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**Raising Capital in the Current Environment VI:
5 Things to Know for Your Successful IPO**

October 14, 2020

Presented by:

Stewart L. McDowell

Peter W. Wardle

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Today's Panelists



Stewart L. McDowell is a partner in the San Francisco office of Gibson, Dunn & Crutcher. She is a member of the firm's Corporate Transactions Practice Group, Co-Chair of the Capital Markets Practice Group. Ms. McDowell's practice involves the representation of business organizations as to capital markets transactions, mergers and acquisitions, SEC reporting, corporate governance and general corporate matters. She has significant experience representing both underwriters and issuers in a broad range of both debt and equity securities offerings. She also represents both buyers and sellers in connection with U.S. and cross-border mergers, acquisitions and strategic investments.



Peter W. Wardle is Co-Partner in Charge of the Los Angeles office of Gibson, Dunn & Crutcher. He is a member of the firm's Corporate Transactions Department and Co-Chair of its Capital Markets Practice Group. Mr. Wardle's practice includes representation of issuers and underwriters in equity and debt offerings, including IPOs and secondary public offerings, and representation of both public and private companies in mergers and acquisitions, including private equity, cross border, leveraged buy-out, distressed and going private transactions. He also advises clients on a wide variety of general corporate and securities law matters, including corporate governance issues.

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Introduction

The Current IPO Market

- Strong third quarter in U.S. equities — the S&P 500 increased 8.5% for the quarter and is up 4.1% year-to-date
- Third-quarter IPO activity greater than any quarter since the global financial crisis:
 - 165 IPOs on U.S. exchanges in the third quarter
 - July had 55 IPOs, August had 51 IPOs and September had 59 IPOs
 - Over the last ten years, monthly IPO activity never exceeded 40 until June 2020
- Driven by the increase in SPAC IPOs - 77 SPACs went public, representing 47% of all IPOs for the quarter
- IPO gross proceeds for the quarter totaled \$61 billion — the largest quarterly amount raised in the last decade



The Current IPO Market

- There were 10 IPOs in the quarter that raised more than \$1 billion, the most since the global financial crisis — led by Snowflake at \$3.9 billion in September
- IPOs in the quarter were led by the Finance sector due to the inclusion of SPAC IPOs (86 IPOs/77 SPAC IPOs), followed by Healthcare (33 IPOs) and Tech (28 IPOs)
- 34 venture capital-backed IPOs and 7 private equity sponsor-backed IPOs in the third quarter, the highest number for each since the first half of 2019
- In September, two more companies (Palantir and Asana) did direct listings, bringing the total to four



The Current IPO Market

- Looking ahead, 106 companies have released initial preliminary filings in 2020 and are still in registration, excluding offerings that have been postponed or withdrawn
- While U.S. equity markets are up year to date, there is still considerable uncertainty
 - The two biggest risks ahead for U.S. equity markets are the COVID-19 pandemic, including the economic impact of any resurgence of cases, and the presidential election in November
 - Any renewed market volatility could make it more difficult for companies to go public

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1. Disclosure Changes

Disclosure Changes: Regulation S-K

- In August 2020, the SEC adopted proposed changes to Regulation S-K including the business, legal proceedings and risk factors sections
- Emphasis on a more “principles based” approach to business and risk factors sections
- Includes human capital resources (including measures or objectives) as specific disclosure topic
- Includes regulatory compliance (not just environmental) as specific topic
- Requires summary risk factor disclosure if risk factors more than 15 pages
- Requires organization of risk factors under relevant headings

Disclosure Changes: Proposed Changes to MD&A

- MD&A and Certain Financial Disclosures – amendments proposed January 30, 2020
- Intended to modernize and enhance MD&A disclosures and eliminate duplicative disclosure requirements
- Proposes to amend MD&A to include new requirement to state principal objectives, enhance capital expenditure disclosures, and codify existing SEC guidance on critical accounting estimates
- Proposes to eliminate certain financial disclosure, including selected and supplementary financial data, certain oil & gas disclosures and redundant contractual obligations disclosures
- Provided guidance on Key Performance Indicators and metrics in MD&A

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2. Marketing

Marketing – Virtual Roadshows

- Virtual roadshows are currently the standard for companies to market themselves to institutional investors since they can no longer travel for live meetings
- Very little changes for an IPO process from a legal perspective when investor meetings are done through video conferencing — roadshow deck vetting and preparation are the same
- Companies can meet many more investors over a shorter period of time, limiting execution risk and exposure to market volatility — timeline for virtual roadshows has been considerably shorter
- Given the speed to execution and time and expense saved, likely to continue, but:
 - Fully virtual roadshows won't make sense for all companies
 - Low profile companies or a volatile market may still require face to face meetings when possible

Marketing – Testing the Waters

- Testing the waters with institutional accredited investors and QIBs now available to all IPO issuers
- Virtual meetings like roadshows
- Benefits:
 - Helps issuers hone the “story”
 - Gives investors more time to understand the investment opportunity
 - Price and valuation discovery
 - Helps gain and understanding of potential demand
 - Effective supplement to virtual roadshow
- Still subject to antifraud rules and Securities Act liability, and the SEC may ask to see written materials to compare to S-1 disclosure

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3. SPACs

SPACs – an Alternative to the Traditional IPO

- Offers potentially faster timeline to public markets for SPAC target than traditional IPO
- Can facilitate going public during periods of market instability; more valuation certainty
- SPAC sponsor may offer operational expertise and investor access
- Post-combination entity has access to public debt and equity markets
- Access to SPAC and PIPE capital at closing to fund operations or growth
- Ability to structure transaction in a manner not available in IPO or a traditional exit, including cash-out of existing owners and earn-outs
- IPO readiness necessary for target company
- Necessary to negotiate/agree on allocation of equity between SPAC/founders/pre-transaction shareholders

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4. Direct Listings

Direct Listings – an Alternative to the Traditional IPO

- Similar SEC registration and listing process as traditional IPO
- Market based price discovery — designed to avoid issuer and existing shareholders leaving money on the table as compared to the traditional IPO “pop”
- Offers equal access for all investors, not just large institutions and other investors that traditionally have access to IPO shares
- Reduced transaction costs
 - Financial advisory fees tend to be lower than traditional underwriting fees
- Not subject to customary 180-day IPO lock-up — immediate potential liquidity for all shareholders

Direct Listings – an Alternative to the Traditional IPO

- Under current rules, no new capital raised (unless coupled with a private capital raise)
 - Rule changes proposed by NYSE and Nasdaq
- Investor education process falls on management significantly more than in traditional IPO
- Less clear path to developing following of research analysts
- Less control by company as to core new investors, including key long term institutional investors
- Pursuant to recent decision in prior direct listing litigation, no tracing requirement to registration statement — increases potential Section 11/12 liability as to all shares. Appeal pending
- Limited execution history. All high profile companies thus far — still likely most available to well known companies

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5. Interacting with the SEC



Interacting with the SEC

- SEC comment process remains streamlined:
 - Average of 15 comments initially and three comment letters total in the first half of 2020
 - Increased informal interactions with SEC staff to resolve comments
 - Confidential request and exhibit redaction process much easier
 - SEC continues to be open to reasoned waiver requests

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Professional Profiles

Stewart McDowell

555 Mission Street, Suite 3000, San Francisco, CA 94105-0921
Tel.: +1 415.393.8322
SMcdowell@gibsondunn.com



Stewart L. McDowell is a partner in the San Francisco office of Gibson, Dunn & Crutcher. She is a member of the firm's Corporate Transactions Practice Group, Co-Chair of the Capital Markets Practice Group and is a member of the Steering Committee of the Securities Regulation and Corporate Governance Practice Group.

Ms. McDowell's practice involves the representation of business organizations as to capital markets transactions, mergers and acquisitions, SEC reporting, corporate governance and general corporate matters. She has significant experience representing both underwriters and issuers in a broad range of both debt and equity securities offerings. She also represents both buyers and sellers in connection with U.S. and cross-border mergers, acquisitions and strategic investments.

Ms. McDowell received her law degree from the University of Virginia School of Law in 1995 and her Bachelor of Arts degree from Princeton University in 1991.

The Recorder has named Ms. McDowell as a "Women Leader in Tech Law" for the last three years. She is ranked by *Chambers USA* for Capital Markets: Debt & Equity (California). She was also named a "Top Woman Lawyer" by the *Daily Journal* in 2017. Ms. McDowell is a member of the California State Bar and the New York Bar Association.

Peter W. Wardle

333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7242
PWardle@gibsondunn.com



Peter W. Wardle is Co-Partner in Charge of the Los Angeles office of Gibson, Dunn & Crutcher. He is a member of the firm's Corporate Transactions Department and Co-Chair of its Capital Markets Practice Group.

Mr. Wardle's practice includes representation of issuers and underwriters in equity and debt offerings, including IPOs and secondary public offerings, and representation of both public and private companies in mergers and acquisitions, including private equity, cross border, leveraged buy-out, distressed and going private transactions. He also advises clients on a wide variety of general corporate and securities law matters, including corporate governance issues. Representative matters include IPOs for Montrose Environmental Group, Parsons, several private equity portfolio companies, Dole Food Company, Eros International and AECOM, and significant capital markets and mergers and acquisition and other transactions for AECOM, CalAmp Corp., Farmers Insurance Exchanges, Chandler Trusts, Dole Food Company, Aurora Capital Group, the Argyros Family Trust, Vivendi, Lazard Freres & Co., Ticketmaster, IAC/InterActiveCorp., InterMedia Partners, Michael Gaughan, Stewart Title Company, Worldwide Restaurant Concepts, ValueClick, BCBG Max Azria Group, K2, Bassam Alghanim, Allied Security, Gryphon Investors, CSK Auto, Casden Properties and Akzo Nobel.

Mr. Wardle earned his J.D. in 1997 from the University of California, Los Angeles, School of Law, where he was elected to the *Order of the Coif* and served as Business Manager of the *UCLA Law Review* and Articles Editor of the *UCLA Entertainment Law Review*. He received an A.B. degree cum laude in 1992 from Harvard University. Mr. Wardle is a member of the Board of Directors and Co-Chair of the Governance Committee for The Colburn School. He is a member of the firm's Compensation Committee, National Pro Bono Committee and chair of the Community Affairs Committee, and serves as one of the Pro Bono Partners for the Los Angeles area offices.

Our Offices

Beijing

Unit 1301, Tower 1
China Central Place
No. 81 Jianguo Road
Chaoyang District
Beijing 100025, P.R.C.
+86 10 6502 8500

Brussels

Avenue Louise 480
1050 Brussels
Belgium
+32 (0)2 554 70 00

Century City

2029 Century Park East
Los Angeles, CA 90067-3026
+1 310.552.8500

Dallas

2001 Ross Avenue
Suite 2100
Dallas, TX 75201-6912
+1 214.698.3100

Denver

1801 California Street
Denver, CO 80202-2642
+1 303.298.5700

Dubai

Building 5, Level 4
Dubai International Finance Centre
P.O. Box 506654
Dubai, United Arab Emirates
+971 (0)4 318 4600

Frankfurt

TaunusTurm
Taunustor 1
60310 Frankfurt
Germany
+49 69 247 411 500

Hong Kong

32/F Gloucester Tower, The Landmark
15 Queen's Road Central
Hong Kong
+852 2214 3700

Houston

811 Main Street
Houston, TX 77002-6117
+1 346.718.6600

London

Telephone House
2-4 Temple Avenue
London EC4Y 0HB
England
+44 (0) 20 7071 4000

Los Angeles

333 South Grand Avenue
Los Angeles, CA 90071-3197
+1 213.229.7000

Munich

Hofgarten Palais
Marstallstrasse 11
80539 Munich
Germany
+49 89 189 33-0

New York

200 Park Avenue
New York, NY 10166-0193
+1 212.351.4000

Orange County

3161 Michelson Drive
Irvine, CA 92612-4412
+1 949.451.3800

Palo Alto

1881 Page Mill Road
Palo Alto, CA 94304-1125
+1 650.849.5300

Paris

166, rue du faubourg Saint Honoré
75008 Paris
France
+33 (0)1 56 43 13 00

San Francisco

555 Mission Street
San Francisco, CA 94105-0921
+1 415.393.8200

São Paulo

Rua Funchal, 418, 35º andar
Sao Paulo 04551-060
Brazil
+55 (11)3521.7160

Singapore

One Raffles Quay
Level #37-01, North Tower
Singapore 048583
+65.6507.3600

Washington, D.C.

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
+1 202.955.8500