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PREPARING FOR STRONGER MARKETS CONSIDERATIONS FOR IPO READINESS

GIBSON DUNN

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Today’s Panelists

Melanie Neary

Melanie Neary is a senior associate in the San Francisco office of Gibson, Dunn & Crutcher, where she practices in the firm’s Corporate Transactions Practice Group, with a practice focused on advising clients in connection with a variety of financing transactions, including initial public offerings, secondary equity offerings and venture and growth equity financings as well as complex corporate transactions, including mergers and acquisitions. Melanie also regularly advises clients on corporate law matters, Securities and Exchange Commission reporting requirements and ownership filings and corporate governance.

Harrison Tucker

Harrison Tucker is a partner in the Houston office of Gibson, Dunn & Crutcher, where he currently practices with the firm’s Capital Markets and Securities Regulation and Corporate Governance practice groups. He regularly represents public and private businesses in a broad range of corporate and securities matters and issuers and investment banking firms in both equity and debt offerings, including Rule 144A offerings. His practice also includes general corporate concerns, including Exchange Act reporting, stock exchange compliance, corporate governance and beneficial ownership reporting matters. In addition, he works closely with the Gibson Dunn bankruptcy and restructuring team, advising on applicable securities laws issues.

Peter Wardle

Peter W. Wardle is a partner in 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, and previously served as partner in charge of the Los Angeles office. Peter’s practice includes representation of issuers and underwriters in equity and debt offerings, including IPOs and secondary public offerings, and representation of companies with securities and other matters in mergers and acquisitions. He also advises clients on a wide variety of general corporate and securities law matters, including corporate governance and disclosure issues.

AGENDA

GENERAL IPO PLANNING

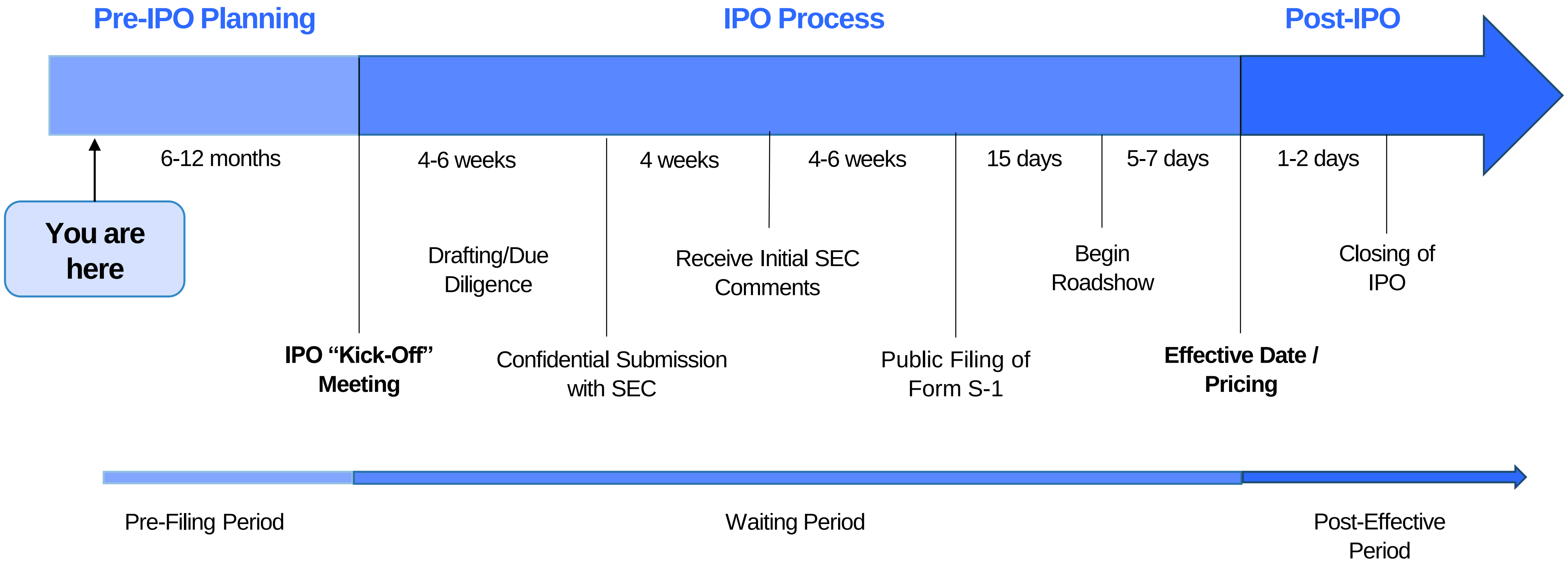
01

IPO Planning

Key Readiness Considerations

- Position the business to be well received by public investors
  - Investors are looking for companies that have a plan for growth and the potential for profitability over the long term
- Show a “clean” company with a positive marketing story
  - Ensure financial statements accurately reflect business and establish reliable financial reporting systems
  - Ensure key members of management and finance teams are in place, and establish appropriate board composition and corporate governance
  - Focus on predictability of earnings and meeting forecasts
  - Simplify capital structure if preexisting equity or debt structure is not conducive to an IPO
  - Spend time framing the company’s story and growth strategies
- Use pre-IPO planning period to consider structural changes, and prepare the business for the shift to a public company

Sample IPO Timeline



Company readiness and goals, as well as market, regulatory and other factors, drive ultimate timing. Pre-IPO planning generally makes it easier to leverage a favorable IPO market window.

IPO Structure

Preliminary Structuring Considerations

- Where is the company incorporated? Would it be beneficial from a tax or legal perspective to change jurisdictions?
- What would the tax implications be for conducting an IPO, including for existing owners? Should the company be structured to maximize an efficient tax structure (e.g., UP-C Structure)?
- What does the company's current capital structure look like? Should the capital structure by simplified? Should an additional class be added to maintain sponsor control?
- Do the existing owners plan to maintain long-term control post-IPO?
- Is only a portion of the company going public (e.g., spin-off transaction)? Is there any internal restructuring needed to get the company IPO ready?
- What other significant events will occur during the expected timeline (e.g., key acquisitions or dispositions)?

Key Preparation Considerations

- **Preparation of Business Disclosure**
  - Underwriters will generally prepare first draft of business description
  - Early guidance from company key to getting the “story” right
  - Helpful if management can outline 5 or 6 key competitive strengths and strategies in advance of drafting – minimizes churn on drafts
- **Determination of Filer Status and Disclosure Relief**
- **Determination of KPIs**
  - Identify and define key non-GAAP measures and/or KPIs
  - Identification of support for TAM metrics
- **Finance / Tax**
  - Public company credit facility
  - Use of proceeds
  - Evaluation of tax implications for existing owners
- **Financial Statements / Financial Disclosure**
  - Preparation of audited financial statements often affects the timing of an IPO
  - Important to analyze potential audit issues and key financial reporting concerns that may require additional review with auditors or input from SEC, including:
    - accounting treatment for any predecessors
    - acquired companies or probable acquisitions
    - segment reporting
    - non-GAAP financial measures

Key Preparation Considerations

- **Public Company Board / Governance**
  - Select the appropriate governance structure to support execution of long-term strategy
  - Consider the rights of existing owners
  - Start early – board composition and key public company governance functions take time and planning
- **Establishment of Communications Policies**
  - External communications are key
  - Any communications from the company post-IPO will receive closer scrutiny from investors, analysts and regulators
  - Important in the pre-IPO planning phase to assess current communications strategy, both internal and external
- **Compensation / Employment Matters**
  - Important to review all existing employee agreements and incentive plans and arrangements
  - Implementing plans pre-IPO is subject to fewer procedural hurdles compared to post-IPO
  - Evaluate buildout of key teams, including finance and IR
- **Other Matters**
  - Reserve ticker symbol
  - Consider preferred exchange
  - Identify necessary consents for IPO
  - Assemble materials for due diligence review
  - Assemble back-up for statements included in the prospectus
  - Identify material contracts that need to be filed
  - Identify any particular risks that need to be discussed or disclosed
  - Assess related-party transactions

COMMUNICATIONS

02

Communications

Key to establish communications policies to avoid “gun-jumping” issues pre-IPO and Reg FD/insider trading issues post-IPO. Policies should also cover communications with media and use of social media.

Questions to Ask

- How does the company currently communicate with employees, suppliers and customers? Consider impact of restricting distribution of financial and operating performance data to a smaller group of key management.
- Does the company currently issue public press releases?
- Does the company have a current plan to review and approve public communications?
- Who is authorized to speak on behalf of the company?
- Does the company have an internal IR team, or will it work with an external IR consultant?
- When and how will the IPO be communicated to employees?

Communications

“Gun-Jumping”

- Securities laws impose strict limitations on communications during the IPO process. Violation of the communication rules (or “gun-jumping”) can result in civil liability and significant delay in the IPO.
- Communications during the IPO process generally should be in line with past practice, and references to the IPO or the growth prospects of the company should be avoided.
- Establishing a proper communications system during the pre-IPO planning phase is critical to avoid “gun-jumping” issues and inadvertent disclosure.

FINANCIAL STATEMENTS

03

Financial Statements

Preliminary Considerations

- **Independence Review of Auditor** – Independent auditors under stringent PCAOB standards are required. Pre-IPO companies should review the independence of their current auditors well in advance, as independence issues may require a waiver from the SEC or a change in auditors.
- **Prepare financial statements in compliance with GAAP** – Public companies will need to prepare audits under the more stringent PCAOB standards, which often requires additional time.
- **Map out the financial statement requirements over the course of the IPO process** – Consider which financials can be excluded in first filing and what financials will need to be added. Consider any recent acquisitions.

Financial Statements

Preliminary Considerations

- **Assess and Document Internal Controls** – Assessing internal controls and identifying material weaknesses early can flag issues well in advance of the IPO process and provide time for the company to prepare and implement effective policies and procedures going forward.
- **Review Capabilities and Needs of Finance and Accounting Staff** – Public company reporting can be a big burden on finance and accounting staff. Additional team members with prior public company experience can help facilitate the preparation of financial statements.

GOVERNANCE

04

Governance

Key Areas of Governance Focus in IPOs

- “Controlled company” status / exemption
- Board / committee formation / composition (including independence, financial expertise and diversity)
- Anti-takeover provisions
- Related-party transactions
- Shareholder agreement
- Board and committee nomination rights / observer rights (if applicable)
- Veto / approval rights (if applicable or available)
- Identifying / building out key public company policies

Governance

Practical Tips

- **Background checks** – Run background checks on management and Board members.
- **Board and committee composition** – Recruiting board candidates takes time so start early and consider engaging a search firm.
- **Plan your post-IPO public company board / committee meetings and reporting cycle** – Plan meetings sufficiently in advance and align with future reporting cycle.
- **Review your practices in light of future public company requirements (e.g., insider trading and Regulation FD)** – Who has access to material nonpublic information? Who are the company's spokespersons with investors, media, etc.?
- **Identify and develop your ESG strategy** – What will your ESG story be? Will you publish a sustainability report and how quickly post-IPO?

COMPENSATION

05

Compensation

Preliminary Considerations

- Equity awards must be granted at fair market value. To support the value of awards in the absence of a liquid market for equity, a third-party stock valuation may be used.
- Pay careful attention to equity grants leading up to the IPO in order to avoid “cheap stock” issues (e.g., grants that are valued below the expected IPO valuation). Prepare for response to “cheap stock” questions from the SEC.
- Ensure that any award issuances have been made in compliance with the securities laws governing equity awards.

Compensation

Preliminary Considerations

- Engage external compensation consultant to advise on public company program changes. Consider whether changes to employment or severance arrangements may make sense.
- Keep in mind that the IPO registration statement and ongoing public company disclosure will require the company to disclose in great detail the compensation of certain “named executive officers.”
- Disclosure in registration statement will include discussion of historical compensation, compensation philosophy, future bonus targets and benchmarks.

PREPARING FOR REPORTING

06

Reporting

Prepare for Post-IPO Reporting

- Public company reporting obligations under the securities laws include annual and quarterly reporting on operational and financial information, as well as disclosure of certain events.
- Readiness for accelerated schedule for closing of books/preparation of financial statements is often a key challenge for companies. Includes readiness for earnings cycle and guidance process.
- We can assist by providing frameworks or initial drafts and reviewing disclosure prepared internally by the company.

Periodic Report Filing Deadlines	
Annual Report on Form 10-K	**Large Accelerated Filer:** 60 days after fiscal year end **Accelerated Filer:** 75 days after fiscal year end **Non-Accelerated Filer:** 90 days after fiscal year end
Quarterly Report on Form 10-Q	**Large Accelerated Filer:** 40 days after fiscal year end **Accelerated Filer:** 40 days after fiscal year end **Non-Accelerated Filer:** 45 days after fiscal year end

Reporting

Jump-Start on Post-IPO Reporting

- **Adopt a periodic reporting schedule** – Financial reporting team, legal and IR should be preparing quarterly financial information and communications plan prior to IPO. Consider "practice" quarters pre-IPO.
- **Review comparable company precedent** – Several portions of the registration statement typically require additional time to prepare, and will serve as a template for ongoing reporting, including:
  - Management's Discussion & Analysis and Results of Operations
  - Key performance metrics – how industry players analyze performance

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