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visionary guidance

together

OUTLINE OF ISSUES TO CONSIDER IN PREPARING FOR AN IPO

- **Up to One Year Before IPO Kick-Off**
 - Estate planning for executives with equity ownership
 - Plan for any new equity participation by management
 - Experienced IPO counsel
 - Experienced IPO accounting firm
 - Ensure availability of audited financial statements for requisite periods
 - Establish website and public communications policy
 - update website sufficiently in advance of IPO so as to establish a history of ordinary course business and financial communications
 - limit website and other public communications to ordinary course business and financial matters
 - Establish rational fair market value exercise price for option grants, stock issuances and stock transfers, such as gifts
 - Plan for repayment of officer and/or director loans prior to IPO (Sarbanes-Oxley)
 - Assess sufficiency of minute books and other corporate records
 - Obtain directors and officers insurance and understand required IPO upgrades
 - Consider impact of new business initiatives on IPO timing to avoid surprises
 - Identify potential independent members for Board of Directors
 - Determine whether any additional members of senior management are needed
 - Upgrade internal controls, including Sarbanes-Oxley compliance plan, to ensure integrity of financial statements and sound corporate governance
 - Organize due diligence materials
 - Prepare fact book to support market data

- **Two Months Before IPO Kick Off**
 - Board of Directors at IPO
 - independence – a majority of Board must be independent
 - committees of all independent directors:
 - audit committee
 - compensation committee
 - nominating and corporate governance committee
 - director compensation for Board and committees
 - cash compensation: cash retainer vs. per meeting fees
 - equity compensation: options, restricted stock
 - chairman fees; for Board and committees
 - audit committee “financial expert” required
 - ideally a CPA and/or former CFO or audit firm partner
 - Officers
 - titles – review and reconsider management structure and titles
 - “executive” officers vs. “Senior” officers
 - Section 16 insiders - reporting and compliance issues (a/k/a Form 4 filers)
 - employment agreements
 - incentive arrangements and plans
 - Employees
 - non-compete, non-solicitation and confidentiality arrangements
 - incentive arrangements and plans
 - Equity plans
 - compliance with tax and securities laws – 409A and Rule 701
 - consider new plans or plan amendments
 - SEC registration of restricted stock and option shares (Form S-8)
 - Directors and officers liability insurance at IPO
 - coverage amount and deductibles
 - increased cost of coverage at IPO
 - Charter, Bylaws and Corporate Records
 - create form of “public company” charter and bylaws for post-IPO- review and make any necessary changes
 - review capital structure (make sure that there will be sufficient common stock and blank check preferred)
 - antitakeover provisions, such as a staggered board
 - review indemnification provisions
 - review corporate structure

- consider creating holding company structure
 - consider need for existing subsidiaries
 - tax issues, including the use of a Delaware or foreign “technology” subsidiary for state tax planning
- Share capital
 - review and clean up existing shareholder list
 - registration rights/notice and/or waiver
 - lock-ups by directors, officers and shareholders
 - are there lock-ups under existing agreements
 - new lock-ups to underwriter – 180 days after pricing
 - lock-ups in option agreements
 - preemptive rights; antidilution provisions
 - accuracy and completeness of stock book
 - identify all issuances of shares since formation
 - shares authorized and outstanding - amend charter as necessary
 - transition stock recordkeeping to transfer agent
 - stock options and/or restricted stock outstanding and to be granted
- Exchange
 - consider Nasdaq v. NYSE listing
- Corporate Governance
 - new Board Committee charters – public company versions
 - Code of Conduct that includes Code of Ethics
 - Insider Trading Policy
 - Disclosure Controls and Procedures for SEC filings
- Pre IPO Annual Meeting of Shareholders
 - adopt charter
 - other required actions
 - avoids Annual Meeting immediately after IPO
- **Timetable for Offering**
 - Internal preparation meetings – Before kick-off meeting
 - Begin drafting Form S-1 – Before kick-off meeting
 - Kick-off “All-Hands” Meeting – Week 1
 - Weekly drafting meetings – Weeks 1 – 4
 - Target date for initial SEC filing – End of Week 4
 - SEC review period
 - 30 days for first SEC comment letter – End of Week 8
 - 15 days to respond to first SEC letter – End of Week 10

- 15 days for second SEC comment letter – End of Week 12
 - 7 days to respond to second SEC letter – End of Week 13
 - 7 days for third SEC comment letter – End of Week 14
 - 3 days to respond to third SEC letter – Week 15
- Road show schedule/presentation – Weeks 15-18
- resolve any further SEC comments
- Pricing – Week 18
- Closing – Week 19 (T+3 after pricing)
- **Structure of Offering**
 - Offering entity
 - Offering size
 - primary (shares to be sold by company)
 - selling shareholders, if any
 - over-allotment option (size - typically 15%) - and split between company and any selling shareholders)
 - Use of proceeds (repay debt, acquisitions, working capital, etc.)
 - Syndicate strategy
 - Shares to be reserved for specific investors or syndicate members
 - Underwriter compensation –discount from price to public (typically 7%)
 - Road show
 - Nasdaq vs. New York Stock Exchange listing
 - Ticker symbol preference (reserve in advance)
 - Directed share program (“Friends and Family”)
- **Accounting and Financial Issues**
 - Preparation and audit of financial statements – 3 years or from inception
 - Need for unaudited interim financial statements - SAS 71 review
 - Historical option pricing or other potential cheap stock issues
 - Historical revenue recognition policy
 - Management’s Discussion and Analysis of Financial Condition and Results of Operations (“M, D&A”)
 - Comfort letter from auditors to underwriters (note: underwriters may request comfort on all 5 years included in Selected Financials)
 - Management letters
 - Availability and discussion of forecast information
 - Tax issues – NOLs (Section 382 analysis)
 - Goodwill/intangibles
 - SEC requirements for separate financials in connection with acquisitions

- Pro forma presentations
- **Legal Issues**
 - Outstanding litigation and/or claims – resolve if practical to do so
 - Third-party consents required
 - Disclosure issues
 - confidentiality agreement restrictions
 - material contracts
 - identify material contracts
 - disclosure issues
 - file as exhibits to registration statement
 - confidential treatment requests
 - related party transactions and agreements
 - identify related party relationships
 - consider if advantageous to continue
 - review documentation
 - ratification by independent directors
 - employment agreements
 - executive compensation for management
 - option and/or restricted stock grants to executive officers
 - pending acquisitions or other material transactions
 - restrictions on future activity contained in any agreements
 - regulatory matters
 - antitakeover provisions
 - D&O questionnaires - Identify any issues raised by responses
 - Make sure that there is appropriate trademark protection for the Company's name and that there are no other intellectual property conflicts
 - Review any NASD affiliations of directors, officers and significant shareholders
- **Questions for the Managing Underwriters**
 - Firm's IPO expertise in Company's industry
 - recent transactions
 - aftermarket performance
 - Resource commitment (during and after the transaction)
 - investment banking team
 - research analyst (note: new independence requirements)
 - market making activities
 - Research positioning in Company's industry

- current coverage universe
- firm's ability to articulate the Company's opportunity
- Valuation, structure and timing
 - approach to valuation
 - transaction terms (see "Structure of Offering" below)
 - filing strategy/pricing strategy
 - recommendation on timing
- Proposed spread and other underwriters' compensation matters
- Recommended selling strategy
 - institutional vs. retail
 - domestic vs. international
- Additional lead-managers
 - number of other lead managers
 - fee split arrangement