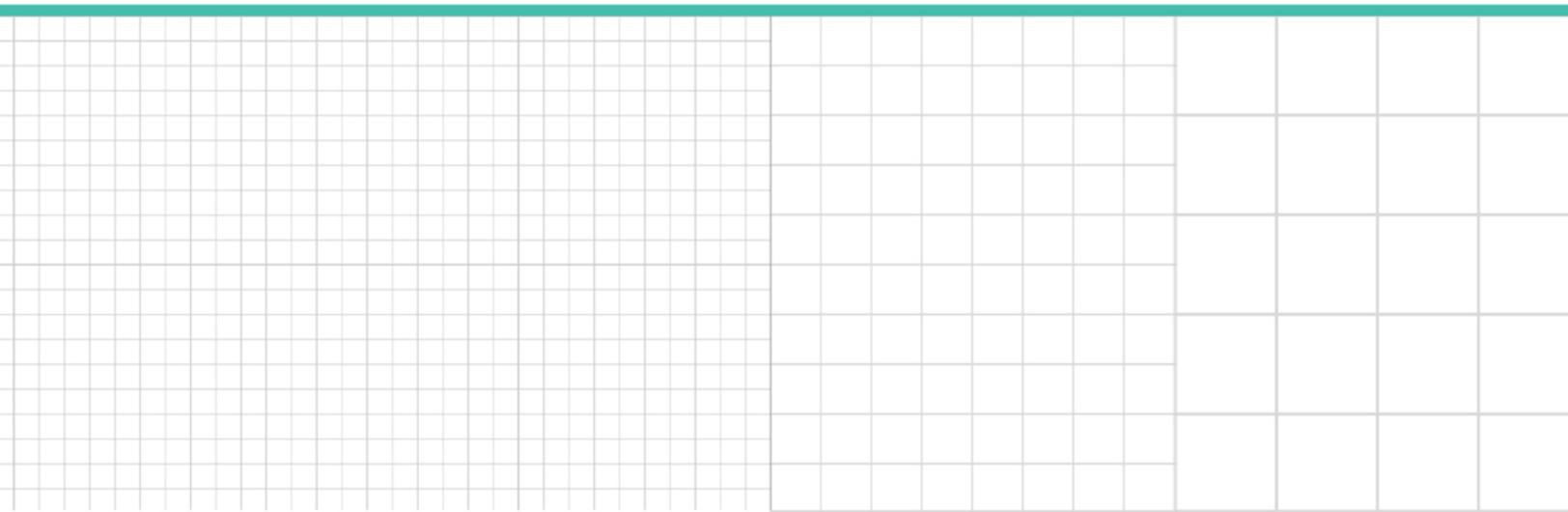


**Checklist**

# **Planning and Disclosing Indications of Interest for Participating in IPOs**

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# Planning and Disclosing Indications of Interest for Participating in IPOs

Contributed by *Spencer G. Feldman, Olshan Frome Wolosky LLP*

An investor's indication of interest, through testing-the-waters communications, provides a strong message to the market, especially for smaller retail-oriented IPOs. At the same time, the issuer and underwriters must carefully review such disclosures to ensure compliance with applicable securities laws.

## Planning Indications of Interest

<u>Permissible Activities</u>	<u>Impermissible Activities</u>
May engage in testing-the-waters communications in the context of the IPO	May not solicit actual orders or guarantee an allocation
May solicit non-binding indications of interest from prospective investors, with assistance of underwriters	May not solicit or accept money from investors
May seek estimate of number of shares that investors would like to purchase and price range	May not make sales or accept commitments to purchase shares until the offering is effective
May disclose indications in the prospectus for the offering, but which can be scaled back in book-building process	May not ask investors to commit to purchase shares, whether in writing or orally

## Disclosure of Indications of Interest

<u>Prospectus Section</u>	<u>Applicable Disclosures</u>
Prospective Cover Page	Identify prospective investors or type of investors (e.g., director, officer, existing stockholder or new unaffiliated investor) and number of shares or dollar amount of indicated interest  Optional: Include disclaimer that investor's indication is not a binding agreement and investor may not ultimately purchase any shares in the offering
Prospectus Summary: The Offering; Indications of Interest	Include name of each investor and disclaimer with respect to their indication of interest, if not provided on the prospectus cover page
Risk Factors: Risks Relating to the Offering	Indicate that the purchase of shares by affiliated indicated investors reduces the number of shares available for sale to the public and may impact liquidity and an active trading market

<u>Prospectus Section</u>	<u>Applicable Disclosures</u>
Principal Stockholders	Reflect in beneficial ownership table, the full indicated interest of a director or officer, or of any existing stockholder or new unaffiliated investor acquiring more than 5% of the issuer's outstanding shares
Certain Relationships and Related Party Transactions	Describe the indications of interest from officers, directors and large existing stockholders, and any material business relationship with a new unaffiliated investor
Underwriting	Disclose arrangement if the underwriters' commitment in the offering is contingent upon or affected by the investors ultimately purchasing all their indicated interest or if they have agreed to lower compensation with respect to purchases by the indicated investors