

# The Guide to Going Public



# Table of Contents

What it's all about . . . . .	1
The time factor . . . . .	1
The timing of going public . . . . .	2
Does your company have what it takes? . . . . .	3
<b>Preparing to Go Public</b>	
Why go public? . . . . .	5
The disadvantages . . . . .	7
The cost considerations . . . . .	9
How the costs add up . . . . .	10
Support for your decision . . . . .	12
Going public begins with a business plan . . . . .	13
Key components of an effective business plan . . . . .	13
Put the plan in action . . . . .	15
Get your house in order . . . . .	15
Manage like a public company . . . . .	17
Develop a public profile . . . . .	20
Establish key professional relationships . . . . .	21
Lawyers . . . . .	21
Auditors/Business Advisors . . . . .	22
Underwriters . . . . .	23
Printers . . . . .	27
Consider the alternatives . . . . .	27
Overview of alternative options . . . . .	28
The market listing . . . . .	30
Timing the markets . . . . .	31
<b>The Initial Public Offering</b>	
Overview of the process . . . . .	33
Zero to Sixty – Things speed up quickly . . . . .	34
The go-ahead meeting . . . . .	36
Preparing the prospectus . . . . .	36
First the preliminary . . . . .	37
Cover . . . . .	38
Contents . . . . .	38

Undergoing due diligence . . . . .	39
Request list . . . . .	40
Management questionnaire . . . . .	40
Close inspection . . . . .	41
Updating . . . . .	41
Regulatory review . . . . .	41
Marketing the IPO . . . . .	42
The road show, the red herring and the green sheet . . . . .	42
The final prospectus . . . . .	43
The closing . . . . .	44
The closing meeting: How many companies make it? . . . . .	45
<b>Life as a Public Company</b>	
Transition and adjustment . . . . .	47
Public accountability . . . . .	47
The perpetual three-month calendar . . . . .	48
Timely disclosure . . . . .	48
Keeping investor interest alive . . . . .	49
<b>Going Public in the United States</b>	
Going public in the United States . . . . .	51
What draws Canadian companies to the U.S. marketplace? . . . . .	51
What attracts U.S. investors? . . . . .	51
The IPO process in the U.S. . . . .	52
Options in offerings and listings . . . . .	53
Disclosure drives the IPO process . . . . .	55
Your U.S. advisors . . . . .	57
The right option . . . . .	57
<b>Your Decision</b>	
Should you take your company public? . . . . .	59
<b>Appendices</b>	
Glossary . . . . .	61
About PricewaterhouseCoopers LLP . . . . .	64
Contact us today . . . . .	65

## What it's all about...

This is not a textbook on going public – you can leave the technical details to your advisors. Rather, it's an overview that will give business owners an idea of what it takes to go public, what to expect should you decide to do so, and what the alternatives are if going public is not in your best interest.

Essentially, going public is the process of offering equity – shares, partnership units, trust units and so on – of a privately owned company to the general public. As the name suggests, the initial public offering (IPO) is the company's first such offering. Any subsequent offering is referred to as a secondary offering.

It is a complex process involving three distinct stages: preparing to go public, the actual offering and, afterward, life as a public company. Each stage presents a balancing act – ensuring you don't put the business on hold while forging ahead with the offering – and the entire process hinges on two critical factors: time and timing.

## The time factor

Successful offerings are the result of solid planning and preparation – often several years in the making. Ideally, a public offering should be part of a strategic plan that is implemented over the course of three to five years, although offerings can and do happen within a shorter time frame. The earlier you start planning the better, but the market waits for no one. Often the window of opportunity dictates that the process be completed within a year. Experience shows that anything less than nine months could spell trouble.

Why is preparation time so important? Before going to the marketplace, you have to have the policies, procedures and people in place that are expected of a publicly traded company. Compliance often requires housecleaning – in streamlining operations, getting the books in order and pulling together an independent board of directors. This important lead-time helps you reduce company expenses, limit surprises and minimize disruptions to day-to-day operations once the offering process is under way. You have to be prepared to devote the necessary resources to get the job done.

In a perfect world, the offering should be completed in 100 days, although the reality is that it often takes longer. Regardless, time is of the essence as you follow a prescribed process to put together your prospectus, seek approval from securities regulators and elicit interest from potential investors.

Basically, you'll work with underwriters and a team of lawyers and accountants to prepare a prospectus – a detailed story of your company. While the relevant securities commissions review your preliminary prospectus, you have a narrow window of time to take your story on the road in order to sell it to the investment community. With feedback from the roadshow and the regulatory review, all the work funnels down to the few days when the final share price is established. During this period you'll have to make the last amendments to the prospectus, arrange for a final printing and deliver the final prospectus to the investor, along with the share certificate. It's at this point that you receive the proceeds of the offering to carry out your business plans.

Life as a public company means working to three-month deadlines. The moment the offering closes – when all the documents are signed and funds received – your company's life changes for all time. You now live in a perpetual three-month time frame, meeting the regulatory requirements of quarterly reporting to shareholders and the expectations of the market. You're no longer in the business of selling products or services alone – you're in the business of delivering shareholder value. And you are accountable to your shareholders.

## **The timing of going public**

Timing the markets to optimize the offering plays an important role in the decision to go public. Your preparation is fundamental, but if the market isn't ready, your company may be forced to wait. Market conditions are beyond your control. At the same time, however, you should ensure that you are prepared and ready to act while the market is receptive.

The age and stage of a company are also important factors. High tech, mining, and oil and gas companies tend to go public in their early days – to raise capital, attract and retain staff, and acquire status. They're attractive to investors because they often grow quickly and yield high returns. But IPOs are not for early bloomers alone. More established firms in other sectors – well-established privately owned manufacturing, real estate or industrial companies – may look at going public as a means to expand, to improve market presence or as a long-term, planned exit strategy.

## **Does your company have what it takes?**

Investors look for a track record of strong and sustainable earnings growth – or explosive potential. You should have a proprietary technology, product or service that will distinguish your company in a competitive market. Investors also look for strong leaders. Your management style should be flexible to help you withstand the pressures from shareholders, directors, analysts, the financial press and the public, but you must still manage the company for long-term success. And your company's need for capital should typically be long term, supported by a thoughtful and well-documented business plan. Of course, you need strong internal controls, with accounting and information systems in place that are fully capable of handling increased growth and timely financial reporting.

The right decision results from a thorough analytical evaluation, a dash of gut instinct and a vision to succeed.

If you make the decision to take your company public, you're in for an exhilarating – albeit disruptive – time. The planning and the possibilities generate excitement. The heightened activity during the offering stage creates a charged atmosphere. And a successful completion brings a great sense of satisfaction, a renewed sense of purpose and new challenges that make business rewarding.

Take the time to read through this book and evaluate whether going public is appropriate for your company.

# Preparing to Go Public

careful consideration of the pros and cons...

a thorough understanding of the process...

a well-thought-out plan...

strategic orchestration of action...

clever positioning...

TIME FRAME

three to five years

## Why go public?

For some business owners, going public is the pinnacle of success. For others, growth and the need for more capital drive the decision. For still others, it's a strategic estate planning move. In certain industries – oil and gas, mining and high tech – going public is a must for start-up companies that rely on stock incentives to attract and retain key staff, require the injection of capital to carry out plans, and need the profile to gain access to industry suppliers.

Whatever the motivation, there are distinct advantages to taking your company public:

➤ **Access to long-term capital**

Perhaps the most obvious benefit is access to capital through a share offering. Going from private to public means your company is no longer limited to cash from operations and borrowings. You have access to a wider range of sources of money from a wider investor base. There's more opportunity to support growth, increase working capital, invest in plants and equipment, expand research and development, or retire existing debt. Once you establish a track record with the investing public – and assuming your stock performs well – you may be able to raise more funds by selling additional shares on favourable terms.

➤ **More favourable financial status**

When you sell shares to the public, it increases your organization's equity and creates more leverage for financing growth. Since the offering is usually in the form of an equity security, there are immediate benefits to your balance sheet and debt-to-equity ratio. This generally makes it easier to borrow additional funds; it may also make the company eligible for more favourable financing terms – for existing debt as well as any future borrowing.

➤ **Increased market value**

The value of public companies tends to be higher than that of comparable private companies, due in part to increased liquidity, availability of information and a readily established value.

➤ **Less dilution**

Most often, a public offering nets a higher price for securities than do private placements or other forms of



equity financing. The bottom line is that you give up less of your company to secure the same amount of funding.

➤ **Status and prestige**

An initial public offering can take your company from obscurity to high visibility. The attendant publicity and the widespread distribution of shares create greater public awareness of your company's products or services. If yours is a regional company looking to expand, the enhanced visibility may make it easier to grow nationally or internationally.

➤ **Improved credibility**

Going public may give potential suppliers and customers a greater sense of security in doing business with you, because public company status may be perceived as a positive statement about your financial affairs. In fact, it may be the deciding factor in contract bids. It may also mean easier access to industry suppliers and more favourable audience with government regulatory bodies.

➤ **Personal wealth and owner liquidity**

A public offering can increase your net worth. Subject to certain restrictions and practical market limitations, as the business-owner-as-shareholder you may sell your shares either in the IPO or by converting your investment into cash at a later date. Beyond taking profit from the sale of shares, you can use publicly traded shares as collateral to secure personal loans.

➤ **Exit strategy**

A well-thought-out plan to go public can serve as your most attractive exit strategy. However, this is a long-term plan, because most investors will want to know that you are committed to staying on to run the company for some time after the transition to public life.

➤ **Key people incentive**

If you have an exciting product or significant market potential, stock option plans are a distinct advantage in attracting and keeping talented personnel. Such plans give employees a chance to share in the company's financial success and are an attractive non-cash alternative that can provide employees with significant tax advantages. You benefit from the caliber of people you can attract – and from their vested interest in the ultimate success of the business.

➤ **Increased expansion options**

Acquisitions and mergers are often more easily and favourably negotiated if your company is publicly traded. With an established value, the shares can be used as currency to finance future transactions.

## The disadvantages

Excited as you may be about the potential benefits of going public, you need to carefully consider the disadvantages – and then weigh the pros and cons. This is especially important because going public is essentially a one-way process. It is difficult and costly to take a public company private again.

Of course, hurdles are easier to jump – or even avoid – when you know about them in advance. Here’s a run down of what you’re up against.

➤ **Cost**

Cost is a big consideration. There is no question that the initial and ongoing costs of going public, which we discuss in detail in the next section, are substantial. If the offering is successful, you recover your costs. But there is no guarantee of success. An unsuccessful bid to go public hits you with a double impact. Not only do you lose the money invested in the effort, but most of that cost cannot be deducted from other income for tax purposes.

➤ **Time**

Time spent in going public is as significant as the dollar cost. You’ll have to focus your attention on the offering for months – and it always takes longer than you think. Beyond the offering itself are the ongoing time demands on a public company. Investor inquiries, presentations to the investment community, and the writing, printing and distribution of quarterly and annual reports all require management time. Your executives will require up-to-date information about company matters, and they must be available to discuss them with shareholders, brokers and analysts, and the media.

➤ **Loss of privacy**

There are no secrets when you’re a public company. Under disclosure requirements, details of your company’s business, operations and finances hitherto unknown to the outside world are suddenly open to public scrutiny – and to your competitors. For example,

public companies are required to disclose details of sales, cost of sales, gross profits, net income, major customers, cash flows, salaries and perquisites of officers and directors.

➤ **Loss of control**

If more than 50% of your shares are sold to the public, you may be faced with losing control of your company. Although it is not usually popular in the marketplace, you may address the question of control by issuing non-voting shares to the public or providing multiple-voting shares for the original owners of the business. Once you go public, there is potential for further dilution through secondary offerings and shares issued for acquisitions.

➤ **Reduced management flexibility**

One of the big adjustments for the business owner who takes a company public is the learning curve on joint decision making. You can no longer make all decisions unilaterally or on an immediate basis. Instead, you may need the approval of your board of directors or your shareholders on certain important issues.

➤ **Performance pressure**

Once the company goes public, you have as many partners as the company has shareholders – and they'll all want a reasonable return on their investment. They can significantly drive down the stock price if they get impatient or disappointed. If the stock does go down, it may affect the morale of employees, who may worry about their bonuses or job security. Also remember that a company's long-term prosperity may be jeopardized by shareholder emphasis on short-term results. This sets up a balancing act for management: balancing short-term growth with long-term goals. The need to report operating results on a quarterly basis only intensifies the pressure.

➤ **Market volatility**

External economic factors and overall stock market fluctuations – even though they're not directly related to your business or within your control – can affect the value of your company. Market sentiment can make you or break you.

➤ **Trading restrictions on insider shares**

As part of the underwriting agreement, regulators and underwriters usually request that insiders' shares be held in escrow for a period of several months to several years after an initial public offering. The rationale is to maintain a strong after-market by avoiding insider sales and to keep insiders actively involved in the company to ensure performance.

Because you have access to key information before the public, as an insider you must exercise caution in trading the company's shares and in discussing internal affairs. Otherwise, you could be held liable for violations of insider trading regulations.

➤ **Potential tax increase**

Income tax laws provide special deductions and tax credits to Canadian-controlled private companies – provisions that no longer apply when the company goes public. If you're like most private business owners, you may be more concerned with tax savings than with earnings per share. As a result, your accounting practices may have been selected for the purpose of maximizing cash flow to yourself while minimizing income taxes. While these practices may conform with the standards of generally accepted accounting principles (GAAP), they may also run counter to a public company's objective, which is to enhance shareholder value over the long term.

➤ **Compensation review**

Levels of compensation, benefits and related-party transactions that may work for a private company may not be appropriate for a public one. This could mean bringing your total pay package in line with those in the prevailing market. You should also understand that other people will likely have to approve your level of earnings. Public companies usually have a compensation committee that recommends the basis for determining executive compensation.

## **The cost considerations**

Costs, of course, will vary. Because each situation is unique, financing costs will reflect the size and complexity of the offering.

With the exception of the underwriters' commission, which is usually determined as a percentage of the proceeds received, other costs of the IPO can range from \$225,000 to \$400,000 for smaller offerings to \$900,000 to over \$1,000,000 at the higher end. But the same principles consistently apply to controlling costs: early-stage planning and prompt, effective action keep costs down. Generally speaking, the earlier in the process you take action, the less expensive it is.

There's no avoiding the time it takes to achieve a successful public offering. But the more time you spend planning and preparing, the more control you will have during the actual process.

## How the costs add up

There are costs associated with each of the three stages of going public. First there are costs involved in getting the company into public shape. Then there are the costs of the offering itself. Finally, there are ongoing costs of administration and reporting. All these costs must be considered before making the decision to go public.

### **Preparing to go public: audit and accounting fees, legal fees, additional salaries and directors' fees**

- **Audit and accounting fees:** You may be required to reconstruct the financial statements and put new reporting systems in place to comply with quarterly reporting requirements. With specific exceptions, you'll also need audited statements for three to five years prior to going public.
- **Legal fees:** There may be legal costs involved in cleaning house – in reviewing significant contracts, settling any outstanding claims or disputes and streamlining your company's organizational structure.
- **Salaries:** It may be necessary to add bench strength to your management team before taking the company public.
- **Directors' fees:** You may want to have a strong, independent board in place before you go public – and it will cost accordingly.

### **In the offering stage: underwriters' fees, audit and accounting fees, legal fees, road show, printing costs**

- **Underwriters' fees:** This is the largest single cost of a public offering – about two-thirds of the total – and typically comprises three components: commission, expenses and future considerations.

The commission or discount generally ranges from 6% to 10% of the gross proceeds of the offering. The amount, most often negotiable only within a narrow range, depends on the size of the offering, the maturity of the company, any anticipated difficulty in completing the offering, the nature of underwriting commitment and the type of security offered.

Additional compensation may go to the underwriters in the form of warrants, as an over allotment – the right to purchase future shares at specified prices – or as shares issued in advance of the offering below the offering price. Further consideration may also include the right of first refusal on future offerings.

- **Audit and accounting fees:** The fees will vary depending on the audit and on the reporting and accounting issues that arise, but costs can be minimized if regular audits have been performed and if the previous year's audit has just been completed. Other services typically include writing assistance and reviews of the prospectus, responses to regulatory review comments and preparation of the "comfort letter" to the underwriters.
- **Legal fees:** Again, the fees vary according to the complexity of the company, the orderliness of its records and the amount of time necessary to draft and file the prospectus. Regulatory review comments and the number of amendments made to the prospectus will affect legal fees. You are also usually required to reimburse the lead underwriter's legal fees, especially if their counsel is significantly involved in the drafting of the prospectus.
- **Road show:** You will need to prepare marketing and presentation materials that allow you to tell your story effectively to the investment community. As competition grows, the professionalism and sophistication of the presentation becomes more and more important. You need to allow for the costs of an effective public relations program. There are also travel costs as you take your story on the road – often a dozen or more presentations across the country over the course of several weeks.

- **Printing:** Printing costs are associated with the prospectus and share certificates. Costs vary depending on the length and number of documents, the use of colour and the number of revisions and amendments.
- **Miscellaneous:** These costs include filing fees, registrar and transfer agent fees, securities markets' entry fees and other miscellaneous expenses.

### **Complying as a public company: annual administrative and investor relations costs**

- **Reporting costs:** These include preparation, printing and distribution costs for quarterly reports, proxy material, annual reports and annual shareholder meetings.
- **Investor relations:** It is usually advisable to hire additional staff or engage an investor relations firm to handle inquiries and effectively manage the reporting process.

## **Support for your decision**

At this point you're no doubt beginning to understand the scope of this process and the demands it makes on you as a business owner. Public offerings tend to take over your life and the life of your company. But you can't go it alone. You need the support of family and key members of the management team. The process taxes everyone.

First and foremost, you should consider the personal side of going public and discuss it with your family. In the short term there are the sheer time demands. Your working hours will increase and intensify during the offering process. And, because your energy and endurance will be tested, you'll have less time for family.

Your family will have to be understanding and supportive enough to weather your absence and preoccupation. In fairness, they need to know and understand the process in order to provide the necessary support.

Do some soul searching at this point. Talk to people who have been through the process and can tell you the good and the bad. What are your core reasons for going public? If it's financial, will the money you'll raise give you more time? More freedom? This is a decision that has to balance with all other aspects of your life.

Your management team will play a key role in "minding the store" while you pursue the option of going public. They will also be responsible for implementing changes as they become necessary along the way. You can minimize the threatening aspects of change and build support for your decision by communicating your plans in a clear and open manner.

## Going public begins with a business plan

For many business owners, a lack of time makes planning a major stumbling block. But a solid business plan is one of management's most valuable tools. If you're in the time trap, it may help to know that a good plan pays dividends – not only in a more focused and efficient business, but in the going-public process.

Your business plan will contain much of the information that will be useful in drafting the prospectus – which, in turn, becomes the basis of the story you'll take to the marketplace. In fact, the prospectus ideally should be an extension of a good business plan. And, if you put the information together yourself, you'll reduce legal and accounting fees associated with drafting the prospectus.

As you work through market analysis, product performance and potential, management strengths and the related financial story, you begin to distill the essence of the company. In addition to helping you set goals for the company's performance, the business plan sets out a basis for evaluating that performance and becomes a key communications tool. Not only does it help communicate the company's message in-house, but it tells the story to suppliers and potential investors. It gives you clarity of purpose and credibility.

## Key components of an effective business plan

**Business definition:** In the simplest of terms, you need to describe how your company makes money. Outline the general development of the company and project where it's headed. Include an overview of products and services, market and industry trends, and major customer groups. The definition should describe your distinctive competence – what gives your company its competitive edge. This could include a unique product or service, superior customer



### TIP

Here's a useful suggestion in helping you keep the entire exercise in perspective. As it evolves, the process can get emotional, so you must be able to step back and evaluate whether going public continues to make sense.

On one side of a page, write down all your reasons for going public – reasons to forge ahead even in the face of adversity. On the opposite side, write down essential factors that would make you give up the plan. Seal it in an envelope marked "Open in the Crunch."

If the going gets rough, it may be necessary to revisit your original reasons for going public. You may see value in redoubling your efforts. It may also be that a public offering no longer makes sense – though your entrepreneurial tenacity refuses to let go. That's the time to remind yourself of the reasons you once deemed valid enough to discontinue the process.



**FAST FORWARD**  
*Preparing the prospectus,*  
page 36



service, a specialized knowledge base or an ideal geographic location. The definition should hone in on your core operations and identify opportunities to add value to those operations.

**Market analysis:** Review your current markets, establishing industry trends and your company's competitive position. This exercise can often highlight areas where you need to streamline efforts – such as concentrating on establishing a strong position in a few markets rather than spreading efforts too thin. Through assessment of demographics and geographics, the analysis can also pinpoint the need to expand markets.

**Market strategy:** This is where you describe the activities that will allow you to meet sales targets. The strategy should include distribution channels, plans to advertise and promote your product or service, the size and nature of your sales force, and an analysis of cost of sales. You want to demonstrate an efficient approach to delivering your product into customers' hands.

**Product performance and potential:** This is where you take a hard look at your product line, identifying your winners and losers. Your emphasis should be on your distinct competitive advantage. Outline the specific benefits of your product or service, its ability to meet defined needs and its stage of production – whether it's in prototype form or already in production. This section also calls for an assessment of the product life cycle and the factors that could extend or shorten its life. You'll need to include the steps you've taken to protect intellectual property and proprietary rights – copyrights, patents and trade secrets, and planned research and development activities.

**Operations:** This section outlines production procedures and delivery capability. Outline competitive advantages in technique, experience and economies of scale.

**Management:** Investors look for leaders, so the skills and talents of your management team are among your company's most valuable and unique assets. This section ties the talent of your people to your operations and sales, an exercise that helps you highlight strengths and identify weaknesses.



**Financial statements:** The financial statements tell your company story in numbers. This exercise can be surprising and revealing. In this section you should include an historical review of the past three to five years – balance sheets, statements of income and cash flows – and then look ahead for the next five years. Your projections are your best estimate of what will take place. Not only does this exercise identify problem areas, but it clearly demonstrates the value of good reporting systems.

## Put the plan in action

Your company's story will be told over and over again to prospective investors. The business plan helps you to fine-tune that story – to demonstrate your company's competencies and to show how you are able to meet goals and objectives. The investor looks for a compelling story, so ensure that your business plan communicates one.

Using the business plan as a blueprint, you can take the steps needed to smooth the transition from being a private enterprise to establishing a public company. As part of your action plan – and with a generous timeline built in – you will:

- **Get your house in order.**
- **Manage like a public company.**
- **Develop a public profile.**
- **Establish key professional relationships.**
- **Consider alternatives to going public.**

As well as being a blueprint, your business plan will later act as a benchmark for measuring the success of the company in meeting its objectives.

## Get your house in order

As you work through the business plan, you will identify areas requiring your attention. Though by no means exhaustive, following is a list of some of the common areas that usually need attention and action as a company works toward a public offering.

### TIP

Begin early to position your company to go public by ensuring that a sufficient number of years of audited financial statements are available before starting the IPO process. You will save fees, headaches and, most important, time.

If you wait until "crunch" time to have multiple-year audits, you may face two nasty surprises: first, high costs for the reconstructed financial statements, and second, figures that show the company may be performing at a level below expectations.

As one of many planning considerations, set an initial timetable that builds in time for delays. This way, should you encounter delays, you may be able to avoid the need to include interim or updated financial statements – and thus the associated costs.



**FAST FORWARD**

*Preparing the prospectus, page 36;  
Undergoing due diligence, page 39*

1. **Lose your losers.** Look closely at marginal products and divisions. The core business will be healthier when you prune any deadwood. Investors won't punish you for having past losses, but they will punish you if you retain losing units after the IPO.
2. **Restructure.** Essentially, you are looking at what you need to do to make the company more attractive to investors. Your actions may include correcting problem areas and addressing what is missing in your corporate structure, as well as implementing measures to improve your operations.
3. **Review all contracts.** What works for a private company won't necessarily work for a public one. For example, a private company may have agreements with a limited number of shareholders, giving them rights of first refusals or buy-outs. You need to review shareholder agreements, employee contracts, debt or lease arrangements and so on with a view to having them conform to what is appropriate for a public company.
4. **Ensure that the numbers are right.** If operations and reporting systems have been somewhat informal, the more formal business-planning process may pinpoint inefficiencies and unnecessarily high costs. Your work is cut out for you – to streamline costs, address pricing and make what's inefficient efficient.
5. **Establish internal systems.** Following on the previous point, you need to put in place reporting systems that give you reliable, relevant and timely information to manage your company at optimum efficiency – and, ultimately, as a public company, to meet ongoing reporting requirements for full and complete disclosure.
6. **Refine financial plans.** Looking ahead to a public offering, describe how the financing fits into your overall business strategy. Take care not to over-inflate or exaggerate. You need to be realistic.
7. **Retain an auditor.** Hiring an auditor is a business necessity in the going-public process. If you haven't done so already,



## TIP

Arrangements with related parties, key employees or significant customers that may be normal for a private company will likely require disclosure in public offering documents. Consider discontinuing such arrangements to avoid being misunderstood by investors. Simplify the process by making appropriate changes before going public.

now is the time to have your financial statements properly audited. You'll need to produce audited financial statements for up to five years prior to the offering. The audit, which is always more time consuming and costly to reconstruct after the fact, will often pinpoint weaknesses in financial reporting systems and identify inefficiencies and high costs.

8. **Streamline the payroll.** Although this doesn't apply to all private companies, many business owners must take a hard look at nepotism and income-splitting arrangements. Related-party transactions should be identified, reviewed and either eliminated or well documented if they are to continue in the future. There is no room in a public company for anyone who isn't making a significant contribution to the team. And what are you paying yourself? Now's the time to bring compensation levels into line with the prevailing market. Whenever possible, get related-party transactions behind you.
9. **Address the tax issues.** If you have tax- or estate-planning arrangements in place that are unique to private ownership, you'll need to plan for changes to bring them into line with what is acceptable for public companies.
10. **Settle outstanding issues.** Review any outstanding litigation and strive to get it resolved before going public. Anticipate any problems that may come to light in employee relations, safety or environmental areas.

## Manage like a public company

Before you actually become a public company, you have to look like one. Public companies have a management structure with clear lines of authority, a strong and independent board of directors and a committee structure to comply with corporate governance rules set out by the securities exchanges.

### Management

As the CEO, you are the pivotal figure for the entire offering process. You make the strategic decision to go public. You evaluate

the company's readiness, recruit the team, monitor the process and make the key decisions. Your leadership and vision set the tone for the entire exercise.

Just as the team needs a good leader, the leader can't do it alone. You need a solid team that is prepared to juxtapose the responsibilities of managing the company with the significant additional demands of preparing for and completing the initial public offering process. Your management team will come under close scrutiny as you take the company public. It should bear up as a cohesive unit that shares a long-term vision and demonstrates its depth of experience, expertise, commitment and integrity.

If your team doesn't measure up on all counts, you may need to hire additional personnel to add necessary depth and improve your chances of success.

Management experience in taking a company public is a definite asset. Investors look for executives who have a successful track record in building companies, who meet goals and who demonstrate the ability to deliver shareholder value.

## **Board of Directors**

A strong board is an invaluable business asset. Directors should be able to enhance shareholder value by bringing specialized expertise and experience, business contacts and a more objective perspective to your company.

Ideally, you want an independent board of directors with a broad range of expertise, because the right mix and the right credentials speak volumes about your company. But attracting the right people can be easier said than done. Because of legal exposure, it can be a tough sell to attract the best board members. Securities laws hold directors responsible for "full, true and plain disclosure of all material facts" relating to the issuing of securities. Board members can be held liable for the information or lack of information in the prospectus. Existing corporation acts and other legislation hold them personally responsible for employee payroll, as well as sales and excise taxes that are collected but not properly remitted. They may also be held responsible for the environmental impact of company operations and for the management of pension funds. Although insurance can usually be



**FAST FORWARD**  
*Undergoing due diligence, page 39*

obtained to protect directors against these potential liabilities, such insurance is costly and cannot cover all eventualities or completely eliminate the risks.

So again, a timely and orderly approach increases your chances of attracting high-caliber board members. The more you look and act like a public company, the greater comfort there will be in joining your team.

## **Corporate governance**

The securities exchanges have established guidelines for the responsibility of the board and its various committees in operating and governing a public company. These guidelines set out a formal structure with respect to the board's independence from management, the ongoing monitoring of the board's and management's performance and compensation, the recruitment of new members of the board, and the appointment and mandate of the board's committees. These corporate governance guidelines are designed to ensure that you are complying with the proper procedures for managing a public company.

A listed company must include an annual disclosure regarding its corporate governance practices in its annual report or information circular in order to demonstrate that the board supervises the management of the business and affairs of the corporation with a view to enhancing shareholder value. The disclosure includes the mandate of the board of directors, including its duties and objectives. It also outlines the composition of the board, whether the board has a majority of directors unrelated to the day-to-day operations of the company, and how the board functions independently of management. In addition, disclosure describes the board's committees – their composition, mandates and activities.

The number of committees will vary according to the size and nature of a company's business. At a minimum, you must have an audit committee to review and recommend to the full board the approval of the company's financial statements and the adequacy of internal control systems, a corporate governance committee to ensure regulatory compliance, and a compensation committee to review and recommend compensation levels for directors and senior management.

Compliance with corporate governance guidelines is a strict requirement for listing on major securities exchanges. These guidelines are likely to become even more comprehensive in the future.

## Develop a public profile

Not only do you need a compelling story to capture public attention and interest, you need to get it out to the right people and make it sing – to generate the kind of interest that will make people want to invest in your company.

Developing a public profile is a process that requires careful management. In fact, it can be daunting if you've never before had to generate publicity. If that's your position, consider hiring a public relations firm or an investor relations employee who has experience in handling the financial press and the investment community – and do so early in the game. It takes time to build a company's image. The earlier you start to build your story and foster media contacts, the more credibility, name recognition and momentum you have going into the offering process.

Your business plan should identify the elements that will make your story a good one. The headline material might include a new product or service that meets a previously unmet need, or the leadership of a visionary leader. Strong back-up material would include demonstrated profitability, a proven track record, predictable momentum and significant and sustainable growth.

An experienced public relations professional will:

- **Identify newsworthy elements in your story** and put together a program to attract the attention of the business reporters who follow your industry.
- **Raise your corporate and industry profile** through presentations at conferences and trade shows.
- **Provide training to enable you to deliver your story effectively.** One of the rites of passage going from a private to a public company is an intensive marketing effort called the "road show." Not only does your story need to be compelling, but you need to be articulate and unflappable. Assess your presentation skills and, if need be, get some coaching.



**FAST FORWARD**  
*Marketing the  
IPO, page 42*

## Establish key professional relationships

The intense process of going public tends to get "up close and personal." That makes it very important to have well-established relationships with your professional advisors – advisors on whom you can rely and with whom you are completely at ease. You need lawyers, auditors, underwriters and a financial printer who demonstrate sound credentials in their respective fields.

When putting your team together, consider three fundamentals: rapport, reputation and response.

- **Rapport** – Simply put, you need to get along with your advisors. Because the going-public process is so intense, you cannot allow personality conflicts to affect the outcome.
- **Reputation** – You want professionals of the highest integrity who are known for quality work. In addition to being experienced, they should know your industry and be able to deliver the range of services you need.
- **Response** – You want to be assured that your work is high priority. You should expect quick and responsive action.

You should establish professional relationships in advance of the offering, because dedicated relationships translate into strong, cumulative knowledge about your company and industry. And remember: not only do you need professional assistance in preparing the company to go public, but you need time to build relationships based on confidence and trust. You need to evaluate whether existing professional advisors have the depth and breadth of experience to see you through a successful offering. When you are establishing new relationships or retaining professionals for the first time, you must inquire about their experience, check their references, take a look at their previous work and negotiate fee arrangements.

## Lawyers

**Your lawyers often assume a co-ordinating role throughout the offering process. Potential liabilities make their participation and input critical. They are called on to:**

- Depersonalize the business. As discussed in the "housekeeping" checklist, this may include streamlining



### **FAST FORWARD**

*The go-ahead meeting, page 36;  
Preparing the prospectus, page 36;  
Undergoing due diligence, page 39*



organizational structure to create a single organization or a parent corporation with subsidiaries; dealing with related-party transactions; amending articles of incorporation; dealing with pending litigation; amending the corporate charter and bringing the capital structure in line with accepted principles; and reviewing and dispensing with contracts as necessary.

- Issue legal opinions or comfort letters to underwriters.
- Assist in the preparation and review of the prospectus.
- Flag and resolve outstanding issues and problem areas that could adversely affect the public offering.
- Verify disclosures for accuracy, completeness and consistency.

**You should look for:**

- Experience with securities laws and in dealing with regulators.
- Experience in your industry.
- The ability to explain complex transactions in easily understood terms.
- An established profile with the underwriting community.
- Quick and responsive turnaround of work.
- Good chemistry. You'll be spending many hours together.

## **Auditors/Business Advisors**

**Your auditors/business advisors help you make informed and intelligent decisions about going public and assist in getting your financial house in order. In steering your company through the complex process, your auditors may:**

- Assist in evaluating whether going public is the company's best option and explore alternatives with you.
- Review your game plan, sharing the benefit of experience with other companies of similar size and industry focus.
- Help establish a reasonable timetable.
- Assist in preparing a business plan, the corporate profile and the prospectus.



- Advise on internal controls and financial and operating systems.
- Establish accounting principles appropriate for the company and the industry.
- Audit financial statements.
- Assist with budgets and forecasting.
- Assist in drafting and reviewing the prospectus.
- Respond to questions from securities regulators and any due diligence inquiries.
- Issue "comfort letters" to regulators and underwriters.

#### **You should look for:**

- Experience in initial public offerings.
- Experience with your company and the industry.
- A firm with a broad range of services.
- An established profile with the underwriting community.
- Quick and responsive turnaround of work.
- Good chemistry. Again, you'll be spending many hours together.

## **Underwriters**

**Your underwriters put it all together. In essence, they have a highly developed sense of what sells, an instinct for timing and the savvy to anticipate pitfalls and calculate risks. You want the very best representing your company.**

#### **The lead underwriter:**

- Develops the corporate financing structure that will work in the marketplace.
- Assists in developing the prospectus.
- Advises on the timing of the offering and the ultimate share price.
- Co-ordinates the road show.
- Puts together a group of underwriters to sell the shares.
- Provides after-market support and advice.

Your selection of an underwriter is a critical part of planning your public offering. It's a courting process that should start at least one year before the offering takes place. While you're evaluating the

### **TIP**

Your initial contact with the investment banking firm will probably be with representatives whose responsibility is to attract new clients and new transactions. You should also meet and evaluate the research analyst assigned to your company and the appropriate people on the trading desk. You must feel confident that the lead underwriting firm is fully committed to your offering.

various investment banking firms, they in turn will evaluate your company and your likelihood of success before deciding whether they'll undertake the offering. Adequate lead-time allows each side to develop the necessary level of comfort and knowledge to create a positive team environment.

Initiating an early relationship with several underwriters allows you to sell your story over time – and to demonstrate positive milestones. You begin to establish credibility with the underwriters by demonstrating growth factors, upward trending budgets and positive actual results.

Ultimately, your company will seek out one investment banker as the lead underwriter for the offering. The lead underwriter will put together a group or syndicate of other investment banking firms to assist in selling the securities.

#### **You should look for:**

- **An established IPO track record.** Does the underwriter have recognized experience in your industry and in the type of security you want to offer? Are transactions ultimately priced within the original, estimated range? What rate of transactions go through to completion? How have previously handled issues performed in the after-market? These are strong indicators of the underwriter's experience.
- **Solid reputation.** Look for underwriters who have credibility with investors – institutional and retail. A lead underwriter should also command peer respect in order to be able to put together a strong group to assist in selling and distributing the stock. It's also important that your candidate be respected by your other professional advisors.
- **Analyst support.** Do your underwriters have a strong research department with experience in your industry? Does the lead underwriter carry enough weight with colleagues to get the best analyst coverage for your company? The financial community looks to underwriters as the primary source of objective information. You want coverage by experienced analysts who are following your industry and who are respected in the financial community.



## TIP

Sometimes the best information you can obtain on a potential underwriter is through informal processes. Ask for a list of past IPOs that the underwriter has served in a similar capacity to your planned IPO. From this overall listing, select several of a size similar to your company and call for a reference. Ask them some – if not all – of the questions already suggested, as well as these: Would you use the underwriter again and, if so, is there anything you would change? How did the pricing process go? Did the underwriter sell the over allotment? What surprises were there? Have you been satisfied with the after-market support and research?

You can improve your company's attractiveness to the underwriters by being prepared. You should have a complete business plan prepared and should approach a small number of select underwriters through your accounting firm or your lawyers.

- **Distribution capabilities.** Does the underwriter have a regional, national or international client base? How does that fit in with your plans? Are the investors mainly institutional – pension plans, for example – or retail? Is there a strong and varied client base? Do the investors make long-term or speculative buys? Can the underwriter generate ongoing market interest?
- **Terms and conditions.** What flexibility is there concerning the number of shares that can be sold by the current owners? Is there a requirement to hold your shares in escrow? If so, for how long?

### What the underwriter looks for:

Before underwriters agree to undertake the offering, you can expect them to take a long, hard look at your company. They'll review your company's business plan, analyze your financial statements and interview your key employees as well as suppliers, customers and external advisors. When they look at an IPO candidate, they're looking for a company with significant growth potential; a unique product or service on the leading edge of a trend; strong management; demonstrated abilities to set goals and meet objectives; and a clean and solid corporate structure.

### Letter of intent

When you've selected your lead underwriter, you'll meet to discuss the type of security to be issued, an estimated range of the offering price and the type of underwriting required.

At this point, the underwriter will issue a "letter of intent" to formalize the arrangement. This letter is a non-binding working agreement that sets forth the general terms and conditions of the offering but does not create a legal obligation for your company or the underwriters to proceed with the offering. The letter of intent will eventually lead to the legally binding underwriting agreement.

The provisions of the underwriting agreement are under constant discussion during the entire going-public process and are subject to revision based on market conditions. Generally, it is finalized and signed only at the point when the final prospectus is ready for distribution.



## TIP

You may be most concerned with two underwriting functions in particular: valuing your company and setting a stock price. Valuation and pricing issues can involve a significant amount of time for both the underwriter and management and can have multimillion-dollar implications. Although there is no standard formula, certain factors are always included in the valuation process. First, the underwriter must consider the condition of the market as a whole at the time the IPO is undertaken. Second, the final price will reflect the demand generated as a result of the road show.

Prices of other successful and similar offerings will also come into play, as will your company's projected earnings and cash flow at the time of the offering. Finally, the underwriter will consider a host of other, more subjective factors: expected growth, recent prices paid by sophisticated buyers in private transactions, inherent risks of the business, the company's stability and the after-market trading objectives.

Taking this all into account, the underwriter will most likely set a slightly lower price than expected.

This is a safeguard against a weak after-market and will provide incentive for buyers.

There are a number of conditions in the letter of intent that you should seek to negotiate.

- You need to establish the nature and extent of post-IPO support. This is critical to your success in keeping the market active and the share price stable and growing.
- You should also clearly agree on the lead underwriter's compensation and expenses and be sensitive to first rights of refusal on any future share offerings. Such rights could act as a deterrent to other underwriters.
- The letter outlines the type of securities to be offered, the number and distribution of shares and the estimated total dollar amount of the offering – all subject to last-minute change, depending on market conditions.
- Often, the letter includes the size and use of over-allotment options – options that allow the underwriter to purchase and sell up to an additional 15% of the shares offered if the market's demand for the shares is greater than originally expected.

With respect to the type of underwriting, your investment banker will propose one of two types:

- **Firm Commitment**, which means the underwriter agrees to buy all of the issue and thereby assumes the risk for any unsold securities. This is certainly the preferred option from the company perspective – and the most frequently used. The commitment is not made until the exact offering price is set, which is just prior to the effective date of the prospectus. This way, the issue can be priced according to current market conditions.
- **Best Efforts**, which means the underwriting firm agrees to use its best efforts to sell the issue but is not obligated to purchase unsold securities.

## The underwriting agreement

The actual underwriting agreement, a document of 10 to 15 pages, covers the matters included in the letter of intent, as well as the type of offering; warranties by the company; indemnification of the underwriter against liabilities arising under securities laws; and conditions and events that must occur before the underwriter is obligated to pay for the securities, including the receipt of a comfort letter from your independent auditor, the lock-up period, and the time and location of the closing.



## No guarantees

It's important to note that, while a considerable amount of time, energy and money will be devoted to the going-public process, there is no advance assurance that the offering will actually be successful – or even that the underwriting agreement will be signed and the transaction completed. Although there is economic incentive for the underwriter to see that the offering is successfully completed, the marketplace is the ultimate decision maker. The details and timing of the offering must respond to current market conditions.

## Printers

### Your printer plays a key role in the IPO

You need a financial printer who is thoroughly versed in the specialized requirements of producing a prospectus. For example, there are issues of accuracy, timing and security of information, as well as securities regulations concerning paper, type size and layout. Accordingly, you may want to ask for a referral from your underwriter, auditor or lawyer.

It's critical that your printer meet the quick turnaround times that are part of prospectus production. Often, revised drafts of the preliminary prospectus are needed within six to eight hours. The final prospectus itself will usually be printed the night before it's to be filed.

Your printer must also have the facilities for electronic filing as required by the Canadian Securities Administrators through the System for Electronic Data Analysis and Retrieval (SEDAR).

You can't avoid printing costs, but you can take steps to keep them to a minimum. Plan for the printing well in advance. Decide who will do the job and meet to discuss the process so that you have a clear understanding of what takes place.

## Consider the alternatives

Part of the evaluation process in deciding whether to take your company public is looking at the alternatives. If your company is not ready or if market conditions are not quite right, it may make more sense to look at interim or bridge financing.

### TIP

Most IPOs are firm-commitment underwritings. If underwriters are willing to proceed only with a "best efforts" underwriting, you may wish to re-evaluate your plans. This may be an indication that your company is not ready to go public.

### TIP

When it comes to printing documents, patience is more than just a virtue – it's a way to save money. With the evolution of word processing, most of the work can be done in-house or by your lawyers. You can minimize the significant costs of printing by waiting to send the prospectus to the printer until your documents are almost final. This way, the number of proofs and changes – and their associated costs – are reduced. Furthermore, ensure that your lawyers have compatible word processing software so that, once approved, documents can be transmitted electronically to the printer, thus avoiding the delays, errors and costs of retyping.



## TIP

All too often, going public is viewed as the only means, rather than one of several useful business alternatives, to achieve a company's objectives. Accountants can provide the expertise to help you make an informed, intelligent and objective decision.

There are a number of alternatives that could be less expensive and easier to undertake: commercial borrowing, institutional investment, venture capital, private placements of equity, employee shareholder plans, joint ventures and partnerships – even extended terms from suppliers or sale of the company.

It's important to point out that, whatever route you choose for your company, the advice on business planning, cleaning house and preparing your team and your story continues to apply. These are sound business practices. In fact, you'll be faced with the same questions about your company wherever you seek financing. The better shape you're in, the more compelling the story, the greater your likelihood of success in obtaining the required funds.

While there is no set formula, certain indicators may suggest an alternative to an IPO. These include:

- **Significant accounts receivable, inventory or property, plant and equipment that may not be pledged as collateral.** These indicators could suggest asset-based borrowing as a workable alternative.
- **A promising proprietary product or business that isn't sufficiently developed to go public.** It might make more sense to look at a venture capital or a private placement alternative.
- **An existing but undeveloped technology.** You may want to look at trading off a portion of future earnings for a financial infusion through a research and development joint venture, partnership or other arrangement.

## Overview of alternative options

**Commercial loans.** This type of financing depends on sufficient net worth, income, assets or cash flow. It involves borrowing costs, but no sharing of equity in your business. Depending upon the facts, you may negotiate short-term lines of credit, commercial paper, term loans, accounts receivable and inventory financing or mortgage loans.

**Venture capital.** The sophisticated venture capitalist is generally interested in equity investment in companies that have significant

growth or new technology potential and that ultimately plan to go public. Most will insist on having an active voice in the management of the company, which is often beneficial in added experience and reputation.

**Private placements.** A private placement of equity is similar to going public, and certain aspects of securities legislation often apply. Although you are not required to file a prospectus, you will usually have to prepare an offering memorandum, which is similar to a prospectus in many ways. Private placements will entail offering securities to a limited – usually sophisticated – number of investors who see growth potential in your company. The primary advantage to this type of financing is that it can be completed more quickly than the IPO process and at lower costs. However, such placements often result in a lower valuation of the company and a ceiling being placed on the total amount of capital that can be raised.

**Joint venture and partnerships.** In dollar terms, a joint venture or investment partnership can result in favourably priced financing. It can also bring in creative synergy and industry clout. But keep in mind that you may have to sacrifice a portion of your assets, the freedom to develop your own manufacturing or marketing capability, and possibly even the freedom to determine production levels or customer base.

**Selling the company.** This is, of course, another exit strategy, but it often has significant drawbacks. The sale of a private company may face a limited market and result in lower pricing than would result from selling shares in a public company. It also precludes any future upside earnings and may result in immediate, negative tax implications.

**Reverse takeover or merger.** There are alternative routes to taking your company public. In addition to the IPO, you may become a public company by amalgamating your private company with an existing public company. There are two ways to accomplish this: either merge with an operating company or acquire the majority of shares of an inactive public company and operate through it. This is a common method of going public in the natural resources



sectors. At the initial stage, neither of these alternatives raises new financing for your company. As with all the alternatives to going public, these are complex options that bear further discussion with your financial advisors.

## **The market listing**

Prior to beginning the intense offering process, you must consider where you will ultimately list your shares. There are five trading options in Canada: the Alberta Stock Exchange (ASE), Montreal Exchange (ME), Toronto Stock Exchange (TSE), Vancouver Stock Exchange (VSE) and the Canadian Dealing Network (CDN), a subsidiary of the TSE set up to facilitate over-the-counter trading for unlisted stocks. There are also options for listing in the United States.

The exchanges carry different weight in terms of prestige and reputation. They also vary in their trading volume and activity, in their geographic scope and in their listing requirements. You'll find some exchanges more favourable to a company of your particular size and industry sector.

As the parameters vary from one exchange to another, you should work with your financial advisors to consider your best options and to be prepared to meet the requirements of your selected exchanges.

Although it's possible to go public without a market listing, there are a number of good reasons for securing one as soon as possible. Prestige and respect go hand in hand with a market listing. The markets give you a readily determined value and enhance your marketability and collateral. This translates into potential liquidity for all shareholders as well as higher value. You also have easier access to institutional investors who are often restricted to investing in listed companies.

Once you have completed the IPO process, you're well on your way to securing a listing. The process is not nearly as rigorous as obtaining regulatory approval, but you do need professional assistance to guide you in your choice of market and to help you work your way through the technical compliance. As always, it helps to have experience behind you.

## Timing the markets

You've evaluated the process, considered the options and worked your company into shape. Now all that's left is the timing of your debut. You can get your company ready for the market. But is the market ready for you?

The stock market itself is one of the most unpredictable aspects of going public. A strong and rising market generally means there will be an appetite among investors for new issues. In addition, the market can be affected by specific trends, providing high values to particular industries where long-term profits and strong performance are expected. The market window – the appetite and capacity of the stock market to complete IPOs – opens and shuts on short notice and is more frequently closed than open.

Investors are often more favourable to IPOs in periods of low inflation and low interest rates and during rising markets. However, even during such a period, the markets will favour certain sectors and will close the window on others at any given time. You also have to contend with the uncontrollable forces of world economic conditions, which can strike a blow to markets without warning.

Assessing the state of the markets and the right timing for your company to raise capital is more art than science. Consult with your underwriter on a regular basis and follow the performance of companies in your industry or market to help develop judgement about your company's prospects.

- **Be a faithful reader of the financial press and investment newsletters, especially those that cover your industry.**
- **Gauge your market window by tracking how publicly held companies in your industry have fared, particularly those with recent public offerings.**

Because no one can always accurately predict the market's mood, you must be prepared to change your timetable if necessary. You don't want yours to be the deal that's one day too late. The best thing you can do is get your company to a state of readiness. Be prepared to move – and move quickly – when the time is right.

# The Initial Public Offering

a juggling act in a tight time frame...

legal requirements with specified deadlines...

essential team work...

an in-depth probe of your affairs...

a whirlwind tour to generate interest...

TIME FRAME

100 days

## Overview of the process

The offering phase should start with a sense of urgency, because the clock is ticking. So put your running shoes on for the 100-day dash to going public. You need to juggle a number of tasks in parallel time lines – and keep your business running as usual.

In order to go public, a company must follow a process set out by provincial law and securities regulations. You're not expected to know all the technical detail, but you do need to understand that you and your team must fulfill all information requirements. There is a due process to follow – right down to size of paper and colour of ink you use for your prospectus.

Let's review the steps involved. You, your underwriters and your advisors will prepare a detailed description of your business and its prospects, which will be presented in a printed document called a prospectus. At the same time, the underwriters will probe your business in a process of due diligence. Your prospectus will go through a regulatory review and, with the help of your underwriters and advisors, you'll address any concerns that are flagged as a result. Using the preliminary prospectus as a selling tool, you'll do a whirlwind road trip to take your story to potential investors. Throughout the entire process, your underwriters will elicit interest and gauge the response of investors to help determine the offering's likelihood of success, as well as the final number and price of the shares. In the last days of the process, you'll set a final price and file a final prospectus. Finally, your underwriters will sell the shares and deliver the proceeds to the company at a closing meeting.

The time pressure is intensified by the issue of potential liability. Everyone involved in preparing the prospectus must protect themselves from potential liability that could result from misstatement, material omission of fact or inconsistencies. By law, a prospectus must constitute, "...full, true, and plain disclosure of all material facts relating to the securities offered by this prospectus..."

With the pressure-cooker of deadlines and an eye to protecting yourselves from any potential lawsuits, you can well imagine that tension mounts. This is one of the reasons to do a thorough job in preparation and planning.



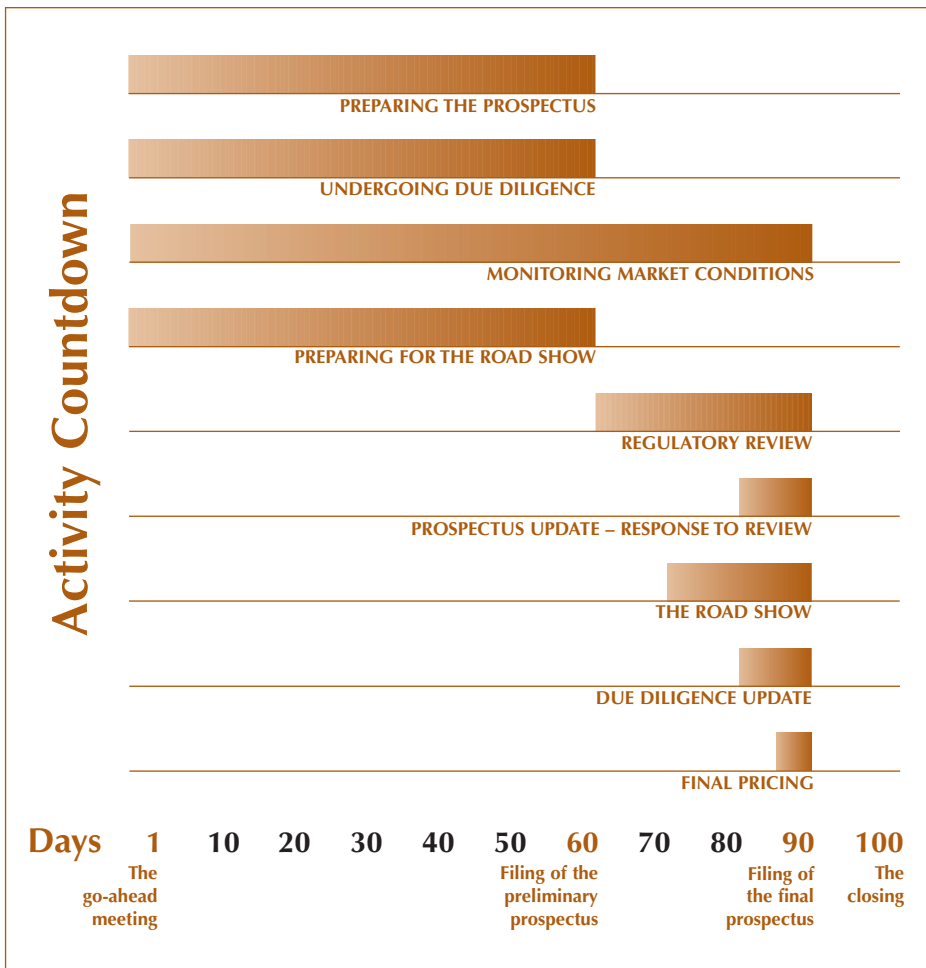
### TIP

As distracting as your IPO may be, keep a keen eye on your business! IPOs are so absorbing that you can easily lose focus of your business when you work on one. Just be cognizant of this "distraction potential" and plan for it to ensure your business doesn't come out of the IPO process weaker than it was when you went into it.



**FAST FORWARD**  
*Preparing the prospectus, page 36;  
The final prospectus, page 43*

## Zero to Sixty – Things speed up quickly



### TIP

In addition to running your business, there are four parallel tasks to co-ordinate in the first 60 days of the offering process:

- > **The preparation of the preliminary prospectus.**
- > **The investigation of your affairs for underwriter due diligence.**
- > **The monitoring of market conditions for pricing purposes.**
- > **The preparation of marketing materials for the road show.**





## TIP

Even with an experienced team of advisors, make sure your company takes an active role in controlling the progress of the IPO. Remember, of all the parties involved, the company has the most at stake.

There will be numerous opportunities for falling behind schedule during the IPO process. Some of it may be unavoidable, but strive to maintain your timetable. For each unscheduled delay, your management team must balance the potential costs – new, required interim financial information, a missed market window or a less enthusiastic underwriter – against the costs of hasty decisions such as problems dealing with securities regulators.

## The go-ahead meeting

The offering process officially gets under way with an "all hands" meeting of what will become the working group. Your company executives meet with your lawyers, auditors, lead underwriters and your underwriters' lawyer to establish relationships, responsibilities and time frames.

It is important that one person is identified and clearly acknowledged as the co-ordinator of the team. In some cases this may be your lawyer, but it may also be a designated person from within the company. In addition, the company must have an ultimate decision maker for all issues that may arise during the IPO process.

As a group, you will agree to areas of responsibility for gathering relevant information and preparing different parts of the prospectus – and to deadlines for completed work. A great deal of information may be available, but because the prospectus is a liability document, the information must be factual, verifiable and traceable to the source. You will determine the availability of each of the group members, develop a timetable and a group list of names and contact numbers.

At this time, it's wise to hammer out the due diligence requirements – the information that will be included in the auditors' comfort letter to the underwriters. There is a natural tendency for the underwriters' lawyers to request as much comfort as possible as the related cost is borne by your company. Consequently, management should insist on being involved in the discussions determining what will be included in the comfort letters.

Although the lawyers are simply protecting their client, you are responsible for paying the bill for completing the due diligence process. So avoid misunderstanding and time delays by reaching an agreement before due diligence begins.

## Preparing the prospectus

Essentially, the prospectus is a document that provides the necessary information to allow investors to make reasoned and informed decisions. It includes the history of your company and outlines future prospects and risks associated with the investment.



It also describes the securities to be issued and outlines how the proceeds from the sale of the securities will be used.

The content, the sequence of information and the form of the prospectus are set out in provincial securities acts and may vary according to industry, size of company and the nature of the offering.

You know your business best, so be sure to take a lead role in the preparation of the prospectus. Don't abdicate responsibility to the underwriters or professional advisors.

### First the preliminary

Long before the final prospectus is filed, you must first prepare a preliminary prospectus, which is subject to regulatory review and revision and which includes all of the required information, except for the final price, the underwriters' commission, the final number of shares to be sold and the net proceeds. That information is decided in the last days of the offering and is included with any revisions in the final prospectus, which is also subject to regulatory review.

The first challenge in preparing the document is to check your writing ego at the door. The prospectus is a committee effort. Individual team members submit their portions of the prospectus to the draft co-ordinator who assembles the pieces to form a first draft, which is then circulated to the team for review. You can expect numerous revisions before all team members are satisfied with the final draft document.

The next challenge is to maintain a balancing act in the writing. The preliminary prospectus has a dual purpose: it's a selling tool and a document designed to limit liability. Though it's used as a marketing document to promote investment in your company, for liability purposes it also includes full disclosure of all risks associated with the offering.

Because the basis of the prospectus is a standardized format, there is a certain uniformity to every prospectus that is filed. But, notwithstanding the fact that the content requirements and sequence of information are straightforward, there is considerable room for subjectivity in drafting the material.



**FAST FORWARD**  
*Marketing the IPO,*  
page 42;  
*The final prospectus,*  
page 43;  
*The closing,*  
page 44



The respective provincial securities commissions are rigorous in reviewing the document to ensure compliance with the prescribed legislation.

## Cover

The printed preliminary prospectus is known as "The Red Herring" because it bears a proviso on the cover – printed in red ink – that states that the prospectus is not yet final and that the content may be subject to completion or amendment. It reads as follows:

"This is a preliminary prospectus relating to these securities, a copy of which has been filed with the (provincial) securities commission but which has not yet become final for the purpose of a distribution to the public. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time a receipt is obtained from the (provincial) securities commission for the final prospectus."

The cover of the final prospectus reads like a fact sheet on the offering. It includes the name of the company and date of offering, a description of the securities being offered, the offering price, the market for the securities and the anticipated net proceeds to the company. It also includes the name of the lead underwriters and certain information about the underwriting agreement.

## Contents

As a general summary, the contents of the prospectus break down into distinct components.

- It includes details of the offering itself – the nature of the securities, how the money will be raised and how the proceeds will be used by the company.
- There is a description of the company, including any significant changes over the previous five years. The

points of disclosure cover your principal products and services and intellectual property such as patents and trademarks, as well as significant markets, customers and competitive conditions.

- The prospectus includes detailed financial information – your company's operating results, its capital structure and an analysis of corporate debt. You're required to provide a comprehensive financial picture, including historical audited financial statements, unaudited interim financial statements and often financial forecasts.
- You also must disclose all material acquisitions and dispositions that have taken place over the two years prior to preparing the prospectus, along with their impact on the company's operating results. Financial information may also be required for any acquired companies.
- In a separate section, the prospectus includes Management's Discussion and Analysis (MD&A) of the operating results and the liquidity of the company.
- Also included is detailed information on management, directors and principal shareholders – including details of remuneration packages as well as the interests of management in any of the company's material transactions.
- Finally, there is a discussion of income tax considerations for the investor, any legal proceedings in which the company is involved and an analysis of risk factors.

## Undergoing due diligence

As part of the process, the lead underwriters and their lawyers conduct a thorough investigation of all aspects of your business. They do so for three primary reasons: to gather information for the prospectus; to be sure that all information that is material to the offering is included; and to confirm the accuracy of that information. Due diligence is a "...reasonable investigation... to provide reasonable grounds for a belief that there has been no misrepresentation." The process is primarily carried out over the first 60 days, and it requires time, patience and co-operation from management.

In addition to protecting the underwriters from potential liability for misrepresentations in the prospectus, the investigation assures investors that the prospectus contains full and true disclosure. This process gives the underwriters a better understanding from which to present your company to investors.

### **Request list**

Generally, the underwriters' lawyers will compile a comprehensive request list for documents pertaining to your company. For example, you'll need to provide corporate documents such as articles of incorporation, minutes of board meetings, detailed records of the company, a current list of all shareholders and so on. They'll also want sales-related information – a list of your top customers and suppliers and any contracts and agreements with them, as well as documents regarding material assets and liabilities.

As part of due diligence, the lawyers will do a thorough review of your intellectual property. They'll investigate all financial information and corporate financing and securities matters, as well as your insurance coverage and claims, litigation and tax matters. They'll also want to satisfy themselves that your company is in compliance with relevant government regulations. Finally, they'll look at your employment status – a list of employees, an organizational chart, your benefits plans, any collective bargaining agreements and details of union activities. This investigation will also include meetings with your auditors, your company lawyers and, in certain circumstances, other consultants.

### **Management questionnaire**

Often, the underwriters' lawyers prepare a questionnaire for officers and directors of the company. In addition to seeking general information about the company, the questionnaire may question statements included in the prospectus, management background and experience, terms of employment contracts and compensation. The process may even include extensive background checks on company executives by private investigators. Your officers and directors must be prepared to answer all questions openly and honestly. The lawyers will

look to verify information and identify any inconsistencies, misstatements or omissions.



## TIP

If your company has new or unusual accounting and/or disclosure issues, you may want a pre-filing conference with securities commission staff to review such matters. These issues may be more easily handled early in the process rather than in the commission's formal review. A pre-filing conference may minimize costly and time-consuming revisions.

## Close inspection

The underwriters and their lawyers will visit your facilities to inspect your material assets. They'll contact customers, suppliers and others with whom you do business and hold meetings with your directors, auditors and other advisors. In almost all cases, they will request a comfort letter from your auditors with respect to specified unaudited financial data contained in the prospectus.

## Updating

Shortly before the preparation of the final prospectus, your working group of advisors will hold a meeting to update the due diligence. This gives all parties an opportunity to raise any questions they have about the offering – or your company – and to establish due diligence defences.

## Regulatory review

Once the preliminary prospectus is agreed upon, it is printed and filed with the relevant securities commissions, along with the auditor's "comfort letter" providing a status report on the auditor's work to date and certificates from the company and the underwriters.

There is a brief pause in the process when you file the preliminary prospectus and the securities commissions conduct their first-stage regulatory review. Depending upon the activity in the markets, the securities administrators will usually issue a comment letter within three to four weeks, outlining required revisions, points for clarification, requests for further information and any other questions.

It bears repeating that, even though you and your team have satisfied yourselves that the document constitutes "...full, true, and plain disclosure of all material facts relating to the securities offered...", prospectus writing is a subjective process. There are often a number of questions or comments that require clarification from the company, your lawyers or the auditors. Usually your lawyer co-ordinates any required revisions.



## TIP

When it comes to road shows, form may matter almost as much as substance. Road shows allow you to tell your corporate story but they also enable you to showcase the talent, caliber and integrity of your management team through an organized, smooth presentation. It can be one of the most important elements of a successful offering. Maximize the value of your road show through planning, preparation and practice!

If the changes are extensive, you may need to file an amendment and distribute it to all those who receive the preliminary prospectus. Otherwise, changes that do not materially affect the offering are incorporated into the final prospectus.

## Marketing the IPO

At the same time you're preparing the prospectus, satisfying the probing questions of due diligence *and* trying to maintain business as usual, you also need to think about how you will present your story to potential investors.

Once you receive the first comment letter from the securities administrators and are able to address their concerns, it's time to take your story on the road to institutional investors and investment dealers.

Not only do you have a narrow window of time to do so, you must also respect strict rules about the ways and means of marketing your offering. Your primary information source is the preliminary prospectus – the red herring – which provides the basis for what's known as the "green sheet." Prepared by the underwriter, the green sheet is a summary of key information from the prospectus, often with comparative data on similar stocks.

## The road show, the red herring and the green sheet

Armed with the red herring and the green sheet, you, your key executives and your lead underwriter will go on a whirlwind tour known as the road show – a series of presentations to the investment community that typically takes place in a number of different cities over a two-week period. The road show itself usually includes a prepared presentation – showcasing the company's vision, its competitive position, its unique attributes and financial performance – followed by a question and answer period. This is the core of the selling effort. The greater the interest you build, the higher the expected pricing or market value of your company.

The road show also gives you an opportunity to showcase the strength of your management team – and your own leadership ability, vision and integrity. The way you conduct yourself speaks volumes about the way you approach business.

The competition for investor interest is often fierce, so make your road show a good one. In fact, because the road show can be one of the most important elements in a successful offering, you should call in your public relations or investor relations firm for assistance.

As excited as you may be about your IPO, you must be very careful about inadvertently disclosing confidential information during this pre-selling period. Remember to use and discuss only the information already made public through the preliminary prospectus and the green sheet. You must be guarded, even in casual conversation with family and friends, about revealing any new information. Keep confidential company information confidential. Otherwise, you may be deemed to be promoting – and the securities commissions do not permit excessive promoting of a public issue. There are serious consequences for violating the rules, including postponement of the offering.

## **The final prospectus**

Throughout the whole of the offering period, the underwriters are testing the waters in terms of pricing and market acceptance. General market conditions and the interest you generate with the preliminary prospectus and the road show affect the final decision on pricing and the number of shares – as well as whether the time is right to proceed with the offering.

Although the underwriters usually recommend the final price and offering size, there is always room for negotiation. As such you should monitor market conditions in order to help you negotiate the final pricing decision. Generally speaking, it's better to go to market slightly underpriced. This encourages the trading of your shares in the after-market and leaves room for an increase in value.

When the price and offering size have been established and the due diligence and regulatory review completed, you are ready to revise and file the final prospectus. Once the final prospectus is filed and a receipt obtained from the securities commissions, the selling and distribution of shares may begin.

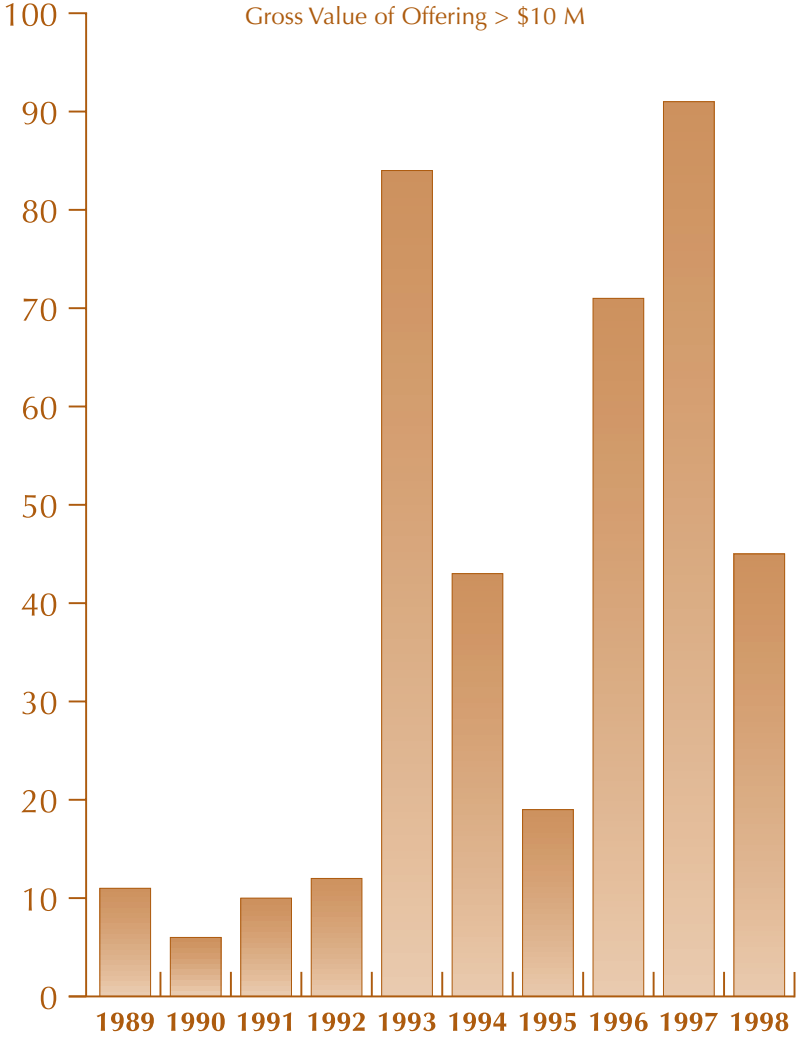
## **The closing**

One to three weeks after signing the underwriting agreement and the securities offering, there is a closing meeting with all those involved in the process. Legal documents are signed and exchanged, after which you receive the net proceeds of the offering in exchange for the securities that are provided to the underwriters.

This closing meeting is the official start of life as a public company.

# The closing meeting: How many companies make it?

**IPO activity in Canada from 1989 to 1998**  
All Canadian Exchanges





# Life as a Public Company

transition time...  
from private to public...  
a new time frame...  
adjustments...  
accountability...  
keeping investor interest alive...

TIME FRAME  
perpetual three-month calendar

## **Transition and adjustment**

The closing is a point in time which marks the beginning of a difficult transition as you adjust to being a public company. For example, making decisions becomes more complicated, because business decisions can have a direct impact on the value of the company's securities. You are now in the business of delivering shareholder value – and you must learn to balance short-term market demands with long-term company objectives.

It can also be difficult to get accustomed to what amounts to working under a microscope. If you've been used to making all the decisions alone and calling all the shots, you have to learn to operate within a more structured environment.

In addition, you must also devote considerable time and effort to maintaining your market position and investor interest. If enthusiasm wanes, trading declines – and thinly traded shares dilute the liquidity benefits you may have been seeking through the IPO. You need an effective investor relations program and ongoing assistance from underwriters to ensure good distribution and support of your stock, as well as continuing interest on the part of analysts.

## **Public accountability**

It may seem that your new public company has become an information machine. You are now regulated under a disclosure regime to continually disclose timely and accurate information about your operations and financial results. You're required to produce quarterly financial reports; to disclose material changes; to produce annual, audited financial statements, accompanied by management's discussion and analysis of the results; to distribute an information circular with proxy material; and to hold an annual meeting of shareholders. You must also comply with the securities commission's electronic filing system, which requires you to file all your disclosure documents for a public disclosure data bank (a system known as SEDAR).

Expect a steep learning curve as CEO. To make matters more complicated, you're learning in the public arena – and not necessarily with time on your side.

A key factor to keep in mind is that you are accountable for the contents of your prospectus. Investors purchased securities in your company based on good faith and a reasonable belief in your capabilities to carry out your plans. So set to work to fulfill the initiatives outlined in the prospectus.

Your plan of action should strive to:

- **Add shareholder value by continuing to grow.**
- **Project a positive image to investors, customers and the general public.**
- **Maintain innovation and commitment at the management level.**

## **The perpetual three-month calendar**

One of the major challenges you face as a public company is to reset your company clocks to a three-month time frame. Security regulations require quarterly reporting of your operating and financial results. You generally have 60 days following the end of each of the first three quarters to give an accurate accounting to shareholders, and 140 days following year-end to produce an audited financial statement with management's discussion and analysis, to distribute an annual information circular and to hold an annual meeting of shareholders.

This ongoing requirement makes it critical to have good information and reporting systems in place to expedite the process of timely, complete and accurate disclosure.

## **Timely disclosure**

Unfortunately, reporting isn't limited to four times a year. You are bound to disclose all news that materially affects the company – good or bad – as promptly as possible. "As promptly as possible" means as soon as you have the full details and are satisfied that they are reasonably accurate. Generally, you have 10 days to issue a press release, including an impact statement from management, announcing any material change – that is, any change that can reasonably be expected to have a significant effect on the market price or value of the company.

## Keeping investor interest alive

One of your most important tasks as a public company is to keep investors and potential investors interested and to satisfy requests for information. Your company will be under ongoing pressure from people wanting an information advantage. You must be cautious about how, when and to whom you release information.

You'll find that shareholders and analysts have a huge appetite for information. In addition to the information your company already provides, you'll likely want to generate added credibility through positive media coverage and influential analysts' reports on your company. These are two of the strongest influences on investment decisions. Because analysts are your conduit to investors, you have the additional pressure of being proactive in terms of keeping them up to date with information – and in being prepared to deal with their ongoing requests.

Responding to requests for information and soliciting coverage can be a huge drain on management time. With so much competition for media and analyst attention, the investor relations process must be carefully managed by people who understand the field. As such, you may want to consider hiring an investor relations manager – either in-house or through contracted services – to help ensure you are projecting a strong and consistent image.

# Going Public in the United States

the U.S. marketplace...  
attracting U.S. investors...  
options in offerings and listings...  
disclosure...  
the right choice...



## Going public in the United States

As with the main body of this guidebook, this is not a technical manual but an overview to give you an idea of what is involved in taking a Canadian company public in the United States and why you might want to consider this alternative.

### What draws Canadian companies to the U.S. marketplace?

The bottom line is access to more capital and increased trading volume in the shares of your company. Generally speaking, there is a greater variety of investors in the U.S. with a bigger appetite for risk. Many Canadian companies also access the U.S. markets for high-yield debt since such a market does not exist in Canada. Another big attraction is the volume of trading – often very high levels – which makes American markets ideal for raising capital and can translate into increased value and greater liquidity. The attraction for Canadian companies may also be increased visibility. A presence in the U.S. markets provides international exposure for a company's name, services and products. It may also provide profile and positioning for a possible strategic alliance with a U.S. multinational company.

### What attracts U.S. investors?

The U.S. has a long tradition of personal shareholding; individuals see the stock market as a way to build personal wealth and tend to be savvy and sophisticated. There is an appetite for foreign holdings, as the number of non-U.S. companies entering the U.S. markets has continued to increase at a record-setting pace. There is also increasing interest in Canadian securities on the part of mutual funds that specialize in foreign holdings.

Some of the positive characteristics that the U.S. investment community looks for are:

- Highly visible products and services. Niche products that provide a solution to a previously unmet need are particularly attractive.
- Significant and sustainable revenue growth.

#### TIP

For a more comprehensive look at going public in the U.S., please request a copy of the PricewaterhouseCoopers publication "Entering the United States Capital Markets – A Guide for Non-U.S. Companies."

- For start-up companies, sole access to a market or ownership of natural resources and significant potential for growth.
- Demonstrated profitability. This applies even where a company has been profitable for only a short period of time but has excellent prospects for high growth in the future.
- An experienced management team with a proven track record.
- Strong systems. Investors look for internal controls fully capable of handling growth and increased financial reporting requirements.
- Audited financial statements prepared in accordance with – or reconciled to – U.S. standards in generally accepted accounting principles (GAAP).
- Purpose. Your company's need for capital should typically be long term rather than short term and should be supported by a strong business plan.

If your company fits the description, you may be ready for a public offering in the U.S. and a listing on a major stock exchange. If you're lacking in some areas but have a good business plan, you may want to consider an interim step, such as a substantial private placement that positions you for a future public offering.

## The IPO process in the U.S.

The IPO process in the U.S. is much like that in Canada. There is a similar time curve – planning time up front, the "crunch" of the offering phase and ongoing compliance as a public company. The same principles of preparation apply. You have to weigh the advantages and disadvantages, consider the costs, put together a sound business plan and then put that plan into action. Before you take your company to the markets, you must do the necessary "housekeeping," put together a team of advisors, ensure strong reporting systems are in place, have the required audited financial statements, address issues of corporate governance and begin building a story to take to the public.

The actual offering process – the "all hands" meeting, the preparation of a prospectus, underwriter due diligence, the regulatory review, the road show and the closing are also similar

in form. It's the content and the details that differ. The U.S. has more rigorous disclosure requirements. In the U.S., the accounting and disclosure system supports, indeed, makes possible, the willingness of both institutions and individuals to invest in its capital markets. This broad participation provides a much larger pool of investor funds than would otherwise be available. U.S. regulators strongly state that the success of capital markets directly depends on the quality of the accounting and disclosure system. Disclosure systems that are founded on high-quality standards are necessary to give investors confidence in the credibility of financial reporting.

The offering of and dealing in securities in the U.S. is predicated on three fundamental values: transparency, disclosure and comparability. The Washington-based Securities and Exchange Commission (SEC) promotes these values and ensures compliance with them through the applicable laws of the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as various rules, policies, interpretations and enforcement proceedings of the SEC and its staff.

All securities offerings in the U.S. public markets are governed by the SEC or state regulators. Offerings generally must be registered with the SEC, although exemptions from registration are available in certain circumstances. However, even if exempt from certain SEC filing and registration requirements, an offering is never exempt from the anti-fraud provisions of the securities laws. Prospective investors must still be provided with sufficient information to make an informed decision. In addition, the offering may be subject to state requirements.

## **Options in offerings and listings**

There are a number of routes to the U.S. markets. Financing objectives, cost and timing are among the many factors that must be considered in deciding whether to initiate a public or private offering. A public issue allows a company to establish a wider trading market for its securities, as well as broader exposure to the business and investing public than is possible with a private offering. The advantages of a private placement include potentially lower costs of preparing the offering document, faster processing and the ability to negotiate complex terms on a confidential basis.



An exempt offering may be appropriate for a company that has limited capital needs and is not yet ready to go public. Such an exempt transaction can be completed more quickly. Because a prospectus is neither prepared nor filed with the SEC, there are substantially lower costs in legal, accounting and registration fees. However, there are disadvantages to exempt offerings. They generally result in a lower stock offering price than would be obtained in an IPO, and a ceiling is often placed on the amount of capital that can be raised. In addition, to offset the lack of liquidity and the risk that the company may never go public, investors in exempt offerings may be expected to discount the perceived value of the company's stock.

Certain exempt offerings under Rule 144A are often used by Canadian companies as an interim step to going public. Rule 144A allows the company to offer or sell debt or equity to certain institutional buyers without registering with the SEC. The object of Rule 144A is to allow large institutional investors to trade restricted securities more freely with each other without subjecting the issuing company to the SEC registration and disclosure process. In many cases, the financing is provided with the stipulation that the company eventually proceed with a public offering.

Another popular route for non-U.S. companies is to first list their existing securities as a prelude to a U.S. public offering raising new capital. They may elect to be quoted on the OTC Bulletin Board, an electronic quotation system operated by the National Association of Securities Dealers (NASD); quoted on the Pink Sheets, a paper-based quotation system operated by the National Quotation Bureau, LCC; listed on the NASDAQ Stock Market (NASDAQ), an electronic securities market operated by NASD; or listed on the New York Stock Exchange (NYSE).

As in Canada, companies listing on a particular stock exchange are required to meet certain minimum listing and ongoing requirements. Among the advantages of listing prior to making a public offering is that it allows a non-U.S. company to complete the SEC registration process in a more controlled and organized manner, without the added pressures of a capital-raising exercise. It also allows the company to establish a following in the U.S. market before embarking on a public offering.

To access the public debt markets, many non-U.S. companies have registered with the SEC without seeking to list their equity securities on the NYSE or obtaining a NASDAQ quotation. Once the initial SEC registration has been completed, the company will have the flexibility to pursue other types of offerings. SEC registration also provides a company with a certain status, as it is viewed as a "good housekeeping" seal of approval.

## **Disclosure drives the IPO process**

High-quality standards for financial information and disclosure underpin all activity in the U.S. public markets. The SEC ensures that participants meet expectations by preparing "plain English" disclosure that provides for transparency and comparability.

These demands for disclosure are set out in various forms and detailed rules and regulations that can be confusing. The complexity in understanding the proper application of these rules and forms, as well as the content requirements, makes it essential to have experienced advisors who have expert knowledge of U.S. filing requirements.

The cornerstone of the IPO in U.S. public markets is the registration statement. Although its exact content and format will vary depending on the offering, the registration statement is basically a two-part document. Part I is essentially the prospectus. It contains information the SEC considers necessary to help investors make an informed decision, including the company's financial statements and related financial disclosures. In addition to the financial information, the prospectus must include extensive non-financial information that the SEC believes is important to prospective investors.

The financial statements are a significant component of the registration statement that cannot be ignored. The market and the SEC place great emphasis on transparent, timely and reliable financial statements. What does this mean for a company entering the U.S. market? The company must review its accounting policies to ensure consistency with generally accepted accounting principles in the U.S. as well as comparability with the accounting policies of other companies in its industry.

The financial statements to be included must either be prepared in accordance with generally accepted accounting principles in the U.S. or the material differences must be quantified and presented in the financial statements. There are a number of significant differences between accounting principles used by companies in Canada and the U.S. The disclosures required in financial statements for an offering of securities in the U.S. are far more detailed and robust than the current disclosures of many Canadian companies. It is important to understand these differences and their effect on the company's earnings and financial position.

Management's discussion and analysis (MD&A) is a required and significant element of Part I of the registration statement. In this section, management provides investors and users with information relevant to the assessment of the liquidity, capital resources and results of operations of the company, with particular emphasis on the company's prospects for the future. MD&A continues to be an area of focus for the SEC staff when reviewing registration statements and inevitably results in comments – particularly relating to the lack of forward-looking information. This focus makes it imperative that the MD&A be carefully drafted. It must be written as objectively as possible, pointing out both favourable and unfavourable developments.

Part II of the registration statement contains certain additional detailed information required by the SEC, such as the registrant's by-laws, articles of association and significant contracts. The SEC does not view this supplementary data as essential to a prospective investor, and consequently does not require it to be distributed with the prospectus. However, the content of Part II is considered public information and is available to interested parties on request through the SEC.

After you file the registration statement with the SEC, you must file in the various states where you're likely to have investors. Individual states have their own securities laws known as "Blue Sky" laws. These vary in content and must be considered for any offering in the U.S.

## **Your U.S. advisors**

As in Canada, your team of professional advisors for an IPO must be chosen with care. They will include your auditor, lawyer, underwriter, investor relations professional and printer. The variance in laws from country to country and even state to state makes it critically important to have a team of professional advisors with experience in U.S. capital markets.

Your accounting firm must have the network and experience to provide the technical expertise with respect to U.S. GAAP and SEC requirements, and it must be up to the challenge of preparing the registration statement and getting it cleared with the SEC. It will be important to retain a Canadian firm that knows and understands the Canadian business perspective and also has extensive U.S. experience and expertise.

Your lawyer must specialize in securities law to be able to provide assurance that you are meeting all the legal obligations and responsibilities under the U.S. securities laws. The U.S. environment is litigious in nature, so expert legal support is crucial to protecting your company and its interests.

## **The right option**

Without question, the complexity of taking a Canadian company public in the U.S. can make it seem like a daunting prospect. But it can be highly rewarding – in terms of access to capital, increased value and greater liquidity. However, it requires careful planning, a great deal of time and a solid understanding on the part of your company, your investment bank and your professional advisors. Choosing the right option is the most important decision.

Your Decision

## **Should you take your company public?**

At this point you have the facts about what it takes to go public – the preparation, compliance and ongoing commitment. You have a good idea of the time it takes. You’ve looked at what the process is all about, evaluated the advantages and disadvantages, and weighed the costs. Practically speaking, you’ve worked through a process of strategic planning and analysis. You know what it takes to get your company looking and operating like a public company. You’ve also considered alternative methods of financing.

You have all the factual information you need to make an informed decision. But ultimately, the actual decision comes down to soul searching – to the examination and evaluation of your reasons for taking your company public and of how such a decision will affect your close personal relationships and the company itself. Are you considering going public solely to raise money? To expand the company? For status and prestige? Is going public necessary to attract and retain key people? Are you at the stage in life where you’re looking for greater personal liquidity or a planned exit strategy?

The process can work for any of these reasons. But remember, it takes time – and careful timing.

# Appendices

## Glossary

**After-market** – Also known as the secondary market. The public trading of a company's securities after the initial public offering.

**All hands meeting** – Also known as the "go-ahead meeting." The initial, full assembly of your offering team, including company officers, your lawyer, auditor, underwriter and underwriter's lawyer.

**Analyst** – A specialist who studies certain industries or stocks for the purpose of giving investment advice.

**Bailout** – An offering in which selling shareholders sell an amount of stock, typically greater than 15% to 20% of an offering.

**Banking group** – Also known as the underwriting group. The group of underwriters put together by the lead underwriter to sell your securities.

**Best-efforts underwriting** – An underwriter's hedge: they agree to use "best efforts" to sell the shares but are under no obligation to purchase any unsold shares.

**Blue sky** – A U.S. term, the name applies to state securities laws. Its origin comes from fraudulent schemes in the early 1900s, including selling building lots in the "blue sky."

**Capitalization** – The total amount of securities issued by a company, including, in certain circumstances, short- and long-term debt.

**Closing meeting** – The meeting at which final documents are exchanged and the offering company receives its proceeds.

**Comfort letter** – A letter or letters that the company's independent auditor issues to the underwriter, detailing results of accounting and auditing procedures performed at the underwriter's request as part of the due diligence process. A similar letter or letters may also be provided to the securities regulators.

**Comment letter** – Also known as a "deficiency letter." The securities commission's response to initial or subsequent filings, stating the areas that have been found incomplete or for which further explanation is required.

**Dilution** – A decrease in the per-share book value of the company or the percentage of ownership.

**Due diligence** – A standard of reasonable investigation by the company's underwriters and directors affirming that the statements made in the prospectus are true and do not omit any material facts.

**Effective date** – The first day that securities of an offering may actually be sold – upon filing of the final prospectus and receipt from the securities commission.



**Escrow** – Also known as "lock-up." An agreement imposed by the underwriters and/or securities regulators to prevent insiders from selling their shares on the market too soon after going public.

**Final prospectus** – See "preliminary prospectus." The printed document filed and approved by the securities commission and used to sell shares to the public. Prepared in the final stages of an offering, it contains required information to help the investor make an informed decision and includes the number of shares being offered, the offering price, the underwriter's commission and the net proceeds from the sale.

**Firm commitment** – An underwriter's agreement to buy all the shares in the offering at a fixed price and to resell those shares to the public. Any shares not sold to the public are paid for and held by the underwriter.

**Go-ahead meeting** – See "all hands meeting."

**Green sheet** – A summary sheet prepared by the underwriter to help other underwriters and securities dealers understand the key elements of the offering contained in the prospectus.

**Insider** – Anyone with access to non-public information about the company, usually any officer, director or holder of more than 10% of a company's publicly traded shares.

**Insider trading** – Trading in a company's securities by company insiders or others with access to non-public information about the company.

**Lead underwriter** – The primary underwriter for the company with whom the offering agreement is made. The lead underwriter acts as the organizer and leader of the group of underwriters who will sell the securities.

**Letter of intent** – A non-binding agreement between the underwriter and the company stating an intention to complete an offering and specifying terms that will be contained in the final underwriting agreement.

**Over allotment** – A provision allowing the underwriter to buy a specified number of additional shares from the company at the offering price, in the event they sell more shares than agreed to in the underwriting agreement. (This is also known as the "green shoe option" because the Green Shoe Company was the first to use it.)

**Over-the-counter** – The market for securities not listed on a stock exchange.

**Preliminary prospectus** – Also known as a "red herring." An interim document filed with the securities commission and provided to prospective investors to allow them to make reasoned and informed decisions. It does not include the underwriter's commission, number and offering price of shares or net proceeds.

**Price-earnings ratio** – The price of a stock divided by its earnings per share.

**Primary offering** – The sale of previously unissued securities.

**Private placement** – The sale of securities that are exempt from prospectus requirements because they are not being offered to the public.

**Proxy** – A shareholder's written authorization for some other person to represent that shareholder and vote the respective shares at a shareholders' meeting.

**Red herring** – Also known as the "preliminary prospectus." A document with distinguishing red ink on the cover to identify it as not being final.

**Registrar and transfer agent** – A person or institution appointed by the company to issue certificates to new shareholders, maintain current records of all shareholders, including addresses, and record the transfer of shares.

**Registration statement** – A U.S. document consisting of a prospectus and all other disclosures not required in the prospectus but required to be filed with the Securities Exchange Commission.

**Road show** – A management tour following the filing of the preliminary prospectus that consists of a series of presentations to potential investors in a number of different locations.

**Rule 144A** – A U.S. rule that allows the sale of restricted securities to certain institutional investors without registering with the SEC.

**SEC** – The U.S. Securities and Exchange Commission, an agency based in Washington, responsible for the administration of U.S. federal securities laws.

**Secondary offering** – A public offering of shares owned by existing shareholders.

**Transfer agent** – See "registrar and transfer agent."

**Underwriter** – The investment dealer with whom you reach an agreement to market your securities. See "lead underwriter."

**Underwriting agreement** – A binding contract between the underwriter and the company, normally signed within 24 hours of the expected effective date of the offering. See "letter of intent."

**Window** – The market window refers to the market's appetite to complete an IPO. An open window means many IPOs are being completed; a closed window means just the opposite.

## About PricewaterhouseCoopers LLP

At PricewaterhouseCoopers, our Initial Public Offering Services group has the resources and expertise to guide you through the complexities of your IPO from beginning to end. We offer industry-specific services in a wide range of areas, including consumer and industrial products, energy and mining, financial services, real estate, forestry, technology, communications, media and entertainment.

As a member of a full-service global firm, PricewaterhouseCoopers LLP can provide the strategic insight, industry knowledge and financial expertise you will need to complete the IPO process successfully. Our years of experience and our leading network of contacts enable us to secure the services of the foremost legal, underwriting and IPO-related specialists. Also, by leveraging our global resources we are invaluable in obtaining cross-border listings on exchanges both in North America and around the world.

The initial public offerings process can be rigorous. We're here to help you better understand what it takes to "go public." Our IPO Services group will equip you with what you need to realize your goals as a publicly traded company.

## Contact us today

Call the IPO regional centre nearest you so we can help you make an informed decision about your future.

### Toronto

**Eric Slavens**  
**Public Offerings Service Leader**  
**(416) 218-1432**  
eric.slavens@ca.pwcglobal.com

### Vancouver

**John Webster**  
(604) 806-7726  
john.webster@ca.pwcglobal.com

### Calgary

**Dennis Hoffman**  
(403) 509-7530  
dennis.j.hoffman@ca.pwcglobal.com

### Edmonton

**Barry James**  
(780) 441-6838  
barry.james@ca.pwcglobal.com

### Winnipeg

**Gino Scapillati**  
(204) 926-2445  
gino.scapillati@ca.pwcglobal.com

### Kitchener

**Dennis Grimm**  
(519) 570-5701  
dennis.grimm@ca.pwcglobal.com

### Ottawa

**Bryan Disher**  
(613) 237-3702  
bryan.disher@ca.pwcglobal.com

### Montreal

**Jean Marois**  
(514) 205-5047  
jean.marois@ca.pwcglobal.com

### Québec

**R. Laurent Després**  
(418) 691-2435  
laurent.despres@ca.pwcglobal.com

### Halifax

**Gary Stafford**  
(902) 492-5149  
gary.r.stafford@ca.pwcglobal.com

PricewaterhouseCoopers ([www.pwcglobal.com/ca](http://www.pwcglobal.com/ca)), the world's largest professional services organization, helps its clients build value, manage risk and improve their performance.

Drawing on the talents of more than 155,000 people in 150 countries, PricewaterhouseCoopers provides a full range of business advisory services to leading global, national and local companies and to public institutions. These services include audit, accounting and tax advice; management, information technology and human resource consulting; financial advisory services including mergers and acquisitions, business recovery, project finance and litigation support; business process outsourcing services; and legal services through a global network of affiliated law firms. In Canada, PricewaterhouseCoopers LLP and its related entities have more than 5,900 partners and staff and offices in 26 locations.

Your worlds



Our people