

Going Public

Strategic Considerations & Process
Overview



September 2017

EXPECT EXCELLENCE®

Agenda

- Deciding to go public
- Means of accessing public markets
- Gun-jumping
- Timeline/process
- Key activities/considerations

Deciding to Go Public

Whether to Go Public

PROS

- Liquidity for current shareholders
- Elevate public profile
- Expanded shareholder base
- Easier access to future capital
- New “currency” for acquisitions/in-licenses

CONS

- Upfront one-time and ongoing expense
- Diversion of management attention
- Volatility - periodic earnings and milestones
- Internal infrastructure
- Loss of control

Strategic Analysis and Initial Preparation

- Analysis of current public markets/landscape
- Analysis of alternatives
- Company planning and preparation:
 - Assembling a team
 - Positioning the company/communications
 - Readiness assessment
- **Plan ahead and stay in control**

Readiness Consideration

- Right team, story and timing
- Pre-IPO financing options:
 - Private raise from “crossover” public equity investors becoming more frequent
 - Consider what type of investor best matches the company’s needs
 - Can help IPO success & post-IPO performance

Consider Capital Structure

- Evaluate current corporate structure, including jurisdiction of incorporation
- Authorized share structure, including amount of authorized shares and features of preferred stock

Understand Your Valuation

- May be different from historical valuations
- Issuer should have an understanding of its value before engaging an investment banker or embarking on a strategic process
- Stock split/reverse stock split may be needed

Emerging Growth Companies ("EGCs")

- Category of issuer established by the JOBS Act
- Generally, any IPO issuer with annual revenue for its most recently completed fiscal year of less than \$1.07 billion

Means of Accessing Public Markets

Multiple Ways to Access Public Markets

- Traditional IPO (sometimes with pre-IPO “crossover” financing)
- Registration alone
- Regulation A offering
- Reverse merger into shell company
- Acquisition of a public operating company

Traditional IPO

- Underwritten offering of common stock
- List stock on a national exchange

PROS

- Publicity, ongoing analyst coverage
- New institutional shareholders
- Flexibility in future raises/transactions

CONS

- Expense and duration
- Governance changes
- Subject to changes in market environment

Gun-Jumping

Gun-Jumping Prohibited

- Gun-jumping - violations of Securities Act communications limitations
- Permitted communications depend on the IPO phase:
 - Pre-filing or Quiet Period
 - Waiting Period
 - Post-Effective Period

Quiet Period

- Begins once issuer seriously considers an IPO (e.g., retains an investment bank)
- Gun-jumping prohibited
- EGCs may test the waters

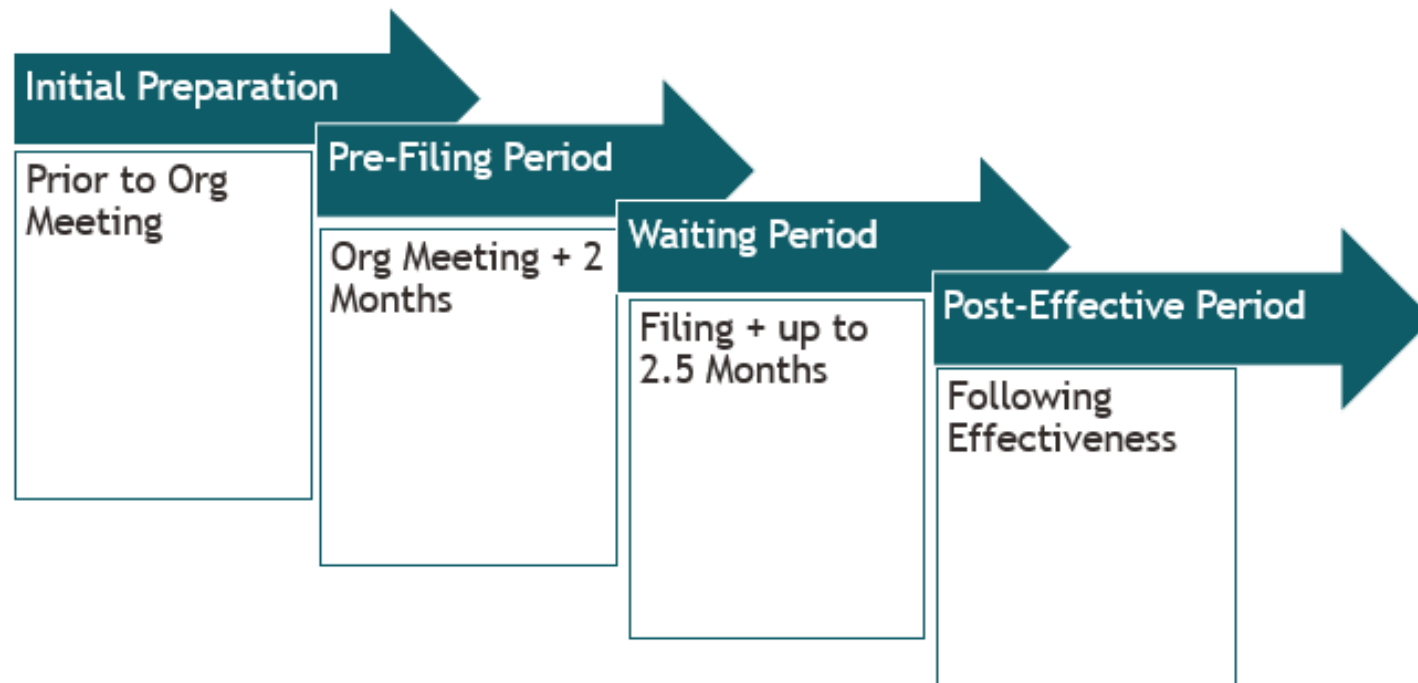
Waiting Period

- Period between filing and effectiveness of the registration statement
- Oral offers generally permitted during this period
- Only certain written offers are permitted

Post-Effective Period

- Extends for 25 days after effectiveness
- Oral offers generally permitted during this period
- Written offers are more broadly permitted when accompanied by a final prospectus

Timeline/Process



Initial Preparation (Prior to Org Meeting)

- Develop the business plan
- Appoint external advisors, draw up schedules/timetables
- Prepare historical financials
- Engage lead underwriter(s) and underwriters' counsel
- Begin corporate cleanup/housekeeping
- Assess registration rights/lockup requirements

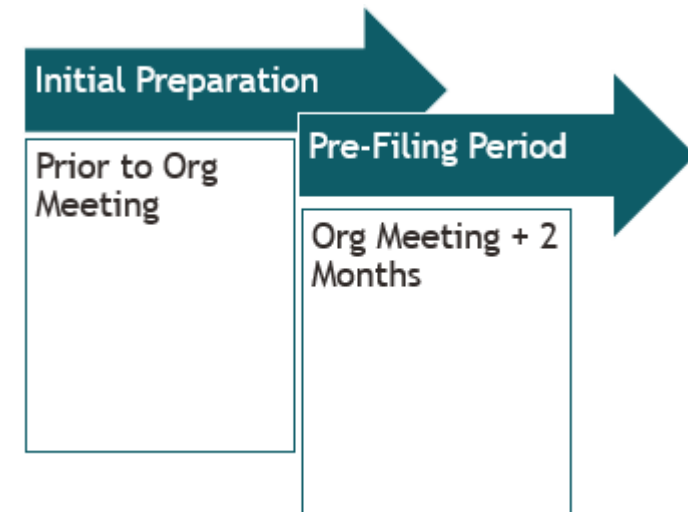


Initial Preparation

Prior to Org
Meeting

Pre-Filing Period (Org Meeting + 2 Months)

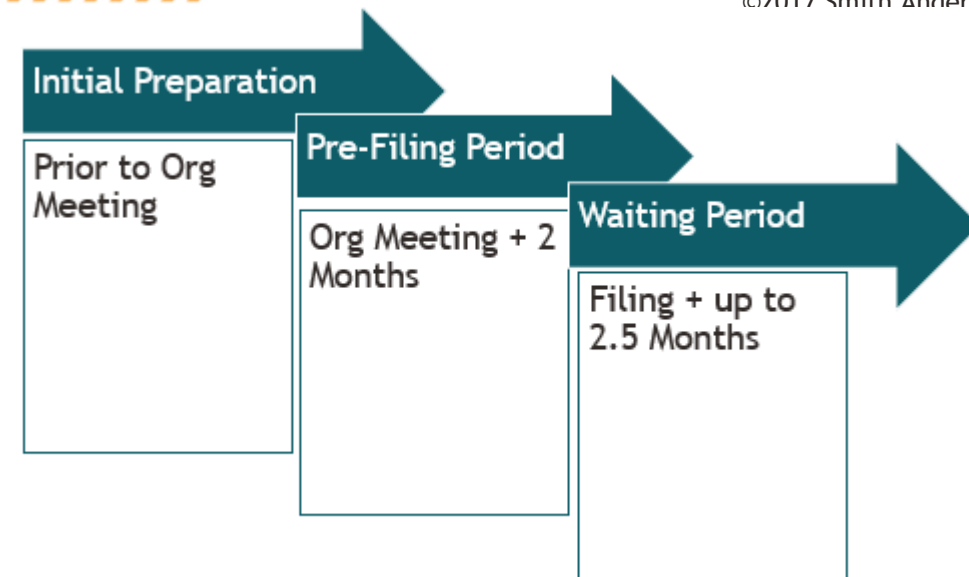
- Prepare Form S-1
- Conduct due diligence
- Select service providers (transfer agent, financial printer, etc.)
- Select securities exchange and reserve trading symbol
- Negotiate/obtain lock-ups



Pre-Filing Period (Continued)

- Identify and obtain any consents required (e.g., with lenders)
- Review and sanitize website
- Commence listing application
- Prepare/negotiate confidential treatment requests for sensitive material contracts
- Approve filing/confidential submission of registration statement
- File/confidentially submit registration statement

Waiting Period (Filing + up to 2.5 Months)



- Address SEC comments and finalize registration statement/prospectus
- Finalize due diligence and address any issues
- Prepare road show materials/conduct road show

Waiting Period (Continued)

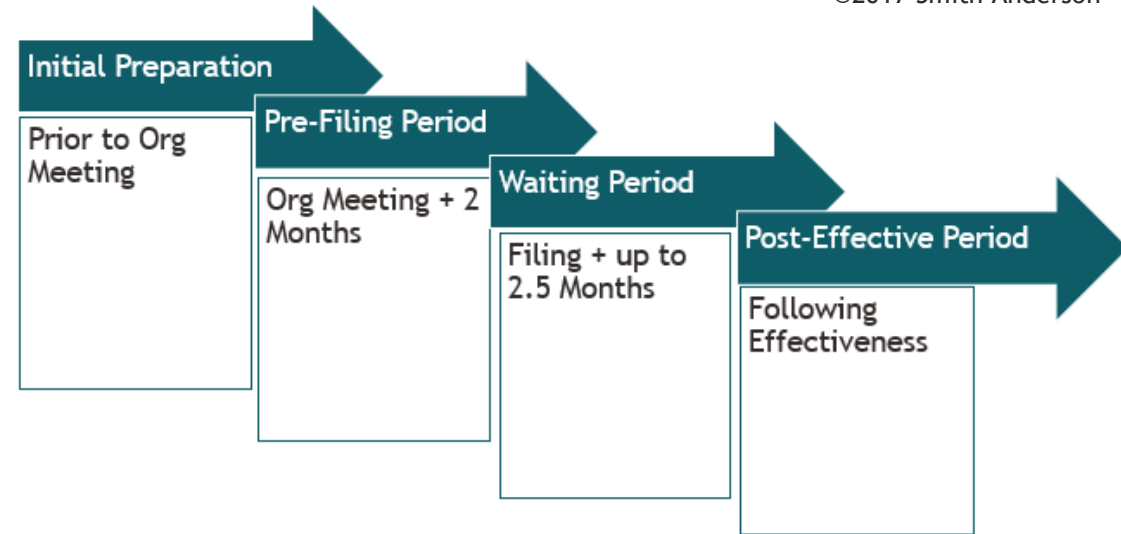
- Update corporate governance structure and processes
- Prepare/approve public company equity incentive plan
- Obtain required shareholder approvals

Waiting Period (Continued)

- Negotiate underwriting agreement
- Finalize listing application
- Revise website to go live once public
- Prepare Form 3 (Section 16) filings
- Coordinate with transfer agent
- Negotiate/finalize comfort letter
- Request acceleration of effectiveness and go effective

Post-Effective Period

- Finalize valuation/price offering
- Execute underwriting agreement
- Upsize offering (if applicable)
- Start trading
- File final prospectus
- Close



Key Activities/Considerations

Financial Statements and Auditor Selection

- Three years of audited financial statements (two years for EGCs)
- Five years of selected financial data (two years for EGCs)
- Auditor: must be independent; must be PCAOB-registered
- Oversight by Audit Committee
- PCAOB auditing standards (as opposed to U.S. GAAS)

Diligence Process

- Purpose of due diligence: Confirm accuracy and completeness of disclosures
- Importance to the Board:
 - “Due diligence defense”
 - Duty of care
- Comprehensive; occurs over multiple areas (legal, financial, tax, operational, etc.)

Diligence Process—Responding

- Preparing for due diligence:
 - Locate relevant documents
 - Populate a virtual data room (VDR)
- Managing the due diligence process:
 - Be organized and responsive
 - Integrate diligence into the prospectus/underwriting agreement

Document Preparation

- Form S-1
 - Identifying peer companies
 - Risk factors
 - Business
 - MD&A
 - Management & comp. disclosure
 - Selling shareholders
- Underwriting agreement and ancillaries

Corporate Governance—General Considerations

- Management team
 - Experience
 - Indemnity/employment agreements
 - Consider personal tax/estate planning issues
- Directors
 - Independence considerations
 - Indemnity agreements
 - D&O insurance

Corporate Governance— Independent Directors

- Board independence
 - A majority of the board must be independent
 - IPO phase-in period - 12 months
- Board committees also have specific independence requirements

Corporate Governance—Committee Composition

- Audit Committee
 - Composition:
 - At least three members
 - All independent under both exchange definition and SEC rules
 - At least one with “financial sophistication”
- IPO phase-in period
 - One independent member at time of registration statement effectiveness
 - A majority of independent members within 90 days of effectiveness
 - Fully independent within one year of effectiveness

Corporate Governance—Committee Composition

- Compensation Committee
 - Composition:
 - Must have at least two members
 - All members must be independent under exchange definition
- IPO phase-in period
 - One independent member at time of listing
 - A majority of independent members within 90 days of listing
 - Fully independent within one year of listing

Corporate Governance—Committee Composition

- Nominating/Governance Committee:
 - Composition:
 - All members must be independent under exchange definition
 - IPO phase-in period
 - One independent member at time of listing
 - A majority of independent members within 90 days of listing
 - Fully independent within one year of listing
 - Note: Companies may choose not to establish a nominating committee and may instead rely upon a majority of its independent directors for board nominations

Corporate Governance—Other Highlights

- Codes of conduct/ethics
 - Code of conduct for all employees
 - Code of ethics for certain executives
- Corporate Governance Guidelines
- Insider Trading Policy
- Related Person Transaction Policy
- Disclosure/FD Policy
- Disclosure Controls and Procedures
- Whistleblower Policy
- Others

Listing Process with Exchange

- Largely run in parallel with SEC process
- Reserve ticker symbol
- Complete an initial listing application

Stock Exchanges

- NYSE
- Nasdaq
 - Global Select Market (highest tier)
 - Global Market (middle tier)
 - Capital Market (lowest tier)

OTC Markets

- OTCBB
- OTC Markets
 - OTCQX
 - OTCQB
 - Pink Open Market

Post-Public Obligations

- Reporting obligations
- Shareholder engagement/annual meetings
- Compliance with stock exchange listing standards

Key Takeaways

- Holistic strategy is paramount
- Explore options
- Continually plan ahead

Additional Questions and Discussion

Thank You

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