



Fundamentals of Initial Public Offerings

*Richard M. Carson*¹

This whitepaper is to serve as a useful overview of the process and material considerations that arise when companies conduct an initial public offering of securities. Companies considering an initial public offering should consult with securities counsel to address these and other matters that may be unique to their particular company.

General

An initial public offering (“IPO”) is the process by which a company registers its securities with the United States Securities and Exchange Commission (the “SEC”), lists those securities on an exchange, and offers those securities to the public for the first time.

Process

Periods

The IPO process has three distinct periods: (1) a pre-filing period, (2) a waiting period and (3) a post-effective period.

Pre-filing. The pre-filing period begins when the company is considered to be “in registration” (i.e., when a company reaches an agreement with the investment banking firm that will act as the managing underwriter). The pre-filing period does not end until a company files a registration statement with the SEC. During this pre-filing period, no offers can be made, prospective purchasers cannot be contacted and the identity of underwriters cannot be publicly disclosed.

Waiting Period. The waiting period begins when the company files a registration statement with the SEC and ends when the registration statement is declared effective. During the waiting period, offers are permitted when made orally or by using a preliminary prospectus. In addition, and subject to certain conditions, a company can use a free writing prospectus—any written communication that constitutes an offer to sell or a solicitation of an offer to buy the securities relating to a registered offering. An IPO issuer (i.e., a non-reporting issuer) can use a free writing prospectus when the free writing prospectus is accompanied or preceded by a

¹ *Richard M. Carson is a Shareholder in the Tulsa, Oklahoma office of GABLEGOTWALS. Mr. Carson represents clients in public offerings and compliance with periodic reporting requirements under the federal securities laws.*

preliminary prospectus. During the waiting period, indications of investment interest are permitted, but sales of the securities are prohibited.

Post-Effective Period. The post-effective period begins when the registration statement is declared effective by the SEC and ends when underwriters or broker-dealers are no longer required to deliver a prospectus by the Securities Act of 1933 (the “Securities Act”) (which is essentially 25 days after the registration statement is declared effective for an IPO). During the post-effective period, sales are permitted and certain communications, such as free writing prospectuses, are allowed. However, a free writing prospectus of an IPO issuer must be accompanied or preceded by a final prospectus.

Selecting Counsel

As early as possible, the company will need to select legal counsel to assist with the IPO. Legal counsel can assist management with initial organizational matters and opine as to current market trends in a company’s particular industry. Engaging regional counsel, such as GABLEGOTWALS, can significantly reduce legal expenses associated with an IPO when compared with engagement of national counsel.

Pre-Offering Publicity

While the IPO process is newsworthy, companies should be aware that violating public disclosure rules, also known as “gun-jumping,” is a violation of federal securities law and could delay the offering process. Gun-jumping occurs when the company or its representatives, such as officers, directors, employees, underwriters or broker-dealers, engage in publicity-generating activities before the use of the prospectus. Gun-jumping typically occurs in an effort to condition the market favorably for an offering. Examples of gun-jumping include advertisements, promotional materials, press releases, research reports, presentations at investor or industry conferences, and speeches or public commentaries. Typically, the SEC responds to gun-jumping by delaying the effectiveness of the registration statement until the harm generated by the publicity subsides—also known as a “cooling off” period.

Company counsel commonly distributes a memorandum to the employees of the company outlining the publicity restrictions throughout the offering process. At a minimum, the officers and directors of the company should obtain clearance from its counsel and underwriters’ counsel before distribution of publicity relating to the company or to the proposed public offering.

Organizational Meetings

The registration process usually begins with a series of organizational meetings wherein a working group (comprised of the company’s key management, legal counsel and investment bankers) sets the proposed timetable for the offering (including, a schedule of drafting sessions, an estimation of the SEC review process and marketing road show logistics). From the date of the first organizational meeting until the closing of the offering, the overall time varies from approximately four to six months for an IPO. The working group usually addresses several issues:

Scheduling. Management availability must be determined in light of the schedule for the offering process. Specifically, management should confirm their availability for drafting sessions and the marketing road show.

Clean-up. Legal “clean-up” is scheduled in order to prepare the company to be in a condition suitable for a public offering. This may include updating minute books and stock registers, forming, converting or dissolving legal entities, and assigning contracts. It also may require amending agreements to alter provisions that would otherwise conflict with the IPO.

Securities Exchange Selection and Compliance. The issuer needs to determine on which exchange it wants to list its securities (e.g., the New York Stock Exchange (the “NYSE”) or the National Association of Securities Dealers Automated Quotations (“NASDAQ”). The company should also coordinate compliance with the listing rules of the selected securities exchange.

Current Entity Ownership. The handling of existing shareholders who plan to sell, if any, deserves attention. The participation of selling shareholders—including the number of shares they are permitted to sell—depends on several factors including contractual registration rights, volume of shares anticipated to be sold by the company and the number of shares the existing shareholders can sell after completing the offering. The underwriters will want to ensure the market is not flooded with sales of stock by the existing shareholders post-offering and will likely “lock up” these significant shareholders for a period of time after the IPO through use of lock-up agreements.

Directed Shares. The working group should discuss whether the company will establish a program whereby employees can purchase IPO shares at the IPO price, commonly referred to as a “directed share program.” If so, the company needs to request the underwriters set aside a certain number of IPO shares to be sold in the directed share program. To ensure compliance with applicable securities law requirements, the company should closely coordinate any directed share program with the underwriters and company counsel.

Overhang Analysis. The working group should conduct an analysis to determine the number of shares that may come onto the market after completion of the offering, commonly referred to as “overhang.” The company needs to provide detailed information on the number of outstanding shares that can be sold post-offering in reliance on SEC Rule 701, Rule 144, or any other available resale exemption from registration, and the date these shares become eligible for sale. As with the selling shareholders, the underwriters can require that all shares eligible for sale be subject to an appropriate lock-up.

Use of Proceeds. The working group needs to coordinate a plan that accounts for the use of the IPO proceeds. Specifically, the underwriters need to understand the intended use of the IPO proceeds because such use has an effect on the company’s future operating and financial projections. For example, if the company plans to use the proceeds for the repayment of debt or specific acquisitions of other businesses, extensive disclosure may be required in the prospectus.

Registration Process with the SEC

Drafting the Registration Statement. Preparing a registration statement requires a joint effort by the issuer, underwriters, and their legal advisors. The goal is a well-drafted registration statement that enables investors to properly evaluate the merits of the offered securities by providing accurate and complete information in compliance with the disclosure requirements of the Securities Act.

The working group is responsible for preparing the registration statement. Registration statements for IPOs by domestic issuers are usually filed on Form S-1, which is the SEC's general registration form. The registration statement goes through several drafts before it is finalized whereby company counsel usually prepare the non-financial portions of the registration statement, the company's accounting department and auditors prepare the financial portions, and the underwriters and their counsel assume responsibility for the underwriting documents. This process is not written in stone and can vary from transaction to transaction. It is not a simple "fill in the blanks" exercise, but rather a detailed narrative exercise, telling the story of the company in a manner that interests investors into purchasing the company's securities and also protects the working group from violations of federal securities laws.

Company counsel customarily prepares the first draft of the registration statement. A thorough first draft can make it easier for the working group to provide meaningful comments to facilitate the subsequent revisions. The first draft is then revised to reflect the comments of the working group. As a starting point, the working group should review prospectuses from comparable companies to determine what types of disclosures their competitors have made. In preparing the initial draft, the working group can also use materials prepared and used by the company in its ordinary course of business, such as marketing brochures, sales literature and conference materials.

Important questions sometimes arise during the preparation of the registration statement that can materially affect the required disclosures. This, in turn, might impact a decision to proceed or cancel the offering. For example, sometimes a company cannot comply with the applicable financial statement requirements because of the unavailability of audited financial statements for the requisite period.

A pre-filing conference with the SEC gives the company an opportunity to obtain guidance from the SEC on unclear issues or to request a waiver of certain SEC requirements. If it becomes necessary for a conference with the SEC, the SEC will request that the company submit a letter in advance describing the nature of the issue. The letter permits the SEC staff to determine whether the issue can be resolved by telephone or further written communication without the need for a conference. The SEC usually avoids reviewing a draft copy of the registration statement at a conference or any other time before the filing of the initial registration statement. Pre-filing conferences do not always result in a resolution of the issue, but can prove useful in letting a working group know whether to proceed with the offering if an issue is particularly troublesome.

When in final form, the registration statement must be electronically filed via EDGAR, the SEC's electronic filing system. In an IPO, it is common for the company to file the

preliminary prospectus at the same time it files the offering's registration statement with the SEC. Although the preliminary prospectus is publicly available through the SEC's website, it is not circulated to investors.

Exhibits to the Registration Statement. Exhibits to the registration statement are required by the Securities Act and, in particular, Regulation S-K, and include the underwriting agreement, the issuer's certificate of incorporation and by-laws, documents affecting the rights of shareholders, and certain material contracts.

The SEC does not define "material" or "materiality" and the standard depends on the particular facts and circumstances. Regulation S-X defines material information as information relating to those matters about which an average prudent investor ought reasonably to be informed. The materiality of an agreement may depend on the size of the issuer, the nature of the business or the custom of the industry. An issuer should consult its counsel and auditors to determine the appropriate standard of materiality for its business.

Confidentiality is often a concern because disclosure of certain material contracts can harm the company if read by competitors or parties with whom it is negotiating. As a result of this concern, the SEC permits companies to file requests for confidential treatment of limited portions of material contracts. The SEC does not, except in unusual circumstances, grant confidential treatment to information required by Regulation S-K or any other applicable disclosure requirement, to material information, or information already disclosed intentionally or unintentionally by the company or even an unauthorized third party.

Submitting a confidential treatment request can delay the effectiveness of the registration statement because it cannot be declared effective until the request is resolved. To request confidential treatment of sensitive information, the issuer must prepare two versions of its exhibits. The first version is filed through EDGAR and has the sensitive portions eliminated or redacted and replaced with a placeholder such as "XXXXXX." The second version is a complete copy of the exhibit submitted in paper format to the SEC with the sensitive portions placed in brackets and accompanied by a letter identifying each item of information for which confidential treatment is sought and providing in detail why confidential treatment should be granted to each item. This application must also contain a legal analysis and supporting case law references for the issuer's claim that an exemption from the Freedom of Information Act is warranted. The application must also specify a particular date to end confidential treatment of the information and obtain a consent to the release of information for official purposes to other government agencies and Congress. However, this last requirement does not apply to requests for confidential treatment of supplemental information or other information not required to be filed by the Securities Act.

The SEC usually grants confidential treatment if the requests meet its requirements. The SEC will review the issuer's confidential treatment request and respond with a comment letter. The issuer may then in turn respond by giving the examiner additional information to support its request, or may file an amendment to the registration statement in which exhibits are re-filed to include the pieces of information for which the SEC is unwilling to grant confidential treatment.

The SEC's purpose in reviewing registration statements is to ensure adequate and sufficient disclosure, not to determine the merits of the offering.

SEC Comments. An SEC examiner and a staff accountant review the registration statement. About 30 days after the filing of a registration statement, the examiner delivers the SEC's comments. For an IPO, the SEC commonly raises extensive comments on the initial filing. The company makes any required amendments to the registration statement and responds to the comment letter. Once filed with the SEC, the examiner and staff accountant review the amended registration statement and comment letter response and then provide another comment letter to the company. This process continues until the SEC is satisfied with the disclosure; it will not declare a registration statement effective until all outstanding comments are resolved to its satisfaction. This process can last for weeks or even months if the disclosure is inadequate or if the company or its auditors dispute the comments.

Marketing Road Show. After filing the amended registration statement with the SEC, and printing the preliminary prospectus, the management team and managing underwriters conduct a road show to market the offering to investors. Completed before the registration statement is declared effective, the road show serves as the principal focus of the marketing efforts of the underwriters. Essentially, a road show consists of a series of group presentations usually made to institutional investors by the executive management of the company. The road show is designed to generate enthusiasm for the offering among prospective buyers. Because of relaxed restrictions on electronic communications, road shows tend to include internet or other electronic media presentations. Investors strongly prefer to view presentations made by the CEO, President and the CFO, or other appropriate senior officers. A poorly prepared or executed road show can have a negative effect on the offering.

Going Effective

After resolving all the SEC's comments, and at least two full trading days before the company and the underwriters intend to price and begin selling the securities, the company and the underwriters request the SEC to accelerate the effective date of the registration statement to a specified date and time. The registration statement is then calendared for final review by the SEC Assistant Director who checks for any final disclosure issues and then signs the order of effectiveness.

In practical terms, a company does not file the acceleration request until receiving underwriting arrangements approval, evidence of adequate preliminary prospectus distribution, and approval for listing from the applicable securities exchange. Simultaneously upon filing the acceleration request, the company must notify the applicable securities exchange of the anticipated date and time that trading will commence. Upon "going effective," the company's offered securities can be freely traded on the applicable stock exchange.

Post-Effective Filing of the Final Registration Statement and Pricing Methods

When the SEC is satisfied with the registration statement and ready to declare it effective, the managing underwriter assesses the level of interest in the offering. It then decides whether to set the offering price at that time or at a later date. Some flexibility exists for the

coordination of the pricing with the effectiveness of the registration statement. The SEC permits the use of two methods, either through the use of Rule 430A or, in the alternative, a pricing amendment.

The most flexible and frequently used approach is the Rule 430A method that permits the SEC to declare a registration statement effective even though certain information has been omitted because it cannot be determined until immediately before the offering. The SEC does not require the final version of the registration statement to contain information about the offering price, the identity of the underwriters, or the amount of underwriting discounts and commissions. After the registration statement becomes effective, the company and the underwriters reach an agreement on final pricing and sign an underwriting agreement.

The underwriting agreement is an agreement between the underwriters, the company and any selling shareholders that outlines each party's rights and obligations. The underwriting agreement sets out the requirement for delivery of many of the closing items. Depending on the type of securities being offered, the parties may also include subsidiary guarantors, co-obligors and affiliates or other controlling persons. The underwriting agreement is usually entered into at the time the offering prices, which is also around the time that the registration statement becomes effective.

Just before the time of sale, the underwriters can orally convey the offering's pricing terms to investors or they can circulate a term sheet. If using a pricing term sheet, it is filed under Rule 433 within two days after the later of the date the final terms have been established and the date of first use. A final prospectus containing the information omitted when the registration statement became effective is filed under Rule 424 within 15 business days after the effective date, but in no event later than two business days after the earlier of the pricing or the initial sale of the securities. Essentially, this method permits the price to be set after effectiveness. This method can only be used if the securities are offered for cash.

The other pricing method is called the pricing amendment method, wherein three steps are required within the 24-hour period beginning with the closing of the trading market for the company's securities on the day before the anticipated date of effectiveness. First, the company and the lead underwriter determine the public offering price and underwriting discount. Second, an amendment to the registration statement reflecting the pricing information and final underwriting arrangements is prepared and the underwriting agreement is signed. Finally, the amendment to the registration statement disclosing the offering price and the underwriting agreements is filed with the SEC, and in turn the SEC declares the registration statement effective shortly after the filing. Effectiveness occurs before the market opens and sales commence on the opening of the market.

Prospectus Delivery

The Securities Act effectively requires that a final prospectus be physically delivered to each investor in a registered offering. However, issuers and other offering participants can satisfy this requirement without physical delivery if a statutory prospectus is filed with the SEC via EDGAR, which also provides public access to the prospectus. This notification of a

registered transaction provides investors the ability to track their purchases for purposes of asserting their rights under the liability provisions of the federal securities laws.

The Securities Act provides an “access equals delivery” solution to the delivery of a final prospectus under Rule 172(b), provided issuers file the final prospectus with the SEC under Rule 424(b) of the Securities Act no later than the second business day after the earlier of the date of pricing or the date the prospectus is first used. This will also satisfy the requirements of section 5(b)(2) of the Securities Act. However, all of this is subject to the requirement that the investors are sent a notice, which can be part of a written confirmation of sale, informing them that sales were made under a registration statement or in a transaction otherwise subject to the prospectus delivery requirements.

Closing Process

Primarily, counsel to the company and underwriters complete the closing process. Counsel must obtain original signatures on the documents before or at the closing. Underwriters’ counsel usually takes responsibility for preparing the closing agenda, which details the mechanics of the closing itself. It includes a list of all significant documents to be delivered at closing and includes all items, such as closing certificates, third-party certifications, legal opinions and executed agreements.

The actual closing is the settlement of the sale of the offered securities, which is essentially an exchange of the securities for cash. The closing must take place no later than the third business day after the pricing of the offering or the fourth business day if pricing takes place after the market closes. The company authorizes the delivery of the securities in the names and denominations as determined by the underwriters. The underwriters then initiate a wire transfer for the proceeds, net of underwriting discounts and commissions, to the company and selling shareholders, if any. At this time, all of the other relevant closing agenda documents as detailed above are delivered. These documents include cross-receipts, management certificates, legal opinions and a comfort letter.

Post Closing Activities

The underwriters of a public offering usually receive an option to buy up to an additional 15% of the amount of securities offered to cover over-allotments. These securities are purchased on the same terms and conditions as other offered securities. In the process of marketing the securities during the road show, the managing underwriters build a list of prospective investors and allocations of the offered securities. At the closing, market and other factors may lead to excess demand for the securities and the underwriters may elect to exercise all or part of the over-allotment option to satisfy some of the demand.

Overselling is relatively common, since it usually assures that the full allotment is sold, even if some investors do not complete their purchase commitments. This option is exercisable for up to 30 days after the effective date of the offering. If the option is exercised soon after the effective date, the closing for these securities can be combined with the closing of the initial securities offered. If not, a second closing must be scheduled to settle the sale of these additional securities.

Post Closing Obligations

The issuer must re-file any amendments documenting substantive changes made to the prospectus as it existed on the date the registration statement if those changes are made after the effective date. The revised form of prospectus must be filed with the SEC no later than the fifth business day after the date it was first used after effectiveness. For a prospectus disclosing pricing and other information that was allowed to be omitted at the time it was declared effective, the company should file the prospectus no later than the second business day after the earlier of the date of pricing or the date the prospectus is first used.

In some instances, market conditions make it necessary after effectiveness to add to the amount of securities listed on the registration statement. Additional amounts of securities must usually accommodate heavy demand for the offering and achieve a desired level of offering proceeds by lowering the price per share and increasing the total number of securities issued.

When the amount of securities to be added does not cause the maximum aggregate offering price to change by more than 20% from the previous estimate in the registration statement, the amount of securities can be amended by filing an abbreviated registration statement before the time confirmations of sale are sent to the investors. As such a registration statement becomes effective on filing, it does not cause delay in the offering and gives flexibility to the company and the underwriters. However, if the registration of additional securities causes the offering size to increase by more than 20%, the company must file a post-effective amendment to the registration statement, which does not become effective automatically and must be declared effective by the SEC.

Company counsel customarily prepares a memorandum for the company's employees describing its public company filing obligations under the federal securities laws. This memorandum usually includes a discussion of the requirement to file periodic reports.

Important Considerations

Timing

Resolution of management, market-related, and corporate issues are necessary for a successful IPO launch. When considering whether to invest, institutions will look to the management team and examine its track record to find sharp business acumen, sound discretion and continuity in decision making and company operations. More specifically, an ideal company would have management team members who are all suitable to investors, united in taking the company public and in agreement with long-term strategic goals. Any changes to the management personnel should be made as early as possible.

Assessing market-related considerations is just as critical to a successful IPO launch since market forces are uncontrollable. Significant market-related considerations include the company's competitive position, the strength of its proven business model, the activities of its competitors, its ability to expand into large and rapidly growing markets, and its general attractiveness to potential investors.

A company must also be prepared for an IPO on the corporate front. Perhaps the most obvious consideration is completing any acquisitions or strategic initiatives prior to filing. Other equally important corporate considerations include ensuring the adequacy of insurance coverage, reviewing important contracts to assess whether a change of control or other provision is triggered, confirming sufficient bank facility capacity, verifying ownership and protection of intellectual property rights, and obtaining certificates of good standing to do business in each applicable jurisdiction.

Company Structure and Governance

Most public entities in the United States are domestic C-corporations, so other business entities such as a limited liability companies, partnerships or S-corporations should seek legal and tax counsel and consider conversion into a domestic C-corporation. In certain instances, however, publicly traded partnerships, also known as master limited partnerships, or MLPs, can offer significant tax benefits when compared to C-corporations. Also, in connection with an IPO, many private companies reincorporate in Delaware because Delaware offers low franchise taxes, many predictable corporation-friendly laws and a large body of jurisprudence interpreting Delaware's corporate laws.

The company should confirm that its form of officer and director indemnification agreement has been approved by the shareholders and has, in fact, been entered into with each officer. Adequate liability insurance coverage is essential.

In addressing the corporate structure, shareholder arrangements will usually be unwound prior to the company going public. However, in some cases, it may be appropriate for significant shareholders to retain some special rights, such as the appointment of representative directors. Attention should be paid to investor rights, especially registration rights to participate in or require a public offering of equity securities. In addition, the company may have granted some of its shareholders the right to include their shares in a public offering of the company's stock. If such rights are triggered, counsel for the company should determine the priority among registration rights holders in the event of a reduced allocation, and for compliance with applicable notice periods.

The company should also examine its organizational documents to assess their suitability for governing a public company. Specifically, the company will want to revise its organizational documents to remove anachronistic share arrangements, restrictions on stock transfers, unnecessary provisions, and cumulative voting. Moreover, the company may want to revise its organizational documents to include special voting provisions, and to consider including anti-takeover provisions such as staggered boards, a supermajority voting requirement in certain transactions, or putting a shareholder rights "poison pill" in place, although such measures are increasingly disfavored by investor groups.

The company should ensure that its securities records are current and properly document all issuances, transfers, conversions and cancellations of stock, convertible debt, options and warrants. Records should also accurately document anti-dilution adjustments and details of any other securities transactions.

Management and Employees

Employment agreements for members of management and key employees must be suitable for a publicly traded company. Consideration should be given to whether management has any conflict of fiduciary duty issues with regard to any affiliated companies. Also, a company with a solid employment record showing a minimal turnover of staff will find it easier to recruit and retain reliable staff.

Capitalization

Counsel should also review any existing company equity incentive plans because once a company goes public, certain provisions of the federal securities laws become applicable to the company's benefit plans.

Capitalization, or the reorganization of the capital stock, is usually necessary in order to ensure that sufficient new shares are available for any issue of shares as part of the IPO and also to ensure that generally there are sufficient shares in circulation for orderly trading arrangements, stock splits, acquisitions and benefit plans.

A company may want to consider converting, if possible, outstanding preferred stock or debt into shares to simplify the capital structure. Counsel should review the governing instruments for automatic conversion triggers on an IPO event. Any waivers or amendments to these instruments should be obtained as soon as practicable.

Other Corporate Matters

Company counsel should review contracts to ensure that there are no change of control or other provisions that would be triggered by the IPO. Counsel should perform due diligence to ensure the company owns all relevant assets and that these are not held, for example, by shareholders. And any non-formalized arrangements involving the company should be formalized, such as for the provision of services or the use of company property.

The company should also ensure that the company and its material subsidiaries are qualified to do business and in good standing in all relevant jurisdictions. It is necessary to start this process early as the underwriters expect certificates of good standing from each applicable jurisdiction to be delivered at the closing of the IPO.

Pros and Cons

Advantages

A successful IPO offers several advantages, including:

(1) Immediate Capital. An IPO generates substantial proceeds for the company to expand its current operations, build infrastructure, deliver more products or services, and generate growth;

(2) Future Capital. An IPO provides a greater opportunity for future financing through follow-on offerings and increased attractiveness to investors in the public debt financing markets because of the periodic and current event reporting requirements;

(3) Liquidity. An IPO provides a regulated liquid market that typically eliminates any investor-imposed liquidity penalty, which allows a company to obtain more cash per new share from new investors;

(4) Appreciation Realization. An IPO generates substantial proceeds for the company to expand its current operations, build infrastructure, deliver more products or services, and generate growth;

(5) Employee Incentives. An IPO can provide incentives to employees if stock options or restricted stock are awarded because their interest in seeing the stock appreciate aligns with that of the company;

(6) Acquisition Currency. An IPO can create acquisition currency when a seller accepts publicly tradable shares instead of cash, which is often eligible for favorable tax treatment;

(7) Increased Company Visibility. An IPO often enhances a company's public profile with coverage and analysis stemming from the initial share offering and then the continuing press and analyst coverage; and

(8) Increased Transparency and Internal Controls. The continuous disclosure requirements applicable to a publicly traded company promotes transparency and requires more effective internal controls, which increases supplier and customer confidence in the financial standing and overall stability of the company.

Disadvantages

The substantial benefits of becoming a publicly traded company are coupled with potential areas of concern, such as:

(1) Loss of Control. Pre-IPO investors and managers will experience some loss of control since significant acquisitions and other strategic decisions may require prior approval from shareholders;

(2) Market Conditions. Company susceptibility to market conditions arises in the context of both public market fluctuations and the pressure to achieve short-term gains at the expense of long-term strategic goals;

(3) Privacy. The company will lose some degree of privacy due to the mandatory reporting requirements, which in an underperformance scenario could cause adverse press and drive the stock price down;

(4) Disclosure and Reporting Expenses. An increase in time and money spent on disclosure and reporting requirements is inevitable because of the required periodic and event-

triggered reports, and the internal governance and oversight needed to compile such reports;
and

(5) Litigation Exposure. Finally, there is an increase in exposure to litigation against a company and its officers from disgruntled shareholders, as well as enforcement actions brought by the SEC.

If you have any questions about this article, please contact the author listed below or the GABLEGOTWALS lawyer with whom you usually consult.



1100 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4217
(918) 595-4833
rcarson@gablelaw.com
www.gablelaw.com

This information is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. This article reflects the opinions of the author and does not necessarily reflect the view of the Firm or all members of the Firm.