

Understanding and Planning an Initial Public Offering (IPO)

Understanding the IPO Process

An initial public offering (IPO) is the process achieved when a private company registers its shares of common stock with the SEC and sells them to public investors in an underwritten offering. The shares subsequently trade on a stock exchange, such as the NYSE or Nasdaq, and the company becomes subject to the public reporting requirements of the federal securities laws.

The process is often challenging – it is a time-consuming distraction for management, it often involves significant transaction costs and, with a narrow “market window,” there is no guarantee the IPO will generate the level of hoped-for proceeds, or be completed at all. Understanding the IPO process and managing it effectively can help avoid these risks.

Early preparation and an experienced team of underwriters, lawyers and accountants are key to a smoothly run IPO process. Below is an outline of the basic steps that will occur over the 3 to 5 month period:

Phase One: Pre-Offering Planning

- Begin preparation of audited historical financial statements.
- Recruit (as needed) qualified, “credentialed” management and Board members, including independent directors.
- Update organizational and capital structure to be acceptable for a public company.

Phase Two: Due Diligence and Filings

- Create electronic data room with complete legal, financial and technical due diligence documents and information for working group.
- Draft the IPO prospectus, describing the company’s products/services, business strategy, marketing and sales; its industry and target market; the management team’s experience and directors’ backgrounds; the risks regarding the company and an investment in the shares; the use of offering proceeds; the compensation paid to management and the Board; and the ownership of the company by management and other existing large shareholders.
- File the registration statement with the SEC (and consider initial confidential submission for emerging growth companies).
- Submit listing application with stock exchange for trading following the IPO.

Phase Three: Market and Close the Offering

- Through selling efforts such as a road show, the company and underwriters promote the offering to potential investors following the printing of the “red herring.”
- Before the IPO process is complete, implement all necessary controls and procedures, organize Board committees, secure appropriate level of D&O insurance and adopt employee equity incentive award plan.
- When demand for the offering solidifies, management and underwriters price the shares to the public and sign the underwriting agreement. The stock begins trading the day after pricing, and the company receives the offering net proceeds three business days thereafter.

The entire IPO process is much more involved than many people realize – advance planning with the right team of advisors increases the chances of successfully completing your IPO.

How Olshan Can Help

Olshan can provide assistance during each phase of the IPO process.

The IPO Planning Phase – The pre-IPO preparation phase sets the groundwork for a successful IPO. Olshan will:

- Identify gating issues upfront and implement changes to enhance corporate governance and transparency as a public company.
- Develop a high-level timeline clearly identifying responsibilities.
- Help assemble the right IPO team – underwriters, accountants and even CFOs.
- Provide support for dual-track strategies such as private equity and other M&A transactions.

The IPO Preparation and Filing Phase – This phase involves a substantial amount of detailed legal documentation. Deep experience with the Securities Act of 1933 and Regulation S-X is imperative during this phase as mistakes can cause serious and costly delays. Olshan will:

- Provide due diligence support for document requests from underwriters and counsel.
- Prepare registration statement on Form S-1, including business disclosures, offering terms and management bios.
- Review SOX corporate governance requirements with management.

The Post-IPO Phase – the post-IPO phase requires attentive ongoing SEC reporting and disclosure. Olshan will help with the following ongoing requirements:

- Preparation of annual, quarterly and current SEC reports, and proxy statements.
- Review director and officer beneficial ownership filings.
- Development of insider trading and Regulation FD policies and codes of ethics .

2018 IPOs Set Near-Record Pace for Numbers and Proceeds Raised

U.S. IPOs grew in 2018. In all, 214 companies went public in 2018 on U.S. stock exchanges, raising more than \$54 billion. This marked the third time since 2008 that offerings topped 200 and the strongest year since 2014 in both number of IPOs and average deal value. Despite increasingly volatile equity markets in late 2018, issuers were able to complete their IPOs due to various factors including a robust stock market, stable interest rates, low unemployment, record consumer confidence and relaxed SEC regulatory environment, resulting in an extended market window during most of the year.

Pharma and life sciences companies dominated the volume of offerings in 2018 with 67 IPOs, representing over 30% of the annual total, while technology, media and telecom companies continued to boom leading in deal value by raising \$19 billion, representing 35% of the total deal value for the year, from 49 IPOs. SPAC offerings also surged in 2018 accounting for 46 IPOs raising \$10 billion. Among the mega IPOs in 2018 were biotech Moderna Inc., music-streaming Tencent Music Entertainment Corp. and data-storage Dropbox Inc. Today’s strong capital markets bode well for a parade of hot tech and biotech startups planning share debuts in 2019.

Are You Prepared to Go Public?

If your company is considering whether to go public, some self-analysis is necessary to determine if your company has all the components for success. Because timing is everything during the IPO process and you may only have one chance, you should be able to effectively answer the following questions to be ready.

1. **Do you have a clear business strategy for your company today and for future growth?**
When you go public, you are selling your company and, most particularly for emerging companies, its vision of what it can be. A company needs to present to potential investors a thoughtful and compelling “story” of this vision and how, when and why it can be achieved.
2. **Do you have the right management team in place?**
Investors look closely at top management and their industry experience and track record at prior companies to see if they are capable of executing the company’s vision.
3. **Do you have trusted Board members overseeing the company?**
Your Board of Directors should understand your business and be able to bring ideas, as well as contacts, to the company. They should have a diverse and balanced background with expertise from operations and finance to technology and regulatory matters, to help guide the company through the early years as a public company.
4. **Do you have a history of profitable operations?**
Your financial results should reflect strong sales, reasonable levels of costs and momentum towards greater earnings. Your accountants may need to restate earnings from previous years if, as a private company, earnings were minimal for tax purposes.
5. **Have you selected the best underwriter for your IPO?**
This is perhaps the most important decision management will make. Through contacts of advisors and outside investors, companies typically seek the “biggest name” – the strongest and most reputable in successfully completed IPO transactions in your industry. But, analyst coverage, level of interest in your company, track record with other IPOs and aftermarket support are also important factors. Interview several lead underwriter candidates as part of the process.
6. **Are you prepared to take on the initial and ongoing costs in being a public company?**
Along with the IPO’s transactional fees and costs for underwriters, SEC registration, FINRA filing, legal counsel and accountants, there are also stock exchange listing and transfer agent fees. After the IPO, there are ongoing public reporting costs and associated professional fees, in addition to internal accounting staff and more sophisticated SOX-compliant accounting and information systems.
7. **Do you know the SEC’s “hot buttons” to avoid unnecessary delays in the process?**
Experienced counsel and auditors can be instrumental in this, identifying legal issues such as “gun jumping” and “integration” of prior offerings, and accounting issues such as revenue recognition that could require a restatement or significant adjustment of your financial statements.

The IPO process offers more than new growth capital, it enhances access to capital markets in the future, facilitates employee compensation, acts as “acquisition currency,” permits owners and investors to gain liquidity and improves the stature and perceived stability of your company. If you would like to discuss this possibility, Olshan can assist you in determining whether this is the right time for you. If prepared, Olshan can guide your company through every step in the process.

Robust Pipeline of Companies Seeking to Go Public in 2019

The floodgates are poised to open for new issues in 2019, in what could be a record-breaking year for IPOs in terms of dollars raised, according to investment bankers. Numerous highly-valued tech, biotech, fitness and fashion companies are currently planning IPOs, including Lyft Inc., Uber Technologies Inc., Airbnb Inc., Pinterest Inc., Peloton Interactive Inc., Levi Strauss & Co. and Poshmark Inc. Several Olshan clients are among those in the pipeline, as the IPO window appears to be open for new deals.

Recent Olshan Public Offerings

Representing:

- Legacy Housing Corp. (Nasdaq: LEGH) in B. Riley FBR led initial public offering of common stock
- IMAC Holdings (Nasdaq: IMAC) in Dawson James, Axiom Capital common stock and warrants initial public offering
- Ameri Holdings (Nasdaq: AMRH) in Northland Capital Markets secondary offering of shares and warrants
- Source Capital in Overstock.com (Nasdaq: OSTK) blockchain voting series A preferred stock offering (first public offering of digital securities)
- Centrex (Nasdaq: CETX) in series 1 preferred stock and series 1 warrant rights offering
- Nathan’s Famous (Nasdaq: NATH) in Jefferies senior note offering
- Maxim Group in Quest Resource Holding (Nasdaq: QRHC) common stock and warrant offering
- Alleghany Corp. (NYSE: Y) in BMO, Goldman Sachs, Morgan Stanley debt offering
- Pharcydclics (Nasdaq: PCYC) in J.P. Morgan common stock offering
- IZEA (Nasdaq: IZEA) in Aegis Capital initial common stock offering
- Roth Capital in Pioneer Power Solutions (Nasdaq: PPSI) common stock offering
- Aerojet Rocketdyne Holdings f/k/a GenCorp (NYSE: AJRD) in Morgan Stanley, Citigroup Global Markets, Wells Fargo debt offering
- Micronet Enertec Tech. (Nasdaq: MICT) in Aegis Capital common stock and warrant offering
- CorMedix (Nasdaq: CRMD) in Maxim Group initial common stock offering
- Ness Technologies (Nasdaq: NESS) in Lehman, Merrill Lynch initial common stock offering
- AmCOMP (Nasdaq: AMCP) in Friedman Billings, Raymond James initial common stock offering

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