continuous disclosure requirements

Canadian securities legislation includes a policy regarding disclosure of corporate governance practices. All entities must include the required disclosures in their AIF or, in some cases, in the management information circular.

The policy is fairly detailed and requires disclosure of many aspects of the board, including the identity of all directors, both independent and non-independent; a description of the board mandate; measures taken for orientation, continuing education, and ethical business conduct; the process for nomination and compensation of directors and officers, and the process used for assessing the effectiveness and contributions of the board and its members. Entities are advised to consult with their legal counsel when developing the disclosures.

“The key is to have proper infrastructure in place that can gather and continuously update information required to meet these continuous disclosure requirements. Without this support, it will be a struggle to meet the deadlines and at the same time provide useful information to your stakeholders.”

The long arm of securities legislation extends far beyond the initial offering of a security. One of the regulators’ primary objectives is to ensure that disclosure similar to that contained in the prospectus is available to securities markets at all times.

These requirements include

- Annual Information Form
- financial statements
- management’s discussion and analysis
- information circular
- disclosure of material changes
- business acquisition report
- certifications.

These areas are discussed in more detail below.

Typically, the annual audited financial statements, the MD&A, and much of the information contained in the AIF are included in an annual report sent to the shareholders. In addition, companies are required to file with regulators copies of material documents, such as bylaws and material contracts.

The securities commissions perform regular reviews of continuous disclosure document filings. They provide individual comments to companies and also publish public comments.

For venture issuers, certain concessions are available. Essentially, venture issuers are companies with unlisted securities or with securities listed or quoted only on the TSX-V, CNQ, or AIM. They do not have any of their securities listed or quoted on any of the TSX, a US marketplace, or a marketplace outside Canada and the US, other than AIM.

Annual Information Form

An AIF must be filed annually within 90 days of the end of the financial year. Companies listed on the TSX-V are exempt from this requirement. The AIF is a disclosure document intended to provide material information essential to a proper understanding of the nature of the company, its operations, and prospects for the future.

The AIF contains many disclosures typically required in a long-form prospectus, including

- incorporation
- general development of the business
- narrative description of the business
- description of the capital structure
- market for securities
- directors and officers
- legal proceedings and regulatory actions
- additional information.

Financial statements

Annual financial statements must be prepared by the company and audited by its auditors. These financial statements must be prepared in accordance with Canadian GAAP, accompanied by an auditors' report, and filed with the relevant securities regulators within 90 days after the end of the company's fiscal year (for venture issuers, within 120 days).

In addition, the company must file interim financial statements each quarter, within 45 days after the end of the respective quarter (for venture issuers within 60 days). These interim financial statements do not require an audit or review. For most companies, the auditors perform a review of these financial statements in order to assist the audit committee to discharge its responsibilities for these statements. If the auditors have not performed a review of the interim financial statements, the statements must be accompanied by a notice indicating that the financial statements have not been reviewed by an auditor.

Management's discussion and analysis

The financial statements must be accompanied by MD&A.

MD&A is supplemental analysis and explanation that accompanies but does not form part of the financial statements. MD&A provides management with the opportunity to explain in narrative form its current financial situation and future prospects. It is intended to enable investors to look at the company through the eyes of management by providing both a historical and prospective analysis of the company's business. Securities regulators provide guidance on the specific content of the MD&A, and have focused on MD&A filings as part of their continuous disclosure review program.

The securities legislation requirements for the information to be reported in the annual and interim MD&A are extensive. They require detailed comparative information and discussion on the operations of the company, as well as discussion on risk areas, material contracts, compliance with covenants, future capital projects, and anticipated changes in accounting policies and their implications. Consequently, management will need to devote a considerable amount of time and effort to comply with these requirements.

The annual and interim financial statements and MD&A must be approved by the board of directors before filing. The board may delegate approval of the interim financial statements and the related MD&A to the audit committee.

Information circular

Generally, an information circular is sent to all holders of voting securities when management gives notice of a shareholders' meeting. The information circular is also filed with the applicable securities regulators.

The information circular is intended to provide each security holder with

- information to help make an informed judgment about the matters being voted on at the meeting
- a statement of executive compensation
- information on the indebtedness of directors and officers
- information on the interests of insiders in material transactions
- details of management contracts.

Disclosure of material changes

One of the objectives of the securities legislation is to ensure that all investors, not just insiders, receive important information regarding changes in a company's affairs on a timely basis. Accordingly, you must file a press release forthwith when a material change occurs in your company's affairs. Within ten days of the change in affairs, you must also file a material change report with the securities regulator, which describes, in detail, the material change and its impact on your company.

A material change is a change in the business, operations, or capital of the company that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the company. It is prudent to seek legal advice if you are unsure whether a change in the business is a material change.

Business acquisition report

If the company completes a significant acquisition, it must file a business acquisition report within 75 days after the date of acquisition. If the most recently completed financial year of the acquired company ended 45 days or less before the date of the acquisition, the company will have 90 days after the acquisition to file this report (120 days in the case of companies listed on the TSX-V).

To assess whether an acquisition is considered significant, consider quantitative criteria that must be met, in terms of the size of the assets, the level of income, and the level of the company's investment in the acquired company.

A business acquisition report should also include information on the profile of the company, a description of the company being acquired and the consideration exchanged, nature and description of any related parties involved, and details on whether the acquisition will cause material changes to the business affairs of the company.

Financial statements required to be included or incorporated by reference in this report include comparative annual financial statements of the acquired company for its most recently completed financial year ended before the acquisition date. The current year financial statements are required to be audited, but the comparative information is not. Interim financial statements of the acquired company are also required for its most recently completed interim period ended after the date of the audited balance sheet and before the acquisition date. Pro forma financial statements are also required.

Certifications

Certification requirements differ significantly for venture and non-venture issuers.

Non-venture issuers

Securities legislation requires CEOs and CFOs to certify in their annual certificates that they are responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting. They also have to certify that they have designed ICFR to provide reasonable assurance regarding the reliability of financial reporting, and preparation of financial statements in accordance with GAAP. Further, they must disclose their conclusion about the effectiveness of disclosure controls and procedures in their annual MD&A.

The CEO and CFO should also certify that the company has disclosed in its MD&A any changes in ICFR that occurred during the most recent interim period that either have, or are likely to have, a material effect on the company's ICFR.

Effective December 15, 2008, certification requirements include a certification on the operating effectiveness of ICFR. Separate auditor attestation about ICFR is not required for companies listed in Canada.

In the quarter in which an issuer becomes public, however, the CEO and CFO are not required to certify on the design and operating effectiveness of controls related to disclosure controls and procedures, nor on the design and operating effectiveness, if applicable, of controls related to ICFR.

Venture issuers

Venture issuers are not required to certify on the design and operating effectiveness of controls related to disclosure controls and procedures, nor on the design and operating effectiveness of controls related to ICFR. Venture issuers must, however, review the annual filing and, based on the certifying officer's knowledge after having exercised reasonable diligence, issue a basic certificate.

Use of non-GAAP financial measures in disclosure filings

Non-GAAP measures are frequently used by companies in their disclosure documents in order to provide a supplemental explanation of financial and operating results. However, as non-GAAP measures do not have any standardized definitions, they have the potential of not being comparable and could be presented in a misleading fashion. When a company chooses to include non-GAAP measures in its public filings (prospectuses and continuous disclosure filings), it must adhere to the specific rules concerning the disclosures of non-GAAP measures, such as including a clear definition, reconciling it to the most appropriate GAAP measure, and clearly explaining reconciling items.

Examples of non-GAAP measures include return on assets; earnings before interest, taxes, depreciation, and amortization (EBITDA); net operating income; and distributable cash.

Continuous disclosure filings

All continuous disclosure filings for public companies can be found on SEDAR and are therefore accessible to the public through the SEDAR Web site at www.sedar.com.

SEDAR is an initiative of the CSA to facilitate electronic filing and public dissemination of certain disclosure documents required to be filed under Canadian securities legislation.

Documents on SEDAR include most of the documents that are legally required to be filed with the CSA and many documents that may be filed with the Canadian exchanges. Prospectuses and other continuous disclosure documents (including AIF, financial statements, proxy materials, press releases, and material change reports) must be filed electronically.

Filings can be made in one of two ways: you can become a SEDAR subscriber and make your own filings, or filings can be made on your behalf by filing agents that are SEDAR subscribers (e.g., law firms, financial printers, and others that normally assist in the preparation of filings).

The SEDAR Web site also contains profiles of all public companies with basic information, such as company addresses, contact information, and stock exchange listings.

Other issues

Annual meetings and proxy solicitations

As a public company, your annual meetings become a major event at which you report on the progress of your company over the past year to your shareholders and others, such as analysts and members of the media.

In preparation, you need to give your shareholders notice of the meeting and send out appropriate materials, as outlined in the earlier section on the information circular. Since your shareholders may be widely dispersed and may be unable to attend the shareholders' meeting, you must send them a form of proxy, allowing them to appoint a person or company as their nominee to act on their behalf at the meeting.

Shareholders may elect to receive the proxy material on-line, and choose to vote on-line. They may also choose whether or not they want to receive the annual general meeting materials distributed to them. This option is limited only to general meetings—for special meetings, you are required to mail the material to shareholders.

Sale of shares

While your company's shares can now be traded publicly, there may be restrictions or limitations imposed by the securities commissions, stock exchanges, or underwriters. These restrictions or limitations generally relate to shareholders that own large portions of the outstanding shares of the company. These restrictions or limitations may prevent these shareholders from selling their shares for a certain period of time or may impose certain conditions on the sale of these shares.

After the closing of the IPO, the board should develop a policy addressing these regulatory requirements, and should ensure that this policy is enforced throughout the company.

Insider trading

Any shareholder controlling 10 percent or more of the voting rights in the company's securities, as well as all directors and senior officers, are required to report their holdings and all changes in those holdings to the securities regulator on a timely basis.

It is illegal for anyone to trade in a company's securities on the basis of insider information. This law applies equally to those directly privy to the insider information (e.g., directors, officers, and employees) and anyone to whom they tip such information before it is made public. Both the insider (whether or not personally benefiting) and the person who receives a tip may be subject to liability for damages to everyone who traded in the security during the period of such illegal insider trading.

Consequently, public companies should take appropriate measures to ensure that controls are in place to protect the confidentiality of such sensitive information.

Anyone who must become privy to such information needs to be made aware of the proscription against trading on or tipping such information. For this reason, it may also be advisable for one individual to coordinate all press statements and contacts with analysts, reporters, and others.

The System for Electronic Disclosure by Insiders or SEDI was established by the securities regulators to facilitate the filing and dissemination of insider reports in electronic format via the Internet.

Bill 198 implications and secondary market civil liability

Bill 198 amended the *Ontario Securities Act* and established a secondary market civil liability regime. This legislation has significantly changed the legal liability of companies, their directors, officers, and experts such as lawyers, for any misrepresentations in continuous disclosure documents and public oral statements. The amendments also address failure to disclose information on a timely basis.

The amendments provide a right of action for damages to a person or company who acquires or sells securities of the responsible company between the time when a misrepresentation is made in a released document or in a public oral statement and the time it is publicly corrected.

A second right of action is provided to a person or company that acquires or sells securities of the responsible company between the time a material change was required to have been disclosed and the time the disclosure is subsequently made. Collectively, these rights provide a secondary market civil liability regime over companies, directors, officers, and experts.

The changes to the act differentiate between core and non-core documents. A core document includes a prospectus, a takeover bid circular, an issuer bid circular, a director's circular, a rights offering circular, an MD&A, an AIF, an information circular, annual and interim financial statements, and material change reports. Core documents are the continuous and timely disclosure documents a company is required to file with securities regulatory authorities.

All other documents are considered to be non-core documents. The distinction between core and non-core documents is important. Whether a misrepresentation is made in a core or a non-core document affects the burden of proof that a plaintiff bears to support a claim, as well as the nature of the defence that a company, director, or officer must establish to mitigate his or her exposure to liability.

The act provides many defences to the company and its directors and officers once a misrepresentation has been demonstrated to exist in a document. However, two primary defences are expected to be used.

Reasonable investigation performed (due diligence) defence

If a director, officer, or company can prove that, prior to the release of the document containing the misrepresentation, he or she (or his or her company) conducted a reasonable investigation and, at the time of the release of the document, had no reasonable grounds to believe that the document contained the misrepresentation, then he or she is not considered to be liable in relation to the misrepresentation.

Reliance on an expert defence

A person or a company can also use the defence of relying on an expert such as a lawyer or actuary. To use this defence, the document must include, summarize, or quote from a report, statement, or opinion made by the expert, and the person or company must have obtained the written consent to the use of his or her report.

Prompt Offering Prospectus system

Companies that have been subject to the periodic reporting requirements of the *Ontario Securities Act* (or the applicable securities laws in other jurisdictions in some cases) are in some cases eligible to use the POP system. This system allows the filing of a short-form prospectus and incorporation by reference of previously filed continuous disclosure filings, such as the AIF and interim reports. It significantly streamlines the time, effort, and expense involved in a public offering by existing public companies. The eligibility criteria for using the POP system are detailed and, consequently, companies are advised to seek the help of their legal counsel in assessing their eligibility. Most TSX-listed companies should be eligible to use the POP system.

Impact of transition to International Financial Reporting Standards

The Canadian Accounting Standards Board has confirmed that, as of 2011, Canadian GAAP for reporting for Canadian public companies will be IFRS. This change will mark a fundamental shift in financial reporting that will affect all areas of an enterprise.

Entities deciding to go public should take the time to consult with their advisers and educate themselves on how adopting IFRS will affect their current systems. They are well advised to consider developing a strategy to implement the changes prior to going public.

Investor relations

To maintain market interest in your securities, your efforts should be directed not only to existing investors in your company—the shareholders—but also to potential investors. Various media can be used to reach this financial community. The volume of information required by the investment community, and the speed at which it wants it, is increasing. To respond to this phenomenon and deal with regulatory and corporate governance issues, many companies are developing information disclosure strategies and policies.

Securities analysts play a significant role in the financial community. They are often part of the research departments of brokerage houses and investment dealers. Their assessments of your company will therefore influence the investment advice provided to their investor clients. Securities analysts will not only analyze your annual reports and other available information, but also often conduct interviews with your company's management to gain further insight into your operations, plans, and prospects. Your company's management should welcome such interviews and even initiate them when possible. Management should also seek opportunities to appear before local investment societies or groups of securities analysts who meet regularly to hear presentations by senior management of public companies.

Many companies maintain an up-to-date investor relations package for securities analyst presentations and general corporate publicity. This package may include a description of the company and its products or services, a brief history of the company, information on its management team, selected financial data, and any other information considered relevant.

The Internet has become a popular method of disseminating information to, and communicating with, shareholders, potential investors, and the financial community. Today, most companies maintain a Web site. Given the relatively low cost of disseminating information through the Internet, it provides an excellent opportunity to provide more information about your company to the world on a timely basis. It also offers the potential for interesting presentations.

All continuous disclosure documents filed in Canada are made available to the general public through the SEDAR Web site. Such documents cannot be posted only on your company's Web site.

The public potentially has access to information about your company through many other Web sites. Securities commission databases, exchange Web sites, financial news organizations, investment dealers, investment research organizations, blogs, discussion boards, and many other sites will contain information about your company that the public may access in researching and analyzing your company. Your investor relations strategy may include monitoring the nature of information about your company on the Internet.

Tax Considerations

Like most business decisions, the decision to go public involves tax implications and considerations, for both your company and its shareholders.

While certain tax advantages will be lost when the company becomes public, other opportunities can be created. It is therefore important to conduct a complete review of corporate and personal tax arrangements during the planning stages before a public offering. Proper tax planning can enable the company and its shareholders to enhance tax benefits prior to going public. It can also help ensure that the company, once public, is structured advantageously for tax purposes.

There are differences between the taxation of public companies and private ones. Consult with your tax advisers and carefully and thoroughly explore the various tax implications associated with a decision to go public. The following pages provide only a brief overview of some of the more significant aspects of tax planning that you should consider.

Corporate tax issues

Small business deduction

Privately held corporations that are controlled by Canadian residents (referred to as Canadian-controlled private corporations or CCPCs) are entitled to a reduced corporate tax rate on a portion of their active business income. When a corporation becomes publicly held, the reduced rate is no longer available.

Capital dividend account

The capital dividend account is a concept used to complete the integration of corporate and personal income tax on capital gains (and other receipts) realized by private corporations. For example, when an individual realizes a capital gain of \$100, the individual pays income tax on half of the capital gain; the other half is not taxed. When a private corporation realizes the same capital gain, the private corporation is taxed on half of the gain and the other half is added to the corporation's CDA. The CDA can be distributed as a tax-free dividend to the corporation's Canadian resident shareholders. When the company goes public, it can no longer pay out a tax-free dividend from its CDA.

Consequently, if your company has a balance in its CDA, consider paying a tax-free dividend out of that account before going public.

Refundable dividend tax on hand

Dividends paid by CCPCs (and certain other private companies) may trigger a tax refund to the company in the year the dividends are paid. The tax refund is calculated by reference to the amount of the dividend and the balance in the company's notional



RDTOH account. The RDTOH account tracks “refundable taxes.” For example, the RDTOH is increased by a portion of the federal tax paid on certain types of investment income and certain dividends received by private corporations. In order not to lose the tax refund, dividends should be paid prior to the company’s going public.

Investment tax credits

Investment tax credits are earned by doing qualified research and development in Canada. Federal ITCs are available to offset federal income taxes payable. The rate of ITCs available for qualified R&D expenditures depends on the type of corporation. CCPCs are entitled to a higher ITC rate for R&D expenditures than non-CCPCs. CCPCs are also entitled to cash refunds on a portion of their expenditures if they are not able to use the ITCs to offset federal income taxes payable. Certain provinces offer ITCs that may vary, depending on whether or not the corporation is a CCPC.

Corporate restructuring

Corporate restructuring prior to a public offering may be advantageous for tax planning or other reasons. It may be necessary to combine various subsidiaries of a corporate group or to remove certain real estate or other assets prior to the offering. In some cases, companies have merged with one or more other companies with complementary operations in order to form a larger, more complete organization that will have stronger investor appeal.

A variety of tax-effective methods are available to accomplish the restructuring of corporations or partnerships or to transfer assets with no immediate tax consequences. These methods include amalgamations, windups, certain asset sales, and share-for-share exchanges. Exercise care when planning corporate restructurings; they are often very complex. Adverse tax consequences may result, or opportunities may be missed.

Commodity taxes

The implications of taxes other than income taxes are often overlooked in connection with corporate restructurings prior to going public. Various commodity taxes, such as goods and services tax, excise tax, retail sales tax, and land transfer tax, may have a substantial impact on any transaction in which ownership of goods is involved.

As with planning for income taxes, it is important that the commodity tax implications of a proposed transaction be thoroughly analyzed, taking care that the proposed transaction does not give rise to an unwarranted sales tax liability.

Other tax implications

Other tax implications for a private corporation going public include

- **Acquisition-of-control rules**—There may be an acquisition of control if a new person or group of persons controls the corporation after it becomes public. This change results in tax consequences, including a deemed taxation year-end, an automatic writedown of accrued losses on various types of assets, and restrictions on the availability of losses incurred before the acquisition of control.
- **Reassessment period**—The federal and provincial reassessment period is extended by a year for a public corporation.
- **Deadline for payment of taxes**—Final payment of taxes payable for “small” CCPCs is due three months after the end of a taxation year, rather than two months after the end of a taxation year for a public corporation.

Shareholder tax issues

Stock options

Stock options can be an effective tool to enhance employee motivation and loyalty, and can provide employees with significant tax advantages. Stock options are generally more attractive for employees of public companies as the shares acquired have a ready market. From a tax perspective, employees must report any benefits derived from the exercise of the options as an employment benefit. The tax treatment of stock options issued by private and public companies differs in some respects.

If a non-CCPC or public company grants options, tax is generally payable by the employee when the stock option is exercised. An exception could apply when the employee receives a deferral of up to \$100,000 per year (based on the value of the stock at the time the option was granted, and the limit applies to the year in which the options vest) if the employee exercises the stock option for public company shares and does not immediately sell the shares. This exception applies if the employee makes an election to defer the taxation of the benefit until the shares are sold. In either case, the taxable employment benefit is reduced by one-half provided the shares are common shares, the employee deals at arm’s length with the company, and the exercise price is not less than the fair market value of the shares at the time the option was granted.

If options are granted by a CCPC, tax is payable by the employee only when the employee subsequently sells the shares. The half deduction is also available if the shares are held for at least two years. If the two-year holding period is not met, the deduction could still be available if the conditions above for non-CCPCs are met.

Enhanced dividend tax credit

Although CCPCs are entitled to a reduced corporate tax rate on a portion of their active business income and are entitled to “refundable taxes” on certain investment income, such income attracts a higher tax rate on dividends paid to individual shareholders.

A higher dividend tax credit rate applies to dividends (eligible dividends) paid to Canadian individual residents by public companies and by CCPCs out of income taxed at the federal general corporate rate. CCPCs cannot pay eligible dividends from income that has benefited from the small business deductions or investment income that is subject to refundable tax treatment.

Capital gains deferral

Individuals are able to defer the recognition of some or all of their capital gains arising on the disposition of eligible CCPC shares (referred to as small business investments), to the extent the proceeds received are used to make other small business investments, and provided that certain other conditions are met. This rollover is not available on shares of public corporations.

Estate planning

If tax or estate planning arrangements currently in place are unique to your company, you may need to make changes to bring them in line with what is acceptable for public corporations.

If you have no such estate planning arrangements in place, it is often convenient to implement them when your company is going public, and you expect growth in the value of the public company. Estate freezing, a commonly used technique in estate planning, involves issuing shares to other family members so that subsequent growth in the value of the public company accrues to the other family members—usually children or grandchildren. For example, a holding company could be set up, and the existing owners of shares of the company going public could transfer those shares to the new holding company for fixed-value preferred shares. Other family members could subscribe for common shares of the holding company that would appreciate in value as the shares of the public company does, with all future appreciation of those shares accruing to them.

Capital gains exemption

It may be advantageous for individual shareholders to file an election to deem to have the shares of the private company disposed of prior to the company's becoming public. This filing would allow the individual to crystallize accrued capital gains by triggering a capital gain and utilizing any available capital gains exemption. Consideration should be given to the amount of any unrealized capital gains on other qualifying properties held by the individual and the anticipated date of disposition of those assets.

Deferred income plans

One advantage of owning shares of a public company is that the shares qualify more easily as investments for deferred income plans (such as RRSPs), compared with privately held shares that qualify only in limited circumstances.

Charitable donations

From a tax perspective, an advantage in owning shares of a public company relates to charitable donations. To encourage donations of publicly listed shares to charities, the donor will be exempt from any capital gains tax. Similarly, if employees of publicly held companies exercise a stock option and donate the shares, they do not need to include any amount of the taxable benefit in their employment income. This exemption applies if certain requirements are met.

Deductibility of IPO-related costs

A corporation undertaking an IPO will likely incur IPO-related expenses. The deductibility of the full amount of the expense will depend on whether it can be argued that it was incurred on account of income or capital. Most expenses related to going public are, however, generally deductible over five years. Some examples of these expenses include

- commissions or fees paid to securities dealers
- legal fees in connection with the preparation and approval of a prospectus
- accounting or auditing fees in connection with the preparation of reports on financial statements, and review of statistical data for inclusion in the prospectus
- cost of printing the prospectus and share certificates
- filing fees required by any public regulatory body with which the prospectus must be filed for acceptance.

Certain expenses may be deductible on a current basis, while still others may qualify as “eligible capital expenditures.” Seventy-five percent of eligible capital expenditures are deductible on a declining balance basis at a rate of 7 percent per year.



Markets and Forms of Going Public

This chapter provides a brief overview of alternatives available to Canadian companies—listing on Canadian exchanges, listing on certain exchanges outside Canada (US and UK), or taking the route of a capital pool company structure for listing in Canada.

The information in this chapter on US and UK exchanges highlights only the significant differences between listing on those exchanges and listing on the TSX. Consult your advisers before making the decision to list on other markets or when considering other forms of going public.

Going public in Canada

Most Canadian companies choose to establish a listing on a Canadian exchange. The TSX, the senior equity market, has established certain basic requirements for its listings. The TSX-V provides emerging companies with access to public equity capital. Its minimum listing requirements are tailored to a company's industry sector, stage of development, financial performance, and operational resources.

Detailed information on these two exchanges is readily available on their Web site, www.tsx.com/en/listings/listing_with_us/index.html. We therefore encourage you to visit that site for the most current information.

The TSX Venture Exchange also offers a special listing vehicle, the capital pool company program, described at the end of this chapter.

Going public in the United States

The market size, investor interest, and the visibility of the US securities marketplace has made it one of the most attractive and popular sources of capital in the world.

Market

As in Canada, the US securities marketplace comprises exchanges and OTC markets. The US marketplace is mainly regulated by the SEC. Each state may have its own securities laws, although many states have adopted the *Uniform Securities Act* to ease the process of filing in multiple states. The state laws are commonly referred to as "blue sky" laws.

The largest stock exchanges in the US are the NYSE, NASDAQ, and Amex, but other regional stock exchanges exist across the country.



Process

The process for going public in the US is generally similar to the process in Canada. The benefits of having access to a much larger and diverse investor base should be weighed against the additional costs to be incurred for compliance with more extensive and complex accounting, auditing, and reporting standards for listed companies in the US. The costs of non-compliance to the company in terms of damage to reputation and risk of litigation can be extensive. Therefore, a company should carefully evaluate all factors and assess its readiness before deciding to go public in the US.

Advantages of listing in US markets

Access to capital markets in the US

The US market offers a company access to additional capital because of its volume of trading, the appetite of the marketplace and the sophistication of the investors. These elements may not be available in the Canadian marketplace. The additional liquidity for securities listed in the US may also enhance shareholder value and decrease the company's cost of capital.

Increased exposure

Listing in the US can help a company gain increased exposure and build reputation in the US marketplace. This profile may make the company more attractive for mergers with other US companies. A US listing can also give a company the opportunity to acquire US currency for undertaking US transactions, and can enable it to increase its customer base.

Disadvantages of listing in US markets

The costs of an IPO in the US and the ongoing costs of continuing as a public company can be high compared with a Canadian TSX listing. The following considerations give rise to such additional costs.

More complex and extensive standards and securities regulations

The core management team and external advisers, such as lawyers and auditors, need to be skilled and experienced in dealing with the extensive securities legislation requirements and more complex US accounting and auditing standards. US disclosure requirements are onerous, and compliance costs can be high.

Tax considerations

The tax regime in the US differs from its Canadian counterpart. Take care in order to ensure that the company and the offering are structured optimally from a US tax perspective. A Canadian company listing in the US should be aware of the tax rules surrounding cross-border transactions and trades, and should also consider its responsibilities and obligations with respect to any withholding tax requirements.

Litigation risks and cost of litigation

Relative to the Canadian environment, the US has a higher risk of litigation. Contributing factors include the extensive and onerous securities rules and reporting requirements for which compliance may be more difficult; the higher number of awards in corporate cases, relative to Canada; and, in general, stronger corporate and public attitudes toward corporate litigation.

Public company compliance requirements

Annual and quarterly reports

Public companies in the US must file annual reports. The annual reports include audited financial statements prepared in accordance with—or for foreign private issuers, reconciled to—US GAAP. They also include MD&A and risk factors. The annual report must be filed within 90 days after the year-end.

Companies must also file quarterly reports within 45 days after the end of the interim period. These quarterly reports include the unaudited interim financial statements and contain less information than the annual reports.

The deadlines for filing the annual and quarterly reports are shorter if the company meets the definitions of an “accelerated filer” or a “large accelerated filer” under the US securities legislation.

Current reports must be filed within four business days of the occurrence of certain events and occurrences deemed material to investors.

Certifications

The certification requirements for CEOs and CFOs are conceptually similar to those in Canada, but with some differences in form and content. The main difference is that companies have to certify on the operating effectiveness of ICFR, and this certification must also be accompanied by an auditors’ report, something that is not required under current legislation in Canada.

Listing and reporting options for Canadian companies

Foreign private issuer

A company that is listed on a US exchange but is incorporated outside the US (other than a foreign government) is considered to be a “foreign private issuer,” unless more than 50 percent of its outstanding voting securities are held, directly or indirectly, by US residents and any one of the following statements is true:

- The business is principally administered in the US.
- A majority of its executive directors or officers are US citizens or residents.
- More than 50 percent of its assets are located in the US.

Only in conjunction with your legal counsel should you make the decision whether a company meets the definition of a foreign private issuer. If a company meets the definition, it may be able to avoid or lessen certain onerous requirements for domestic registrants, including quarterly reporting and US proxy rules.

The US/Canada Multijurisdictional Disclosure System

The MJDS is a joint initiative of the CSA and the SEC to ease the process for Canadian companies listing in the US and US companies listing in Canada. It allows qualified Canadian companies to issue securities in the US and meet their reporting obligations on the basis of disclosure documents prepared in Canada and reviewed by Canadian regulators, and vice versa. In order to qualify, companies should have a public float of at least US\$75 million.

Canadian companies must file the applicable Canadian prospectus with the SEC and provide additional information required by the MJDS registration form. The registration form requires companies to reconcile their financial statements to US GAAP. The SEC will generally not review the prospectus, as it relies on the review by Canadian regulators.

A similar process is available to US companies filing in Canada.

Going public in the United Kingdom

Alternative Investment Market

AIM, launched in 1995, is a market regulated by the London Stock Exchange. AIM was specifically designed for growing markets. An AIM listing provides companies with access to markets in London and Europe.

The rules for AIM are published by the LSE, and companies seeking admission to AIM must adhere to rules of admission and continuous-obligation rules that are less onerous than those in Canada or the US.

Process

The process for going public in the UK through AIM is generally similar to the process in Canada. A company should carefully evaluate all factors and assess its readiness before deciding to list on AIM. The company should evaluate whether its management and external advisers (such as accountants and legal advisers) have the necessary competence, skills, and experience with public offerings on AIM.

Once a company has made a decision to list on AIM, it must ensure that it meets certain requirements. In general, each company applying to AIM should

- appoint a nominated adviser
- appoint a broker
- ascertain that the company's shares are freely transferable
- be registered as a PLC (public limited company) for UK companies, or its equivalent under the laws of the origin country for international entities
- prepare an admission document or prospectus as required.

Nominated advisers

According to AIM rules, every company currently on or wishing to list on AIM must retain a nominated adviser (or Nomad) at all times. The Nomad will determine the appropriateness of the company for listing on AIM, advise and guide the board of directors through the process, and ensure that the directors are aware of their responsibilities and obligations, including continuous reporting obligations.

Nomads are generally firms of financial professionals/advisers (such as investment banks and accounting firms) that are authorized to act as nomads by the LSE. The list of authorized firms can be found on the LSE's Web site.

Nomads have a primary responsibility of care toward the LSE and must ensure that the company's admission and conduct will not damage the integrity and reputation of the LSE. Nomads must adhere to AIM rules for nominated advisers. They are also required to ensure that going public will be in the best interest of the company. In order to conduct the assessment, the Nomad will, with the help of other advisers, conduct a thorough and detailed analysis of the company and its future viability.

Broker

The broker is a securities house that is registered with the LSE (it may be the same firm as the Nomad). The broker helps bring together buyers and sellers of the securities, and thereby plays an important role in the flotation process and in after-market trading.

Financial information and the accountant's report

The AIM admission document requires entities to include audited historical financial information for the past three years. A shorter time period may be allowed if the company has not existed for three years. These financial statements must be accompanied by an independent audit opinion on the financial statements. Half-yearly interim financial statements will also be required if the admission document is dated more than nine months after the company's fiscal year-end.

Long-form report

In addition to preparing the accountant's report, the reporting accountant will also undertake detailed financial due diligence of the company in order to help the directors and the Nomad in discharging their obligations. This due diligence review can take considerable time. The results of the investigation are provided through the long-form report, a private report to the directors and the Nomad (i.e., it does not form part of the admission document).

As part of the due diligence, the reporting accountant will undertake a wide-ranging review of the operations of the company, identifying issues that should be resolved prior to the listing. The review includes an in-depth assessment of business drivers and historical performance, financial reporting procedures, risk management, corporate governance, accounting policies, people and management issues, and control systems.

Working capital report

The admission document requires the directors to make a statement on the adequacy of the working capital. To be able to make the statement, the directors will prepare a

detailed working capital forecast, including sensitivity analysis if warranted, using realistic and reasonable assumptions. This forecast must be prepared for a period of at least 12 months following the date of admission to AIM, but it is preferable to include the first 18 months.

The reporting accountant is then asked to provide an opinion to the company's directors in relation to the director's statement. In order to form this opinion, the accountant will perform a detailed review of the working capital forecast. The reporting accountant's opinion is private and is not required to be disclosed in the AIM document. Auditing standards in Canada will not allow an accountant to issue a similar report.

Fast-track admission process

AIM maintains a list of designated markets on its Web site. The TSX is currently listed as one of the designated markets; the TSX-V is not. Companies that have had their securities traded on an AIM-designated exchange for at least 18 months prior to the date of admission to AIM can apply to be admitted through the fast-track admission process.

Continuing obligations

After admission to AIM, a company must meet continuing obligations that are designed to provide investors with timely information on the company's position and its future prospects:

- A company must retain a Nomad and a broker at all times.
- A company is required to publish annual audited financial statements no later than six months after the end of the financial year. These accounts may be prepared in accordance with accounting standards currently being used in Canada.
- A company is also required to publish interim, half-yearly reports in respect of the six-month period from the end of the last financial year. These reports must be published no later than three months from the end of the half-year period, and must be prepared in a form consistent with that of the annual accounts. Unlike Canada, the UK does not require publication of quarterly financial information.

Advantages of being a public company listed on AIM

Access to capital markets, and institutional and other markets in the UK and Europe

Listing on AIM provides access to capital markets, and institutional and other individual investors in the UK and Europe. Listing in the UK also provides the company with increased visibility and international exposure that can help in the company's future growth.

Simplified regulatory environment

AIM has been specifically designed for small, fast-growing companies. As a result, the rules regarding admission and continuous obligations are generally less complex compared with other markets. For example, AIM has no minimum trading record, nor a requirement that a particular percentage of shares must be in public hands as a prerequisite to admission. In addition, AIM rules require companies to provide half-yearly financial statements, not quarterly as required by other marketplaces. AIM also allows the use of Canadian GAAP as a reporting option for companies incorporated

outside the European Economic Area. As a result, AIM has been used by companies as a stepping stone to becoming publicly listed on other marketplaces, such as the NYSE or the TSX.

Lower costs in the long term

The costs involved in the listing process and in meeting the ongoing requirements include the costs involved in publishing required documents, accounts, and reports and in appointing and retaining a Nomad, broker, and other advisers. Admission costs include the AIM admission fee and costs payable to advisers. Because the rules are specifically designed for smaller, fast-growing companies, the costs of listing on AIM can be significantly cheaper in the long term than on the other international capital markets.

Disadvantages of being a public company listed on AIM

Less liquidity for shares

In the AIM marketplace, trading is driven mainly by the Nomad. Much of the initial trading will therefore be driven by the broker's reputation and contacts. Some companies may find that listing on AIM does not provide as much liquidity as they may have originally expected, and thus may find themselves listing on another exchange shortly afterward to gain added liquidity.

Establishing reputation in the marketplace

A Canadian company listing on AIM is unlikely to have a prior presence, and thus may not be well known in the UK market prior to listing. Such companies will therefore have to invest extra time, money, and effort in order to establish their presence and make themselves competitive in the marketplace.

Capital pool company

The capital pool company program is operated by the TSX-V. The program serves as a corporate finance vehicle, providing companies with an opportunity to obtain financing earlier in their development compared with what might be possible through a normal IPO. The program permits a newly created CPC that has no assets other than cash and has not commenced commercial operations, to conduct an IPO and achieve a listing on the TSX-V. The CPC then uses these funds to identify and evaluate assets and companies for acquisition.

Advantages of the CPC program

- The owners start out with an existing shareholder base that can help address any future liquidity issues.
- The owners are able to obtain a listing more quickly.
- The owners will deal mainly with the stock exchange rather than the securities commissions.
- The reporting requirements on the TSX-V are less onerous, and the filing deadlines are longer (60 days for quarterly filings and 120 days for annual filings) than the TSX (45 days for quarterly filings and 90 days for annual filings).

Disadvantages of the CPC program

- There is less liquidity and recognition due to lower prominence and coverage of the TSX-V among the analyst community.
- Investors generally invest in a CPC at a low price and therefore tend to sell quickly once they are able to recognize a profit on the sale.

Process

Going public through the CPC involves two main stages. The first stage includes incorporating the CPC, initial financing by the founders, completing the IPO, and listing on the TSX-V. The second stage completes the qualifying transaction, in which the CPC acquires significant assets, and lists the company on the TSX-V as a Tier 1 or Tier 2 company.

Specific requirements govern the minimum number of shares to be issued and shareholders for the formation of a CPC. Similarly, minimum market distribution requirements determine whether you qualify as a Tier 1 or Tier 2 company. Additionally, each stage has specific requirements for filing an information circular, prospectus, certain financial statements, and consents from your auditors.

To form a CPC, the principals will contribute an amount between \$100,000 and \$500,000 through the purchase of seed shares of a company incorporated in a Canadian jurisdiction. The minimum price for the sale of seed shares is \$0.05 or 50 percent of the price at which shares are sold to the public on the IPO. The CPC will then proceed with the IPO process. Through the IPO, the CPC must raise a minimum of \$200,000 and a maximum of \$1,900,000. The maximum amount that a CPC can raise before completing a qualifying transaction is \$2,000,000.

CPCs also have to comply with policies that dictate the type of business they can conduct, the payments prohibited to be made to non-arm's-length parties, and how the proceeds obtained from the initial IPO are permitted to be used. For example, the only business permitted to be undertaken by a CPC is identifying and evaluating assets or companies with a view to completing a qualifying transaction and, unless the qualifying transaction is completed, a CPC must not carry on any business. Similarly, no form of remuneration can be paid to a non-arm's-length party until the qualifying transaction is completed; the only permitted payments are reasonable expenses for office rent and related utilities, certain equipment leases, office supplies, certain legal expenses, and certain expenses incurred in identifying assets or companies for completing the qualifying transaction.

Making the decision

Policy 2.4 of the *TSX Venture Exchange Corporate Finance Manual* provides a detailed description of these requirements. If you are thinking of going public through the CPC program, consult with your legal and accounting advisers. Before making any decisions, ensure you are fully aware of all the requirements and have a good understanding of the process and how it will affect you and your existing business.

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Acronyms Defined

| | | | |
|--------------|--|-----------------|--|
| AIF | Annual Information Form | MD&A | Management's Discussion & Analysis |
| AIM | Alternative Investment Market | MJDS | Multijurisdictional Disclosure System |
| AMEX | American Stock Exchange | NASDAQ | National Securities Dealers Automated Quotation System |
| CCPC | Canadian Controlled Private Corporation | Nomad | Nominated Adviser |
| CDA | Capital Dividend Account | NYSE | New York Stock Exchange |
| CICA | Canadian Institute of Chartered Accountants | OSC | Ontario Securities Commission |
| CSA | Canadian Securities Administrators | OTC | Over-the-counter |
| CEO | Chief Executive Officer | POP | Prompt Offering Prospectus |
| CFO | Chief Financial Officer | R&D | Research and Development |
| CNQ | Canadian Trading and Quotation System | RDTOH | Refundable Dividend Tax on Hand |
| CPC | Capital Pool Company | RRSP | Registered Retirement Savings Plan |
| EDGAR | Electronic Data Gathering Analysis and Retrieval | SEC | Securities and Exchange Commission |
| FOFI | Future-Oriented Financial Information | SEDAR | System for Electronic Document Analysis and Retrieval |
| GAAP | Generally Accepted Accounting Principles | SEDI | System for Electronic Disclosure by Insiders |
| ICFR | Internal Control over Financial Reporting | TSX | Toronto Stock Exchange |
| IFRS | International Financial Reporting Standards | TSX-V | Toronto Stock Exchange—Venture |
| IPO | Initial Public Offering | UK | United Kingdom |
| ITC | Investment Tax Credit | US | United States |
| LSE | London Stock Exchange | | |

Glossary

Aftermarket

The public market for a company's securities after the IPO. Also known as the secondary market.

Analyst

A person, often employed by a firm of investment dealers, who follows certain companies and analyzes their financial statements for the purpose of providing investment advice.

Annual general meeting

A meeting that is held by companies on an annual basis, allowing management to report on the progress of the company over the past year to the shareholders and others who may attend the meeting, such as analysts and members of the media. It also provides an opportunity for the shareholders to interact with management and to vote on significant issues facing the company.

Best-efforts underwriting

An agency agreement in which the underwriters agree to use only their best efforts to sell the shares on the company's behalf. The underwriters do not commit to purchase any unsold shares. (See, in contrast, firm-commitment underwriting.)

Black-Scholes model

A mathematical model developed by Fischer Black and Myron Scholes used to calculate the value of options and other underlying derivatives.

Capitalization or capital structure

The company's debt and equity structure.

Closing meeting

The final meeting for the purpose of exchanging company securities for the proceeds of the offering.

Comfort letter

A letter provided by a company's independent auditors detailing procedures performed at the request of the underwriters. This letter supplements the underwriters' due diligence review.

Comment letter

A letter from the staff of a securities commission describing deficiencies noted in its review of a preliminary prospectus.

Consent letter

A letter provided by the company's independent auditors to the company consenting to the use of its report in the prospectus.

Core operations

See value chain.

Dilution

The effect on the prospective purchasers' equity interest caused by a disparity between the public offering price per share and net tangible book value per share of the company immediately preceding the offering.

Disclosure controls and procedures

Controls and other procedures designed to provide reasonable assurance that information required to be disclosed by a company under the applicable securities legislation is recorded, processed, summarized, and reported on a timely basis.

Due diligence

The responsibility of those preparing and signing the prospectus to conduct a reasonable investigation so as to provide a reasonable basis for the belief that the statements made in the prospectus are true and do not omit any material facts.

Escrow agreement

An agreement generally imposed by a securities commission that specified securities (usually common shares) will be held by a trustee for the account of a shareholder and that they may not be sold, assigned, released from escrow, or transferred within escrow without the express consent of the securities commission.

Exercise price

The fixed price at which an option holder can purchase the underlying securities of the company. Also known as strike price.

Firm-commitment underwriting

A type of underwriting agreement in which the underwriters agree to purchase all the shares in the offering and then resell them to the public. Any shares not sold to the public are paid for and held by the underwriters for their own account.

Founder stock

Shares issued to selected persons (e.g., company insiders and promoters) prior to a public offering at a price less than the public offering price.

Green-shoe option

See over-allotment option.

Green sheet

A sheet prepared by the underwriters, summarizing information contained in the prospectus and information on comparable companies, to assist registered securities dealers in understanding the key elements of an offering.

Insider trading

Trading in a company's securities by company insiders or others with access to non-public information about the company.

Investment bankers or dealers

Financial institutions that specialize in advising companies on available sources of financing and on the optimum time for a public offering of securities; often also act as underwriters for a public offering.

Internal control over financial reporting

The process (including all policies and procedures) designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes, in accordance with generally accepted accounting principles.

Lead underwriters

Also known as principal underwriters, they organize the underwriting syndicate and are the primary contact with the company.

Letter of intent

A preliminary, non-binding agreement between the underwriters and a company specifying the terms that will be contained in the actual underwriting agreement. This letter precludes a company from hiring another underwriter and often authorizes the underwriters to incur expenses in connection with the proposed offering.

Market makers

The lead underwriters and some or all of the co-underwriters who offer to buy or sell shares from the public, helping to sustain financial community interest and provide aftermarket support for a company's shares.

National policies

Policies developed jointly by the provincial securities commissions to facilitate the acceptance of a prospectus in more than one province, and to provide for uniformity of administration of interprovincial offerings.

Non-GAAP financial measure

A numerical measure of a company's historical or future financial performance, financial position or cash flow that is not required by GAAP, which (1) either excludes amounts that are included in the most directly comparable measure calculated and presented in accordance with GAAP; or (2) includes amounts that are excluded from the most directly comparable measure calculated and presented in accordance with GAAP.

Over-allotment option

An option allowing the underwriters to purchase up to a specified number of additional shares from the company in the event they sell more shares than agreed in the underwriting agreement (also known as a green-shoe option).

Over-the-counter market

The market for securities not listed on a stock exchange.

Pre-emptive rights

The right of a shareholder to maintain his or her proportionate share of ownership in a company by subscribing to a proportionate share of new securities being issued by the company.

Preliminary prospectus

The preliminary prospectus is filed with the securities commissions and provided by the underwriters to prospective investors. It does not disclose the offering price, underwriters' commission, or net proceeds. Also known as a red herring.

Price-earnings ratio

The price of a share of common stock divided by earnings per share.

Primary offering

An offering by a company of previously unissued securities. (See, in contrast, secondary offering.)

Principal jurisdiction

The securities commission of the province or territory selected by the company to coordinate the review of a prospectus filed in more than one province or territory.

Private placement

Sales of securities not involving a public offering and exempt from prospectus requirements pursuant to certain specific exemptions.

Promoter

Those who took the initiative in founding the company and those who received, in connection with its founding and in consideration of services or property contributed, 10 percent or more of the shares of either the company or proceeds from the sale of the shares of the company.

Prospectus

A legal document that discloses information about the company and the offering and is distributed by the underwriters to prospective investors. Its content is specified by securities acts and regulations. Also referred to as the offering document.

Proxy

A shareholder's written authorization for some other person to represent that shareholder and vote the respective shares at a shareholders' meeting.

Red herring

The preliminary prospectus that is distributed to the underwriters for further distribution to prospective investors. It includes a narrative in red ink on the cover (a red herring) stating that the prospectus is not yet final. (See preliminary prospectus.)

Registrar and transfer agent

An agent for the company that issues the securities sold to investors, maintains current records of all shareholders and their addresses, and maintains the records for subsequent transfers of securities upon resale.

Road show

A series of meetings in different locations allowing members of the underwriting syndicate and certain prospective investors to ask company's management questions relating to the company and the offering.

Secondary market

See aftermarket.

Secondary market civil liability regime

A regime that provides a right of action for damages to a person or a company that acquires or sells securities of the responsible company, based on either a misrepresentation made in a public document or an oral statement, or a failure to provide required timely disclosures. These statutory rights potentially apply against the responsible company, its directors, officers, influential persons, and experts.

Secondary offering

A public offering of shares owned by existing shareholders. (See, in contrast, primary offering.)

Securities and Exchange Commission (SEC)

The US agency responsible for the administration of US federal securities laws.

Strike price

See exercise price.

Transfer agent

See registrar and transfer agent.

Underwriters

The lead underwriter and the other investment dealers that form the underwriting syndicate. Their primary function is to sell securities to the investing public. (See also investment bankers or dealers.)

Underwriting agreement

An agreement containing the details of the company's arrangements with the underwriters, including the type of underwriting (i.e., best efforts or firm commitment), the underwriters' remuneration, the offering price, and the number of shares.

Underwriting syndicate

The group of underwriters or investment dealers assembled by the lead underwriters to sell securities.

Value chain

The sequence of direct activities that add value to the customer. In a manufacturing concern these may include design, purchasing, fabrication/assembly, distribution, marketing, and sales functions.

Vesting

The act of becoming fully entitled to the stock option grant.

Working group

The parties involved in preparing the prospectus, including company management, the company's lawyers, auditors, underwriters, and the underwriters' lawyers.





Appendix 1: Contents of a Prospectus

National Instrument 41-101, *General Prospectus Requirements*, includes Form 41-101F1, which specifies the contents of a prospectus filed at the time of an initial public offering. This appendix provides a brief description of the main contents of a prospectus.

Cover page

Shows key facts about the offering, including the name of the company; the title, amount, and a brief discussion of the securities offered; a table showing the offering price, underwriting discounts and commissions, and proceeds to the company; and the date of the prospectus.

Risk factors, and the market for the company's securities (e.g., conditional approval for stock exchange listing) or the fact that no market exists, are disclosed. Generally, the lead underwriter's name is also shown.

Table of contents

Usually included in the inside cover page of the document.

Prospectus summary

Provides an overview of the information contained in the prospectus, both favourable and adverse, that in the opinion of the company is most likely to influence an investor's decision to purchase the security. The summary should include a description of

- the principal business of the company and its subsidiaries
- the securities to be distributed, including the offering price and expected net proceeds
- use of proceeds
- risk factors
- summary financial information. (This particular requirement cannot be satisfied by a cross-reference to another section of the prospectus.)

Glossary

Describes certain terms used throughout the prospectus that are specific to the particular company, its business, or its industry.

The company

Provides the full corporate name, location of its principal or lead and registered offices, details of its incorporation, and a description of the inter-corporate relationships among the company and its subsidiaries.

Business of the company

Provides investors with insight into the company's business operations. Items addressed in this section generally include

- the business carried on and intended to be carried on by the company
- general development of the company and the business during the last three years
- principal products or services and their markets
- all material acquisitions and dispositions by the company during the past two years and the impact of these on the operating results and financial position of the company
- nature and result of any material reorganization of the company
- any patents, trademarks, licenses, franchises, and concessions held
- any significant dependence on a single or few customers
- number of employees.

Use of proceeds

Discloses the estimated net proceeds to be realized from the offering and the principal purpose for which the net proceeds are intended. If any provisions or arrangements are made for a portion of the net proceeds to be held in trust or to be subject to the fulfillment of any conditions, the details of these circumstances are disclosed. Particular disclosures are required if more than 10 percent of the net proceeds are to be used to acquire assets, or to reduce or retire indebtedness incurred within the two preceding years.

Dividends or distributions

Discloses the cash dividends or distributions declared for each class of securities for the current and for each of the last three completed financial years. A company is also required to disclose any restrictions that could prevent it from paying dividends or distributions, as well as its dividend or distribution policy and any intended change in such policy.

MD&A

MD&A is supplemental analysis and explanation that accompanies but does not form part of the financial statements. MD&A provides management with the opportunity to explain in narrative form the company's current financial situation and future prospects. MD&A is intended to allow investors to look at the company through the eyes of management by providing both a historical and prospective analysis of the business of the company.

The securities legislation requirements for the information to be reported in the annual and interim MD&A are extensive. Management will need to devote a considerable amount of time and effort to comply with the requirements, as the MD&A may not have been prepared by the company prior to going public.

Earnings coverage ratios

Discloses earnings coverage ratios for distributions of preferred shares and for distributions of debt securities having a term to maturity in excess of one year. Cash flow coverage disclosure can be used only as a supplement to earnings coverage, and only if the method of calculation is fully disclosed. Bold-face cover page disclosure is required when the earnings coverage is less than one-to-one.

Details of the offering

Describes the securities being offered, including a description of any income tax implications, and often is accompanied by the auditors' commentary or lawyers' opinion with respect to the tax implications. When shares are offered, the description of the security, dividend and voting rights, and liquidation and conversion rights are disclosed. The terms of any warrants or rights offered are also described. When debt is offered, the interest rate, maturity, security, redemption, sinking fund, and conversion rights are described.

Consolidated capitalization

Discloses the company debt and equity capital structure, both before and after the offering. The pro forma capital structure after the offering is adjusted to reflect the securities issued and the intended use of the proceeds (e.g., to reduce long-term debt).

Options to purchase securities

Describes the type and number of securities, the purchase price, and, when ascertainable, the market value of options to purchase securities from the company or any of its subsidiaries. The prospectus should also provide detail on by whom the securities are held, or proposed to be held, and which are outstanding as of a date within 30 days prior to the date of the preliminary prospectus.

Appendix 1: Contents of a Prospectus (continued)

Prior sales

If you have issued securities of the same class within the last 12 months, the prospectus should disclose details about these issues, including the number, price range, volumes traded, etc.

Escrowed securities and securities subject to contractual restriction on transfer

Outlines the type and number of each class of voting securities of the company held in escrow under an escrow agreement, or that are subject to a contractual restriction on transfer, and the percentage that number represents of the outstanding securities of that class. The company should also disclose the name of the depository, if applicable. When conditions governing the release of the shares from escrow exist, the conditions are detailed.

Principal shareholders and selling security holders

Discloses the identity of the holder, the number of securities held, and the percentages of each class of securities for each principal and selling shareholder, if any. A principal shareholder is a person or company that is the direct or indirect beneficial owner of or exercises control or direction over more than 10 percent of any class or series of voting securities of the company.

Directors and officers

Lists the names and municipality of residence of each director and executive officer, and indicates their respective positions and offices with the company and their principal occupations within the five preceding years. This section also requires a disclosure of existing or potential conflicts of interest between the company or a subsidiary, and a director or officer of the company or a subsidiary. Board committees are disclosed and the members of each committee are identified.

Executive compensation

Includes a Statement of Executive Compensation that contains significant disclosures regarding compensation, including aggregate remuneration paid or payable with respect to office or employment, pension benefits, and the aggregate of other forms of remuneration. The prospectus must describe any intention to make material changes to that compensation.

Indebtedness of directors and executive officers

Provides extensive disclosure of the types, amounts, and terms of indebtedness of each individual who is, or at any time during the most recently completed financial year was, a director or executive officer of the company. There are some exceptions available for "routine" indebtedness.

Audit committees and corporate governance

Discloses information about the company's audit committee and its corporate governance practices. Regarding the audit committee, a company is required to disclose the audit committee's charter and composition, fees paid to external auditors, pre-approval policies, and applicable oversight disclosures among other things.

Regarding corporate governance, the company is required to disclose the identity of both independent and non independent directors, the mandate of the board, position descriptions, process for determining compensation and nomination of directors, other committees, and assessment process among other things.

Plan of distribution

Describes the underwriting and plan of distribution for the securities offered, including the names of the underwriters in the group, the nature of the underwriters' obligation (i.e., firm commitment or best efforts), and the date by which the underwriters will purchase the securities. When the distribution is a best-efforts offering, disclosure is also made of any minimum amount required to be raised, the maximum amount that can be expected to be raised, and the date until which the offering will remain open. Additional disclosures may be required in certain circumstances when the distribution is to fund a new business.

Risk factors

Highlights factors material to the company that a reasonable investor would consider relevant to an investment in the securities distributed, such as cash flow and liquidity problems, if any; experience of management; the general risks inherent in the business; environmental and health risks; reliance on key personnel; the arbitrary establishment of the offering price; regulatory constraints; economic or political conditions; absence of operating history or operating profit; and any other matter that in the opinion of the company or selling security holder would be likely to influence the investor's decision to purchase the securities. The risks should be disclosed in order of their seriousness. Information is also provided in situations in which the purchaser of the offered securities may become liable to make additional payments beyond the price of the security.

Promoters and substantial beneficiaries

Discloses the names of the persons or companies that, within the five years immediately preceding the date of the preliminary prospectus, would be considered to have founded, organized, or substantially reorganized the business of the company. Similar disclosure is also required for a person or company that is a substantial beneficiary as defined in the regulations.

Legal proceedings and regulatory actions

Describes any material legal proceedings, whether pending or contemplated, other than ordinary routine litigation incidental to the company. Disclosure is also required of any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority, and any settlement agreements entered into with such court or regulatory authority.

Interest of management and others in material transactions

Describes and states the approximate amount of any material interest of the directors, executive officers, principal shareholders, and their associates or affiliates in any transaction within the preceding three years, or any proposed transaction that has materially affected or will materially affect the company or any subsidiary.

Auditors, transfer agent, and registrar

Provides the names and addresses of the company's auditors, transfer agent, and registrar.

Material contracts

Describes briefly the nature, parties, dates, and consideration of all material contracts entered into within two years of the date of the prospectus. These contracts must also be made available for public inspection.

Other material facts

Discloses any other material facts relating to the offered securities, not disclosed elsewhere, that are necessary in order for the prospectus to contain full, true, and plain disclosure.

Purchasers' statutory rights of withdrawal and rescission

Discloses the statutory rights of withdrawal exercisable within two business days after receipt or deemed receipt of a prospectus and the applicable statutory remedies for rescission or damages in the event the prospectus contains a misrepresentation.

Financial statements

Securities legislation prescribes an array of financial information to be disclosed in a prospectus on which the auditors may be required to report in some fashion. Such information may include, but is not limited to

- previously audited financial statements, and financial statements to be, or in the process of being, audited
- unaudited interim financial statements
- audited annual and unaudited interim financial statements for an acquired company
- pro forma financial statements.

Appendix 1: Contents of a Prospectus (continued)

Previously audited financial statements

Audited financial statements complete with their notes, for a prescribed number of years, are typically required in a long-form prospectus.

Preparation of these financial statements often leads to certain compilation, accounting, and auditing issues, such as

- the need to adjust financial statements to comply with standards for public companies (e.g., segmented information, tax-rate reconciliation, earnings per share)
- the treatment of changes in accounting policies and corrections of prior-period errors that arose during the period covered by the statements and that have retroactive impact
- the treatment of operations discontinued during the period covered by the financial statements
- the preparation of notes to the financial statements, requiring careful consideration of previous disclosures and events subsequent to the previous reporting dates
- the need to evaluate accounting policies previously followed to determine if any will result in difficulties in obtaining clearance from the various securities commissions.

Unaudited interim financial statements

Includes unaudited interim financial statements for the most recently completed interim period ended more than 45 days before the date of the prospectus (60 days for issuers listed on the venture exchange). An interim period is defined as a completed three-, six-, or nine-month period that commenced immediately following the end of the most recently completed financial year.

Financial statements of an acquired company

If the company is proposing to make a significant probable acquisition, or has made a significant acquisition during the current or any of the past three completed fiscal years, the company may need to include prescribed financial statements of the acquired company.

Pro forma financial statements

To assist investors in understanding the nature and effect of proposed transactions contemplated in the prospectus, pro forma financial statements may be required or desirable. In such cases, actual historical cost financial statements are adjusted to reflect the proposed transactions. Pro forma financial information may be used to reflect significant business acquisitions and dispositions, reorganizations, unusual asset exchanges, and debt restructurings.

Future-oriented financial information

Future-oriented financial information is not required to be included in a prospectus or offering document. The OSC will allow forecasts or, in some cases, projections to be included provided they meet the stringent requirements as set out by the securities regulators. If you intend to include FOFI in your prospectus, consult your legal counsel to gain an understanding of the requirements.

Appendix 2: Selecting and Working with the Underwriters

Selecting the underwriters

Be prepared

Selecting the lead underwriters best suited to your situation should begin with an evaluation of your company and its future plans. Consider the current and potential market for your product. If your geographic coverage is national, you may wish to retain a national firm—one with strong representation across Canada—to capitalize on and enhance your corporate image. However, if your product sales market and desired share distribution are regional, a local firm—one that is strong in your particular market area—may be able to better serve your needs.

If your industry is specialized, you may want to seek underwriters that focus on your industry. If you plan to diversify, through acquisition or internally, consider using an investment dealer that also has experience in that new industry. You can avoid repeating the selection process by choosing underwriters that can fill both your current and anticipated needs, in the hope of building a long-term professional relationship.

In many respects, selection is a two-way process. Not all underwriters may be interested in your offering. Some do not handle IPOs or are interested only in offerings above certain minimum amounts. Others may decline on the basis of their assessment of your company's or industry's future prospects. The underwriters' reputation depends largely on the success of the offerings they underwrite. Because underwriters are compensated only if the offering is completed (except for any expense reimbursement that a company may have agreed to), they will clearly not want to commit significant time and resources if they are not reasonably confident that the offering will be successfully completed.

Before approaching underwriters, it is advisable to develop a formal business plan that describes your company, its products, past performance, and future plans. This plan will serve as both a brief introduction to your company and a sales tool when approaching the underwriters. The quality of your business plan will play an important role in the underwriters' initial assessment of your company and its prospects.

Evaluating the underwriters

The next step is to develop a list of underwriters that appear to meet the criteria that has been set (i.e., national or regional, industry specialization). The financial advisers, auditors, lawyers, and bankers can assist you in identifying appropriate underwriters and in performing a preliminary evaluation of them based on the following:

Reputation

The reputation of the lead underwriters is a significant factor considered by prospective investors. A well-respected underwriting firm can also form a strong underwriting syndicate to sell your securities.

Experience

The underwriters should have experience in underwriting IPOs and in the type of securities you intend to offer. Although specialization in your particular industry may not be required, your underwriters should have experience in the industry as a basis for pricing your stock, selecting an appropriate underwriting syndicate, and providing credibility in the eyes of investors and industry analysts.

Appendix 2: Selecting and Working with the Underwriters (continued)

Distribution capability

Depending on the size of your offering, the number of geographic markets in which you wish to offer the securities, and the type of investor you hope to reach (retail and/or institutional), the lead underwriters may need to establish an underwriting syndicate consisting of a number of other underwriting firms to accomplish your objectives.

A broad distribution will not only provide a larger market for your shares but also help to avoid concentration of major blocks of shares in the hands of one or a few persons. Your underwriters should have appropriate experience, a broad client base, and a retail or institutional investor orientation that is consistent with your needs.

Aftermarket performance

An important part of the underwriters' service is to provide aftermarket support for your shares. This support is accomplished by the lead underwriters and some or all of the underwriting syndicate acting as market makers in your shares—offering to buy or sell shares from the public or in the inter-dealer market, and generally sustaining the financial community's interest in your shares through continuing timely dissemination of information about your company's progress.

Research department

A critical component of aftermarket interest is the underwriters' continuing analysis and distribution of information about your company and your industry. Your underwriters' research department should have the resources necessary to produce that information. It should also have a reputation that commands the respect of investors, particularly institutional investors, and the financial community in general.

Continuing investment dealer services

The lead underwriters should have the resources to continue to provide your company with investment dealer services. These services include assistance in obtaining additional capital as the need arises (whether from private or public sources), advising on proposed mergers or acquisitions, and generally providing a full range of investment dealer services.

Do your homework

Some underwriters may also be prepared to help you contact principal shareholders in several of the companies they have recently underwritten for an expression of satisfaction with the underwriters' service. You may wish to ask such shareholders the following questions:

- How satisfied were you with the underwriters in providing all the services they promised?
- How well did the underwriters display an interest in and knowledge of your industry and company?
- Were there any last-minute surprises or demands from the underwriters?
- How satisfied are you with the breadth of the underwriting syndicate and placement of your shares?
- How well have the underwriters maintained an interest in your company after the initial distribution?
- What happened to your share price in the aftermarket, and how were price movements related to the appropriateness of the initial offering price, the level of aftermarket support from the underwriters, or other factors?
- How do the lead underwriters continue to promote your company through regular research reports?
- Do the lead underwriters provide other financial advice?
- Would you use them to underwrite another offering?
- Should I know anything else about this underwriting firm?
- Would you recommend the underwriters?

The selection process

Once you have, formally or informally, evaluated several underwriters based on these criteria, you can develop a short list of underwriters to approach directly. Opinions vary as to how many underwriters you should approach. Some advisers warn against shopping for underwriters and suggest approaching only one firm at a time. Others advise that some shopping—and the resulting competition—are to your advantage.

The number of underwriters approached depends partly on the attractiveness of your offering. If the offering is larger and likely to be attractive to the larger firms, you may decide to approach three or four underwriters. It is important, however, to inform all prospective underwriters that you are approaching other underwriters, and to provide details about all aspects of your company and the offering. If the offering is attractive, underwriters will investigate your company and sell their services to you.

Also consider whether to retain more than one lead underwriter. The use of co-leading underwriters, particularly for larger offerings, can be advantageous with respect to initial market coverage, research capabilities, and aftermarket support.

While holding discussions with these underwriters and in selecting your lead underwriters from among those willing to handle your offering, remember that you will be working closely with the individuals assigned to your account. You must therefore also feel comfortable with them on a personal level.

Working with your underwriters

You will work closely with your lead underwriters in the preparatory stages of your offering, through the completion of the offering, and often long into the future on subsequent public offerings, acquisitions, or mergers.

Underwriters examine a company and its prospects similar to the way that an investor would, but much more intensively. Their examination begins with the business plan. The plan can spark their interest or lead to immediate rejection. Accordingly, the plan should be well prepared and present your company in its best light. But here, and in all future dealings with the underwriters, you must scrupulously avoid any misrepresentation. If the underwriters find they have been misled, they will abort the offering—leaving you with delays, lost time, and a tarnished reputation that few other underwriters will accept.

Appendix 2: Selecting and Working with the Underwriters (continued)

Company assessments

If the underwriters decide to investigate further, they will examine various aspects of your company. Depending on your company, they will conduct some of the following assessments:

- interview key executives to assess your management strength
- review your financial statements in depth, challenge your accounting policies, and consider your financial projections
- evaluate your company and products in relation to your industry
- contact your suppliers and customers
- assess your market share, technological advantages or disadvantages, and market growth potential, as well as consider the intended use of the proceeds of the offering
- ask your auditors to apply specified procedures to selected items of a financial nature in your prospectus.

In short, they will perform a thorough evaluation of your company to decide whether to handle your offering and, if they are then selected, to help price and promote it.

Negotiating terms

After agreeing in principle to proceed with the offering, you will discuss and negotiate in more detail the terms and characteristics of your offering. While cost is not the most important consideration in selecting your lead underwriters, the underwriters' compensation is a significant amount. Compensation arrangements should be clearly agreed upon prior to commencing with the offering.

The following common factors should be considered in negotiating terms with your underwriters.

Letter of intent

The final underwriting agreement is usually not signed until the morning of the day the final prospectus is filed and the distribution begins. Many underwriters will prepare a letter of intent, which is signed by the lead underwriters and company management. The letter of intent often outlines the agreed-upon underwriters' commission, estimated offering price, and other negotiated terms, but generally it does not create a legal obligation for either your company or the underwriters to proceed with the offering. The letter may, however, create a binding obligation for the company to pay certain expenses incurred even if the offering is not completed.

Type of underwriting

There are two common types of underwriting agreements: firm commitment and best efforts.

In a firm-commitment underwriting agreement, the underwriters agree to purchase all the shares in the offering and then resell them to the public. Any shares that are not sold to the public are paid for and held by the underwriters for their own account. This agreement provides you with the most assurance of raising the required funds.

In a best-efforts underwriting agreement, the underwriters simply agree to use their best efforts to sell the shares on behalf of your company. Some best-efforts arrangements are "all or nothing," in which case the offering is withdrawn if all shares cannot be sold within a specified period. Others set a lower minimum number of shares that must be sold for the offering to be completed.

Offering size and price

Underwriters generally will not, and cannot, guarantee an offering price and total proceeds in advance. The offering price is finalized only very shortly before the final prospectus is filed, as it must respond to current market conditions.

If the underwriters are unwilling to predict an offering price, as many underwriters are, they will generally estimate a range for the offering price based on existing market conditions at the time of their estimate. While such estimates are in no way binding and will change in response to changing market conditions up to the date that distribution of the offering begins, they reduce the chance of misunderstandings and last-minute surprises.

Distribution

The size of your offering, the number of geographic markets in which you wish to offer your securities, and the type of investor you hope to reach (individual and/or institutional) all determine the ideal size and composition of your underwriting syndicate.

Aftermarket support

An important aspect of the underwriter's service is to provide aftermarket support for your shares to keep the market active, to add price stability, and to encourage share-price appreciation. Strong performance by your underwriters in this regard will contribute to easier future access to the capital markets. Reach an understanding with your underwriters as to the nature and extent of post-IPO support that they will provide.

Underwriting commission

The underwriting commission, or discount, is generally the single largest expense in a public offering. Typically, for IPOs, the rate of commission ranges from 6 to 10 percent of the size of the offering. Debt offerings generally result in lower rates of commission than do common stock offerings. In determining the rate of commission, underwriters consider factors such as size of the offering, competitive rates for offerings of similar size, the type of underwriting (i.e., firm commitment or best efforts), and the market for the shares. All of these factors determine how much effort the underwriters must invest to sell your shares. There may also be a trade-off between the rate of commission and other forms of compensation, particularly for smaller offerings.

Underwriters' warrants

Some underwriters will negotiate for stock warrants in addition to their commission. Such warrants are more common when dealing with smaller underwriters and smaller offerings.

Over-allotment option

Often the underwriters are also given an over-allotment option, which allows them to purchase up to a specified number of additional shares from the company in the event the underwriters sell more shares than are agreed to in the underwriting agreement. The prospectus must disclose existence of an over-allotment option (also known as a green-shoe option, named after the Green Shoe Manufacturing Company, which introduced this technique).

Appendix 2: Selecting and Working with the Underwriters (continued)

Reimbursement of underwriters' expenses

It is not uncommon, particularly for smaller offerings, for the lead underwriters to request reimbursement for some of their expenses incurred for your offering. For example, often the company reimburses legal fees incurred by the underwriters. Legal fees will increase with the number of provinces in which you offer your shares, as a result of each province's filing requirements. You may therefore wish to discuss the area of geographic distribution in the negotiation stage, before the underwriting syndicate is established by your lead underwriters. You may also be able to negotiate limits to the reimbursement of underwriters' expenses.

Right of first refusal

Some underwriters will request a right of first refusal on any future underwritings by your company. While such a request may seem innocuous, it can have adverse consequences with respect to future offerings. Other underwriters will be reluctant to invest the time and resources necessary to evaluate a proposed offering if they are aware that they may be pre-empted by another underwriter's right of first refusal. If a right of first refusal cannot be avoided, consider negotiating either a time limit, after which the right expires, or a provision that the right expires any time it is available but not exercised.

Termination clause

The underwriting agreement typically includes a termination clause, whereby each underwriter has the option to terminate the agreement without any liability on the part of that underwriter. Certain conditions under which the agreements can be terminated include adverse changes in market conditions, material changes to the business of the company, and changes to laws and regulations of significant consequence.

Appendix 3: Stock Compensation Plans

A company can structure its stock compensation plans for management and employees in different ways. The key is to select a plan that meets the needs and objectives of the company, considering the motivational tool perspective, the financial perspective, and the impact on the company's results. A company should consult with its accounting, tax, and human resources advisers before implementing a plan. The following pages provide a brief overview of some plans, with implications for Canadian taxpayers.

Stock option plans

This plan gives employees the right, but not the obligation, to purchase shares at a pre-determined (exercise or strike) price. The employee does not have to pay money up front; the employee has to pay only when the option is exercised. The option can be designed to include vesting requirements to assist in retaining employees. However, stock options provide limited risk to the employees as they participate only in the upside and not in the downside. If the share price falls below the exercise price, the value of this plan as a motivational tool may be limited.

For a public company, this plan generally results in a taxable benefit to employees upon exercise. In general, the taxable benefit is equal to the value of the shares in excess of the exercise price. If certain conditions are met, the benefit is reduced by 50 percent. Under limited circumstances, the benefit can be deferred to the date of sale up to an amount of \$100,000. Any loss realized on a subsequent disposition of the shares is typically a capital loss that cannot be used to offset the employment income reported upon exercise. The employer generally cannot claim a deduction for the benefit that is reported by the employees. However, if the employee has the option to receive cash in lieu of shares, the employer could generally obtain a deduction.

The fair value of the options, determined using an option pricing model such as the Black-Scholes model, should be recognized as compensation expense by the company over the vesting period of the option.

Share purchase plans

Under this plan, the employee sets aside after-tax funds in order to purchase stock of the company. The employer may or may not match the contribution, thereby enabling employees to obtain the stock at a discount, and making the plan more attractive to employees. However, the upfront money required to be contributed by the employee in order to purchase the shares may make the plan less attractive.

Any discount provided to employees (either through employer contributions or otherwise) must be reported as a taxable benefit to the employee at the time the shares are purchased. Employers can claim a deduction for contributions provided. Any employer contributions should be reported as compensation expense by the company in the year the shares are purchased.

Appendix 3: Stock Compensation Plans (continued)

Phantom stock plans

Phantom stock plans are plans in which employees receive shares of a company that, while not being actual shares, mirror the movements of the actual share price of the company. Any resulting profits are then paid out to the employees under pre-determined terms and conditions. The payout may be in the form of cash.

The use of this plan avoids the dilution of ownership interest, as actual shares are generally not issued under this plan. The employees must report as a taxable benefit any amount received through such a plan in the year of receipt, and the employer may claim the same as a deduction.

The accounting for phantom shares will vary depending upon the specific provisions of the plan. Generally, the company is required to record the obligation as a liability and mark the liability to market until cancelled, forfeited, or exercised.

Stock appreciation rights

Stock appreciation rights are a modified form of phantom stock in which employees are provided a cash payout in the amount of the appreciation of the price of the underlying stock. The payout may also be given in the form of shares as opposed to actual cash. This plan requires no initial cash outlay by the employee, and the employer can avoid any dilution of ownership by paying out cash (actual shares need not be issued under such a plan). As no shares are issued, the employee cannot vote or otherwise participate in the decision making of the company.

The amount received by the employee is treated as an employment benefit to be reported as income in the year the cash or shares are received. The employer may claim a deduction for the amount paid to the employee, but not if shares are issued. The value of the vested stock appreciation rights must be recognized as compensation expense by the company in the year of vesting.

Restricted stock plan

A restricted stock plan is a plan in which stock is granted to employees at a discount or at a nominal or no-charge amount, but is subject to restrictions such as meeting certain performance goals or vesting conditions. These restrictions can be structured in various ways to align the company's objectives with those of the employees (e.g., creating long-term goals that would help retain employees). From a shareholder's perspective, this plan can result in a dilution of ownership interests, as actual shares are issued. The uncertainty surrounding the restriction may also make it less attractive to employees. Therefore, careful consideration should be given to the design and nature of the restriction, to ensure it is aligned with matters in which the employee has control.

The employee must include in employment income any benefit received under this plan. In general, the benefit is equal to the value of the shares in excess of any amount paid by the employee.

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