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10 Key Considerations for IPOs During COVID-19

Despite the COVID-19 pandemic and associated stock market difficulties, IPOs are still being done. Prior to the pandemic, IPO timelines for the rest of 2020 were largely focused on navigating around the upcoming US elections. The focus has now shifted to the duration and impact of the pandemic and carefully considering when a business is in a position to consider going public. This is especially important for those companies whose financial performance have been materially impacted by the pandemic. As companies decide whether an IPO may still be right for them in the coming months, here are some key considerations:

1. COVID-related disclosure

It is critical to provide investors with as much detail as possible regarding the ongoing and expected impact of COVID-19 on the company's business. This can be a challenge for companies in such uncertain times and with so many unprecedented developments taking place daily. While companies learn more each day how shelter-in-place work environments, closures and layoffs are impacting their businesses, they also have to be mindful of the less-apparent impact on their customers, suppliers, partners, employees, other stakeholders and even regulators in their industry. Consideration should be given to potential business disruptions, delayed product launches or timelines, attendance, impact on international operations and government loans, just to name a few. Companies should work closely with counsel to draft business,

MD&A and risk factor disclosures that help investors understand the interplay of these factors.

2. Analyst models

Expectations of future financial performance provided by companies to bank analysts to build their models are critical in a traditional IPO context. In light of the COVID-19 pandemic and all of the associated uncertainties, many companies are finding it decidedly more difficult to predict financial performance over the coming year and beyond. We have seen hundreds of public companies withdraw 2020 year-end guidance for similar reasons. Accordingly, companies considering an IPO need to think about what models of future performance they would be comfortable providing to analysts. Companies should work closely with their finance team and bankers to consider the most critical items to analysts and what areas they may want to avoid. As we have seen with direct listings, detailed models are not always a prerequisite to getting investors and analysts comfortable with the company's financial prospects. However, we do expect continued focus by investors and analysts on the core business model and ways to show positive progression.

3. Key metrics and KPIs

As companies think about how they present their financial performance and business model to the Street, certain key metrics and KPIs may adjust as a result of COVID-19 implications. For example, businesses focused heavily on SMB customers or

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broader consumer adoption should pay close attention to growth drivers that will “see through” some of the broader economic impact being experienced throughout industries. Upsells may be harder in times of budget constriction than obtaining new accounts by replacing competitive or less efficient alternatives. Companies should be mindful of how management’s focus on growth and key performance indicators are changing in a COVID-19 environment and less focused on mirroring the key metrics provided by companies in similar industries pre-COVID-19.

4. Audits and timing

Preparing financial statements for an IPO is almost always a challenge for private companies. While auditors are adapting (and adapting well, in our view) like everyone else to working in a virtual environment, it is critical for companies to prepare early for facilitating public company financial audits and reviews with their accountants. Early identification of particular accounting issues (such as whether an uncertain accounting determination or potential pro forma financials related to an acquisition) and proactive engagement with the SEC – which we have found attuned to some of the difficulties facing companies right now – can be critical to preparing for a successful IPO.

5. Virtual roadshows

It’s a Zoom world...In the IPOs we have completed over the last month, virtual roadshows have proven to be effective and efficient – and may even be here to stay. Some roadshows have been shortened, given the lack of need to travel as well as the desire to mitigate exposure to market volatility. That said, companies should work with their bankers to think through how a virtual roadshow might impact marketing, especially as it relates to potentially unavailable anchor investors and timeline. Moreover, virtual roadshows may reduce a company’s ability to engage in certain marketing activities, such as live product demonstrations or group investor days. The good news is most TTW meetings were being handled remotely already, so investors have been increasingly conditioned to meeting

management and understanding businesses without in-person sessions.

6. SEC review process

The SEC is managing through their own shelter-in-place requirements and dealing with IPO registrants during these uncertain times. Our experience is that the SEC has been extremely responsive, communicative and understanding, and is keeping to all of the timelines for SEC review we have experienced pre-COVID-19. Their electronic filing system, EDGAR, remains open for business, and they are taking calls in baseball caps like everyone else, so we do not see the SEC review process during the pandemic as a hinderance on IPOs or timing. We are in the process of petitioning the SEC ([see our recent blog post](#)) to allow for electronic signature of registration statements filed as part of the IPO, which, if approved, would lower the burden on companies going public with a remote workforce.

7. Diligence process

Understanding the risks and key factors affecting companies is particularly challenging in this environment. Companies should be prepared to speak with bankers and legal counsel in detail on how the pandemic and related factors are impacting their businesses and prospects. It’s a key area of focus of diligence during this time. This goes beyond just financial performance and competitive dynamics and should include detailed disclosure around the potential risks associated with employee relations and health concerns, regulatory and governmental approvals and compliance, debt and lender issues and executive compensation. The world of securities litigation post-IPO will change during and after the pandemic, and it is important for companies to consider the diligence process in this new light.

8. Governance and diversity

We advise our companies to put a heavy focus on building a best-in-class governance structure following an IPO. That includes a diverse and well-rounded

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board of directors and governance policies that empower and protect shareholders. We think these mandates are even more important in light of the pandemic. Finding public company directors may be even more difficult in light of current limitations, but companies should be vigilant in planning early to build the right board.

9. Stockholder protection measures

Though always mindful of shareholder concerns around overreaching, we think it is particularly important for companies during this time to adopt the right stockholder protection measures to protect the company's shareholders from unwanted inference after becoming a public company. As we continue to see market volatility and an increase in some aspects of predatory activism, companies should be clear with investors of their mid- to long-term visions for their businesses and adopt measures that ensure they will not be overly threatened by short-term results from the pandemic and market raiders.

10. Direct listings

We continue to be fans of direct listings generally, but many companies that were seriously considering them are rethinking that in the context of the current economy. Cash, already King, has recently been crowned Caesar as companies look for enough runway to weather an uncertain storm. We are hopeful that the SEC will at some point allow for primary fundraising in direct listings, but until that happens, companies will need to ensure investors that pre-IPO (or post-IPO) alternatives for primary capital raising are adequate to finance the company for a healthy period post-public. Moreover, given the number of uncertainties in light of the pandemic, some companies are rethinking whether they are willing to take on the execution uncertainties associated with direct listings in this environment. Having said that, one of the key components of direct listings is the more "democratic" pricing structure at listing, and in these volatile markets, we believe that will continue to be an advantage.

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