Initial Public Offerings Desktop Guide

2025 Edition

ROPES & GRAY

About this Guide

The 2025 Edition of the Ropes & Gray Desktop Guide to Initial Public Offerings is intended to familiarize management and other key stakeholders of U.S. private companies with the applicable rules and requirements when undertaking an initial public offering.

The purpose of this guide is to serve as a reference for considerations related to IPO workstreams and life as a public company. The objective is to provide a practical resource that can be referenced throughout the IPO process.

Although this handbook reflects current regulations and guidance as of publication, new guidance appears on a regular basis. We advise readers of this guide to consult legal counsel for any further developments that may have occurred since the publication of this guide.

About Ropes & Gray

Ropes & Gray has extensive experience representing corporate issuers, and leading private equity firms and other large institutional investors and major investment banks, in all aspects of capital markets financings and investments.

We have a team of **more than 100 attorneys** regularly representing clients on capital markets transactions.

Since 2019, we have closed **over 400** capital markets transactions worth **over $150 billion**.

We draw upon our significant experience to help clients interact with the SEC, including navigating all types of securities offerings from traditional initial and follow-on offerings and private placements to complex liability management and other structured transactions.

The breadth and depth of our attorneys' knowledge allow us to effectively manage the capital markets process for our clients and develop creative solutions to meet their needs. We stay ahead of the ever-changing regulatory environment and issue client alerts as well as proactively notify clients of developments that may affect their business.

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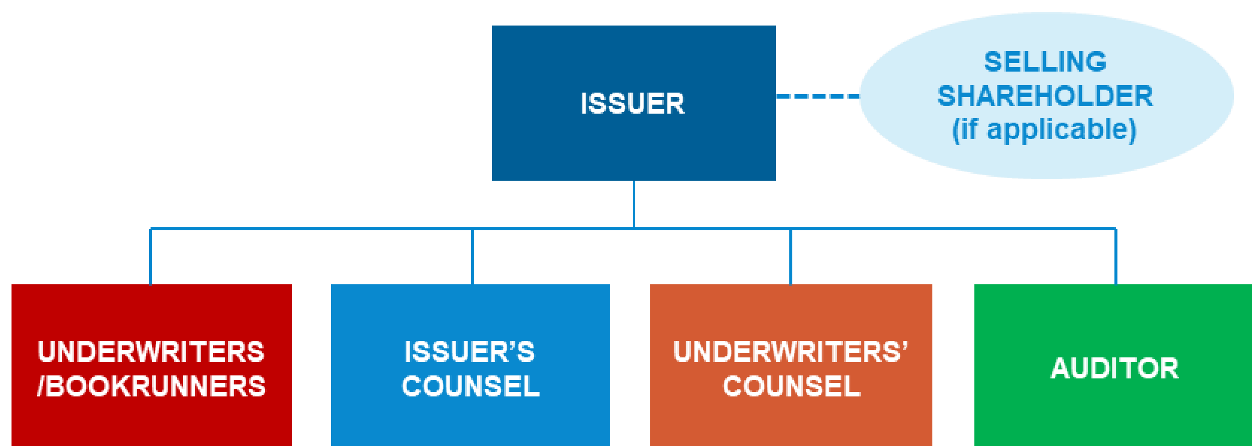
IPO EXECUTION CONSIDERATIONS

An initial public offering is a transformative milestone for any company. An IPO can provide numerous benefits to a company, including significant advantages for growth and expansion. Among the key reasons to pursue an IPO are:

- Presenting a path to liquidity for shareholders and providing greater access to capital for the company;
- Increasing exposure and prestige;
- Providing management and employees with the liquidity afforded by the public markets; and
- Benefitting from lower costs of capital.

THE KEY PARTICIPANTS



In addition to the issuer itself, several external parties will play key roles in a successful IPO. The key participants in an IPO include:

Underwriters/Bookrunners

- Responsible for marketing, allocation and pricing;
- Works with Issuer to craft the "story" to be the basis of the Company's business description;

- Provides market stabilization, as applicable;
- Leads transaction process, including due diligence;
- Analyst group are the initial analysts who review the equity story; and
- Lead transaction execution and market stabilization, if needed.

Issuer's Counsel

- Prepares and files SEC and stock exchange documentation;
- Negotiates key transaction and governance documents;
- Advises and facilitates corporate structure;
- Coordinates with Transfer Agent;
- Prepares and files Section 16 and Schedule 13D and 13G filings; and
- Delivers legal opinions.

Underwriters' Counsel

- Leads due diligence process;
- Assists in preparation of registration statement;
- Prepares and files FINRA documentation;
- Negotiates key transaction documents on behalf of the Underwriters; and
- Delivers legal opinions.

Auditor

- Audits financial statements;
- Participates in due diligence process; and
- Delivers comfort letter.

Building the Team

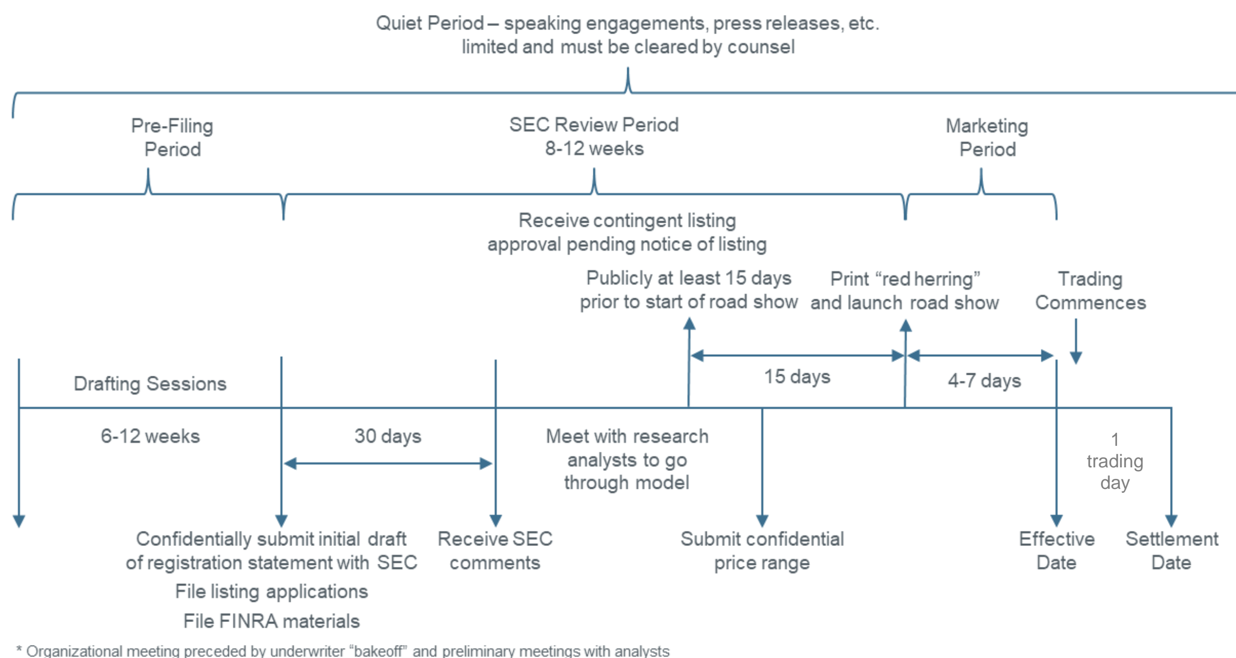
After engaging issuer's counsel, the issuer and its counsel will typically work over the course of several weeks to prepare a virtual dataroom for documentary diligence, begin drafting portions of the registration statement and otherwise prepare for the upcoming IPO process.

The underwriters are selected through a "bakeoff" process. The issuer will prepare an information pack about the company, which will include a preliminary financial model, that is included in the request for proposal to each potential underwriter. Note that any analyst meetings occurring prior to allocation of economics should be limited to a one-way dialogue in which analysts pose questions to the company and do not provide any feedback due to limitations under FINRA rules.

In addition to issuer's counsel and the underwriters, other advisors for the process will also be engaged, including counsel for the underwriters, a financial printer, the transfer agent and other consultants and service providers.

IPO TIMELINE

The formal IPO process is typically considered to commence following the selection of the lead underwriters through the "bakeoff" process and the holding of a kick-off organizational meeting. At this point, the issuer is generally considered to be "in registration," and is subject to restrictions on public statements. *Review the section titled "Communications During an IPO" beginning on Page 13 of this guide for important information related to communications during the registration process.*



Key Milestones in an IPO

The chart above sets out key milestones in an IPO process, which collectively can take anywhere from approximately four to six months from organizational meeting to the closing of the IPO. These milestones include:

Organizational Meeting.

- Management presentation to underwriters, counsel and accountants; beginning of diligence process

SEC Filing.

- Preparing the initial registration statement typically takes six to 12 weeks before it is submitted confidentially to the SEC

- The SEC typically responds 30 days after submission; approximately two weeks for subsequent submissions
- Three to five rounds of SEC comments are typical

Analyst Day.

- Consists of management presentation and financial model, including three to five years of forward projections and eight to ten forward quarters

Testing the Waters Meetings.

- Companies are permitted to “test the waters” with certain sophisticated investors
- Typically occur after initial submission, but prior to launch of roadshow

Public Flip and the Road Show.

- Company must publicly file the registration statement at least 15 days before launching the roadshow
- The roadshow is a four to seven day marketing tour by management directly to institutional accounts/investors

Going Effective and Pricing Offering.

- Price offering and sign underwriting agreement after SEC declares registration statement “effective”
- Shares begin trading on the first trading day after pricing

THE PLANNING PHASE

Evaluating IPO Readiness

Early planning and preparation are essential for a successful initial public offering. The period between the IPO organizational meeting and the closing are very busy, absorbing significant management time and attention. To facilitate a successful IPO, the items listed below should be addressed well before beginning the registration process.

Confirm availability of required financial statements.

The registration statement for an IPO must include three years of audited historical financial statements, or two years if the issuer qualifies as an emerging growth company (EGC), and interim quarterly financial statements as of a date not more than 135 days prior to the pricing date. Additionally, if you are considering or have recently completed any significant acquisitions, additional financial statements may be required.

Certain financial statements can be omitted from initial submissions of the registration statement depending on overall deal timing and what will be required when the IPO ultimately prices.

Your audit firm must be registered with the PCAOB and satisfy the "independence" requirements under SEC and PCAOB rules. If you are currently using an audit firm that would not qualify (or that is otherwise not suitable for a public company), you should consider making a change as soon as possible to allow the new firm sufficient time to prepare and audit the required financial statements. Auditor independence can take time to verify and to address any issues. Companies planning for an IPO should ask their auditor to confirm independence well in advance of kicking off the formal IPO process and should ensure their auditor continuously monitors for any new engagements that would implicate independence. *See "Financial Statements & Non-GAAP Measures" beginning on Page 21 of this guide for more information regarding required financial statements.*

Identify any public accounting issues.

Public company accounting rules differ from private company accounting rules. For example, certain redeemable equity instruments classified as equity on a private company balance sheet would be reclassified as debt on a public company balance sheet. In addition, the SEC accounting staff has certain "hot button" issues (e.g., cheap stock, revenue recognition, non-GAAP financial measures). Together with your accountants and lawyers, you should identify these issues early so that any adjustments can be made.

Build out internal controls over financial reporting.

After becoming a public company, Section 404 of the Sarbanes-Oxley Act (SOX 404) will require that management evaluate and report on the issuer's internal control over financial reporting. In connection with the IPO, any material weaknesses will be disclosed in your IPO prospectus. Once public, compliance with SOX 404 is a significant undertaking, and newly public companies often engage third parties to assist them in evaluating and/or remediating internal control issues. The IPO underwriters will also seek to do additional diligence on the issuer if any material weaknesses are identified.

Develop financial model and financial reporting and performance measurement process.

You will want to refine and develop your financial model early in the process and pressure test its underlying assumptions. The underwriters and their research analysts will review your model in connection with their decision to underwrite the transaction, as well as their valuation of your company. The research analysts will build their own independent financial models based on your financial model and projections.

In addition to financial metrics, most companies will benefit from establishing and disclosing key performance indicators (KPIs). KPIs will allow you to share a compelling growth story with potential investors.

Prior to the IPO, it is important to test your internal processes for measuring performance to ensure that you will be able to provide timely and reliable disclosures to the market post-closing and that you can begin to measure quarterly performance against the expectations reflected in your model.

Evaluate capitalization and existing shareholder rights that might affect the public offering.

It is important to review the current capital structure to determine the impact of an IPO on outstanding securities (e.g., the conversion of outstanding preferred stock and the treatment of any options or warrants). A review of existing shareholder rights (both under your organizational documents and any various investor agreements) should be undertaken to identify any necessary consents, waivers and/ or amendments. Thought should also be given to any desired post-IPO shareholder control rights, such as dual-class stock, board nomination rights or shareholder consent rights.

Review composition of the board of directors to plan for compliance with independence and other listing requirements.

Subject to certain transition rules and exemptions, the listing requirements of both Nasdaq and the NYSE require that a majority of an issuer's board be "independent" (as defined by their respective rules) and that the board have standing audit, compensation and nominating and governance committees comprised solely of "independent" members. It is often necessary or desirable for an issuer to change the composition of its board of directors by changing or adding directors to satisfy these requirements and build out the board's diversity and skill set. *See "Obligations as a Public Company" beginning on Page 28 of this guide for more information regarding Nasdaq and NYSE board composition requirements.*

Evaluate management team for public company needs and add any necessary personnel.

The public company demands on an issuer's management team are significant, and often companies need to increase their accounting and finance staff and add investor relations capabilities, among other positions. Consider whether it will be necessary or advisable to retain additional senior management or make senior management changes ahead of the IPO. It is generally inadvisable to make any senior management changes in the period immediately following an IPO.

Consider equity compensation and employment agreements.

Most companies adopt a new equity compensation plan in connection with the IPO. Because the exchanges require public company plans to be approved by shareholders, it is recommended to adopt a new plan, or bring forward the existing plan, in advance of the IPO. It is also important to review and consider the impact of the IPO on existing employee equity awards.

Existing agreements with management should be reviewed in advance of the IPO. Certain agreements may need to be updated to reflect what is appropriate and "market" for a public company management agreement. In addition, information about these agreements likely will need to be disclosed and the agreements themselves publicly filed as part of the SEC registration process.

Reflect on how to position your story and stay true to your mission.

A significant challenge for mission-driven companies is to develop a strategy to maintain control over the company's story and culture. These types of companies need to carefully consider how best to keep true to their mission while braving the markets and increased public scrutiny. Utilizing tools such as carefully scripted disclosures, enhanced investor relations and public relations functions and the consideration of environmental, social and governance frameworks are important tools to achieving success.

Prepare for the diligence process.

The underwriters and counsel for both the underwriters and the issuer will conduct legal and business diligence on the issuer, including a review of corporate records, material contracts and other similar materials, and documentary support for statistical information and other statements included in the IPO prospectus. The SEC will also require an issuer to provide materials to substantiate claims regarding market position, industry size, etc. The issuer should be prepared to provide substantially all such materials well ahead of the initial submission of the IPO registration statement. The issuer will also collect an extensive questionnaire for all current and prospective directors and executive officers as part of the due diligence process. *See Appendix A and Appendix B of this guide for sample D&O questionnaires and due diligence request lists.*

Structural Considerations

Prior to the organizational meeting, the issuer should estimate the desired size of the offering and expected valuation, taking into account the over-allotment option, which is typically 15% of the base offering size. During the bakeoff process, the underwriters will present their preliminary views on valuation, which will become more fully developed as analysts provide feedback after the Analysts Day presentation.

Other key structuring considerations include whether the offering will be primary, secondary or a combination of both, the size of any directed share program and the use of proceeds. Each of these considerations will require specific disclosure within the registration statement.

Emerging Growth Company Status.

Among the key considerations is determining whether the issuer qualifies as an EGC. EGC status allows the issuer to take advantage of several exemptions both during the registration process and as a public company.

A company qualifies as an EGC if it had total annual gross revenues of less than $1.235 billion in the last fiscal year and will continue to be an EGC for the first five fiscal years after it completes an IPO, unless one of the following occurs:

- its total annual gross revenues are $1.235 billion or more
- it issues more than $1.0 billion in non-convertible debt in a three-year period; or

- it becomes a "large accelerated filer"

If an issuer qualifies as an EGC, it is permitted to provide audited financial statements for only two fiscal years (rather than the typical three years required) in the registration statement and include less extensive narrative disclosure than required of other reporting companies, particularly in the description of executive compensation.

EGCs also are not required to provide an auditor attestation of internal control over financial reporting under SOX 404 and may defer complying with certain changes in accounting standards.

Controlled Company Status.

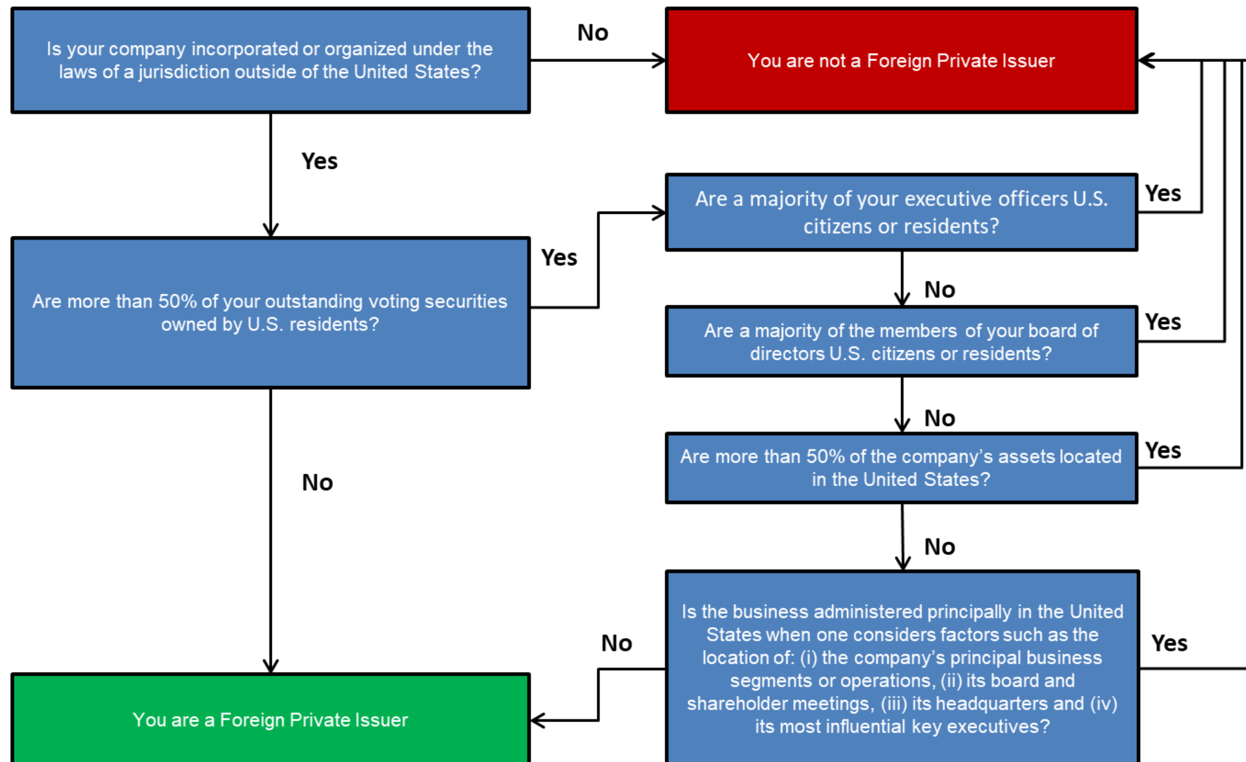
The "controlled company" exemption is available to Nasdaq and NYSE-listed issuers and provides an exemption from certain governance and independent listing requirements.

In order to qualify as a controlled company, 50% or more of the voting power for the election of directors must be held by a single person or a "group." A "group" is defined as two or more persons that have agreed to act as a group with respect to their ownership of the company's shares (as evidenced, for example, by a public filing such as a Schedule 13D or 13G acknowledging the existence of the group).

If a company qualifies as a controlled company, it is not required, so long as it maintains such status, to have a majority independent board or independent compensation and nominating committees. Controlled companies are, however, still subject to the audit committee membership and independence requirements. Following loss of "controlled company" status, companies must achieve compliance with all listing standards within a 12-month phase-in period (subject to certain earlier deadlines).

Foreign Private Issuer Status.

Certain entities incorporated under the laws of a jurisdiction outside of the US will qualify as a foreign private issuer ("FPI") if certain shareholder and business contact tests are met. The following chart outlines the applicable tests to determine FPI status:



If a company qualifies as an FPI, it will conduct its IPO on a Form F-1 (rather than Form S-1 for domestic registrants). The F-1 process is similar to the S-1 process described in this handbook, but there are key differences, including the financial statements required to be presented and the format of those financial statements. Once public, FPIs are subject to less stringent reporting requirements and are exempt from certain other governance and disclosure rules.

THE REGISTRATION STATEMENT

The IPO issuer must file a registration statement with the SEC to offer the securities in a registered offering. The registration statement must be declared effective by the SEC prior to the sale of the securities. The registration statement must include a prospectus that is compliant with the requirements of the Securities Act, with audited financial statements and reviewed interim financial statements (if applicable), signatures of executive officers and directors, exhibits, including material contracts, and the other information specified in the registration statement form. *See "Financial Statements & Non-GAAP Measures" beginning on Page 21 of this guide for further information regarding required financial statements.* Although initial registration statements may be filed publicly from the outset, most registrants opt to confidentially submit a draft registration statement with the SEC and not file publicly until the SEC review process is complete. Until publicly filed, the registration statement does not need to be signed by executive officers and directors and need not include a consent from the registrant's auditors.

Drafting the Registration Statement

The registration statement is prepared in consultation with the underwriters, counsel and accountants over many weeks and through multiple drafting sessions. At the outset, the issuer should identify the internal quarterback(s) to take the lead on drafting the prospectus, address issues in due diligence and coordinate with internal teams. Typically, issuer's counsel will "hold the pen" on the registration statement draft, with key contributions from the underwriters, management, finance and legal teams.

Generally, the Company and underwriters will work in close coordination on the business section. This section provides the Company's "equity story" and typically includes a description of the potential market opportunity and the company's competitive strengths and growth strategy. Be mindful that any market information, including total addressable market or white space data, will need to be appropriately sourced and may need to be supplementally provided to the SEC. The business section helps to define the scope of growth that the company expects investors to underwrite and should be consistent with the company's growth model. This section also may include certain key performance indicators ("KPIs") to drive messaging. It is critical that any source materials are retained and accessible for purposes of the "back up" process, including third party industry data or reports used in the registration statement.

A sample registration statement drafting plan is below. ***For a more fulsome list of typical tasks and responsibilities in connection with an IPO, see Appendix C to this guide for a sample IPO Checklist.***

Registration Statement Section	Primary Resp.
Prospectus Summary—"the box"	Banks / Management / Counsel
Summary Financial Data	Finance / Counsel
Risk Factors	Counsel / In-house legal / Management
MD&A (including KPIs)	Finance / Counsel / Banks
Business	All
Executive Compensation	HR / Finance / Counsel
Related Party Transactions	In-house legal / Counsel / Finance
Financial Statements	Finance / Auditors

SEC Review

The SEC will assign an examiner, who will deliver legal and accounting comments on the initial draft registration statement within approximately 30 days of confidential submission. The issuer and its counsel, in consultation with the underwriters, underwriters' counsel and accountants, will prepare amendments to the registration statement and a response letter addressing each of the comments made by the SEC.

While the number of comments varies depending on industry, examiner and issuer, typically there will be three to five rounds of comments with the SEC.

At the time of the first public filing, the initial confidential submission and any subsequent amendments are made public. The SEC comment letters and the company's response letters are made public after the completion of the offering.

ADDITIONAL KEY DOCUMENTATION

In addition to the registration statement, other key transaction documentation workstreams include:

Underwriting Agreement

- Underwriters' counsel will prepare an initial draft underwriting agreement. The underwriting agreement is the contract that governs the issue and sale of the shares in the IPO.
- The key negotiation points typically include the representations and warranties included in the underwriting agreement. The market standard for representations and warranties in underwriting agreements is different from similar representations given in the M&A context, so the reps and warranties will differ significantly from any rep and warranty package included in any prior merger agreement the issuer has negotiated.

Lock-Up Agreements

- Lock-up agreements are typically obtained from all or substantially all of the Company's pre-IPO stockholders and optionholders and restrict the transfer of such securities for a period that typically ends 180 days after the IPO.
- Consider appropriate carve outs from the lock-up restrictions for Rule 10b5-1 plans, estate planning transfers, transfers to affiliates, gifts etc.

Legal Opinions

- Issuer's counsel and underwriters' counsel will each issue legal opinions to the underwriters in connection with the closing of the IPO.
- Depending on the circumstances, additional legal opinions may be required (for example, from local counsel or intellectual property counsel).
- Consider the need to involve separate counsel for selling stockholders, if any.

Comfort Letter

- Underwriters require a comfort letter be delivered by the auditor of the financial statements included in a registration statement. If the registration statement includes financial statements reviewed by more than one audit firm, multiple firms will be providing comfort.
- It is expected that AS 4105-level review is completed on interim unaudited periods presented in the registration statement.
- Underwriters' counsel coordinates with the auditors.

Post-IPO Governance Policies and Procedures

- Issuer's counsel will prepare a slate of public company policies, as required by applicable SEC and stock exchange rules. These policies include an insider trading policy, Regulation FD policy, code of ethics, related party transactions policy and whistleblower policy, among others.
- In addition, issuer's counsel will prepare any amendments needed to the Company's stockholders agreement, charter, bylaws and other organizational and governance documents.

COMMUNICATIONS DURING AN IPO

Under the securities laws, specific rules apply in each of three relevant time periods – (1) pre-filing, (2) the so-called “waiting period” after the initial filing, and (3) the post-effective period after the offering commences. Of course, false and misleading communications are prohibited at all times. Because statements about the Company made by an affiliate of the Company may be attributed to the Company, significant investors and board members of the Company should adhere to these restrictions in addition to management and other employees.

THE PRE-FILING PERIOD

Under Section 5 of the Securities Act of 1933, it is unlawful to make “offers” (either oral or written) to sell securities that will be registered before the registration statement for the offering has been filed with the Securities and Exchange Commission (“SEC”). “Offering” securities before filing a registration statement often is referred to as “gun jumping.” Although the SEC has never defined when the “pre-filing period” begins, it is widely considered to start when the Company decides to proceed with an IPO, which is generally no later than when it selects its lead underwriter or underwriters for the IPO or when it, formally or informally, conducts an organizational meeting in connection with the IPO. From that point forward, the Company is considered to be “in registration.”

Pre-Filing Period

- Period begins when managing underwriter is selected
- Company counsel should be consulted with respect to communications generally
  - All interviews, speeches, press releases, presentations, website content and advertising may be considered offers and can lead to potential “gun-jumping” concerns
  - Safe harbor may be available for communications more than 30 days prior to filing

During the pre-filing period, the Company should not make any public statements -- including through discussions with journalists -- about the proposed IPO or its financing plans in general. If a Company representative receives an unsolicited inquiry about the Company’s financing plans, the representative should indicate that the Company does not comment on market speculation. In addition, no one at the Company should make an offer to anyone regarding shares that may or will be offered through the IPO. For example, representatives of the Company should not discuss a potential directed share program with employees or vendors or inform them that they can participate in the IPO. If anyone is offered unregistered shares privately (including employees), in advance of

the IPO, the private offering must be completed before the investor to whom the shares were offered privately may participate in the IPO. Further, depending on what information is provided to the private investor, such private investor may not be able to participate in the IPO at all. Alternatively, in cases where it is not practical for an investor to participate in the IPO directly (whether because the private placement cannot be completed in advance of the IPO or for any other reason), then the Company may decide to issue shares to such an investor in a concurrent private placement. Concurrent public and private offerings are permissible, but the Company and its underwriters, in consultation with counsel, will want to be very thoughtful about who participates in which offering process, how investors are solicited for each offering, the timing of offers and sales and what disclosures are provided.

The SEC broadly interprets the prohibition on gun jumping to capture not only express offers and sales but also publicity that may arouse public interest in a proposed IPO. Accordingly, care should be taken to avoid any press release, website posting, marketing campaign, conference presentation, television or radio appearance, or other corporate communication that might be viewed as “conditioning the market” for the IPO.

There are limited, but important, exceptions to this general rule. SEC Rule 163A generally provides that a communication that does not refer to the IPO and is made more than 30 days before the first public filing of the registration statement (not to be confused with any confidential submissions or draft registration statements made prior to the first public filing and which will not be publicly available until the first public filing of the registration statement) will not be an impermissible offer if the issuer takes reasonable steps to prevent its further distribution or publication. Rule 169 provides that the regular release of factual business information intended for use by persons, such as customers and suppliers, other than in their capacity as investors or potential investors also generally will not constitute an impermissible offer. The information that is released pursuant to Rule 169 must be consistent in timing, manner and form with information previously released in the ordinary course of business. Rule 135 permits the Company to issue a press release notifying the public of a proposed IPO, but with very limited additional information. In all cases, it is important to discuss any particular situation with counsel before relying on any of these exceptions.

In addition, under SEC Rule 163B, the Company and its authorized underwriters may engage in oral or written communications with potential investors who are either “qualified institutional buyers” as defined in Rule 144A (each, a “QIB”) or institutions that are “accredited investors” as defined in Regulation D (each, an “IAI”) to determine whether such investors might have an interest in the contemplated registered securities offering. Such “testing-the-waters” communications are permitted during both the pre-filing period and the waiting period, described below.

If the Company intends to engage in any “testing-the-waters” communications it should do so only following discussion with counsel and its lead underwriters and should document that the potential investors with whom it communicates are, or it reasonably believes are, QIBs or IAIs (for example, by requiring a signed confidentiality agreement that contains appropriate representations prior to such communications). Because any

such communications remain subject to liability for material misstatements under federal securities laws, oral and written communications should be carefully vetted and should generally be consistent with the disclosure in any filed registration statement. Any written materials that are used with potential investors should be collected at the end of any presentations and "leave behinds" should be avoided. In addition, because underwriters will typically seek representations or other evidence of compliance with the "testing-the-waters" rules, the Company should maintain documentation identifying the dates and persons who received any communications under this exception.

THE WAITING PERIOD

From the date on which a registration statement is first publicly filed until the date on which the SEC declares it effective, (1) the prohibition against oral offers no longer applies and (2) written offers are permitted but only if made by means of a qualifying preliminary prospectus. Sales of any securities are not permitted until the registration statement is effective. Although oral offers are permitted during the waiting period, the underwriters and counsel should be consulted when communicating with investors or engaging in any "testing-the-waters" communications.

During the waiting period, in response to requests for information about the IPO, the Company generally should not provide any written material other than a qualifying preliminary prospectus. Furthermore, the Company should not include any written material with a preliminary prospectus unless such material has been pre-screened by its underwriters and counsel.

Waiting Period

- Period between the public filing of the registration statement and the declaration that the registration statement is effective
- Communication should be limited to information contained in the registration statement
- Companies may engage in "testing-the-waters" communications following the public filing of the registration statement provided that no written materials are provided to potential investors
- Company counsel should be consulted with respect to communications generally

The SEC takes the position that a preliminary IPO prospectus that omits a price range is not a qualifying prospectus and, therefore, should not be distributed to investors. Accordingly, even though the initial registration statement filing (and each amendment thereto) will be publicly available on the SEC's EDGAR website, the Company should not distribute it or send a link to it until it meets all of the SEC's requirements and the road show is ready to begin.

The SEC also takes the position that e-mails and recorded oral presentations constitute writings. Consequently, an e-mail to an employee about a directed share program, an e-mail to a potential investor, or a link on the Company's website to the IPO registration statement or an archived recording of an investor conference presentation each could constitute an illegal prospectus. Given the very broad definition of what constitutes an "offer," and the severe penalties that may apply if even a seemingly innocuous email or other "writing" is deemed to be an offer (which penalties may include not only rescission rights for recipients of the writing who buy in the IPO, but also

substantial delay of the IPO, exclusion from the IPO of potential investors who received the e-mail or other writing and forced disclosure of the entire situation in the prospectus, as discussed below), the Company and all of its officers and directors need to exercise caution with e-mails, handouts, recorded presentations, and any other "writings."

There are limited exceptions to these rules as well. During the waiting period, Rule 134 permits press releases and other written communications containing specific, limited information. If the Company wants to distribute a letter, issue a press release announcing the filing or the launch of the road show, its underwriters and counsel should be consulted, but such communications may be permitted pursuant to Rule 134.

In addition, Rule 169, which, as discussed above, generally provides that the regular release of factual business information will not constitute an impermissible offer, also provides that, as a general matter, a writing containing regularly released factual business information will not represent an illegal prospectus. Because the safe harbor contains specific restrictions, the Company's underwriters and counsel should be consulted about taking advantage of this rule.

During the waiting period, the Company and the underwriters will market the IPO through road show presentations. The Company and the underwriters, however, may only solicit "indications of interest" and may not accept orders or enter into contracts to sell the shares before the registration statement is declared effective.

The SEC rules provide that if the Company produces an electronic IPO road show, it must file a *bona fide* version with the SEC or make one available electronically to an unrestricted audience. Many IPO underwriters advocate using an electronic road show and posting it on netroadshow or a similar website.

The SEC rules also permit the use of "free writing prospectuses" ("FWP"). These are written offers that do not contain all the information required in a statutory prospectus. Use of an FWP in an IPO is conditioned on (1) providing a statutory prospectus – a preliminary prospectus with pricing information -- before or concurrently with the FWP, (2) filing the FWP with the SEC, and (3) including a legend directing investors to the registration statement. Because of the requirement to deliver a statutory prospectus, FWPs have not been used extensively to market IPOs and, as with the other exceptions, the underwriters and counsel should be consulted before any use of an FWP is considered.

Rule 433(f) includes certain accommodations where an FWP is prepared and published or broadcast by unaffiliated and uncompensated media. The accommodations of this so-called media FWP are available in an IPO. As a result, if during the registration process, a representative of the issuer participates in an interview with unaffiliated and uncompensated members of the media that is published or broadcast, and the interview constitutes an offer, it will be considered a media FWP. If the substance of the information in the interview is contained in the registration statement, generally an FWP does not need to be filed with the SEC. If not, an FWP will need to be filed with the SEC and the registration statement may need to be amended to include the substance of the

information from the interview. Despite these rules, interviews with the media should be curtailed during registration and counsel should be advised prior to speaking with any member of the media.

THE POST-EFFECTIVE PERIOD

Post-Effective Period

- Period begins when the SEC declares the registration statement effective and ends when the prospectus delivery requirement ends (25 days)
- Communications remain restricted

After the registration statement becomes effective (1) sales are permitted, (2) oral offers may be made, and (3) written communications, other than the final prospectus, may be used to offer securities if accompanied or preceded by the final prospectus. The SEC takes the position that the Company remains "in registration" while dealers are obligated to deliver a prospectus to a purchaser. If the Company's common stock is listed on a national securities exchange, such as the NYSE or the Nasdaq Stock Market, this period will last 25 calendar days beyond the date the registration statement became effective. During this period, determinations regarding potential written communications and television, internet and radio appearances must factor in (1) the Company's public company status, (2) the "stickiness" of the IPO, and (3) whether the proposed disclosure is consistent with the disclosure in the final prospectus.

PENALTIES FOR VIOLATION OF SECTION 5

Gun jumping and the use of an illegal prospectus can result in both civil and criminal penalties. While the SEC would likely only commence a formal enforcement action in an egregious case, a more significant concern is the SEC's policy of delaying the effectiveness of a registration statement if it suspects that gun jumping has occurred. The SEC sometimes does this, in order to allow the impact of premature publicity to fade. This remedy can have severe consequences depending on timing and market conditions because it can disrupt the underwriters' marketing plans. If an underwriter is involved in the violation, the SEC (or the rest of the syndicate in consultation with counsel) may also require that this underwriter be excluded from the underwriting syndicate. In addition, the SEC could issue an order to cease and desist from further violations of the Securities Act.

The SEC also could require the issuer to file or summarize in the registration statement the content of a news article or other publicity, e-mail, recorded presentation, or other writing, exposing the issuer to potential prospectus liability if the material is incorrect, misleading, or incomplete. Alternatively, the SEC could require the issuer to disclaim such material in the final prospectus and explain that the statements could be misleading and were not authorized by the issuer or the underwriters. In addition, the SEC could require the issuer to indicate that its disclosure activities may provide investors who received the illegal offers with rescission rights. This type of disclosure could be embarrassing and could damage the marketing and selling effort.

After the IPO, private plaintiffs could seek substantial damages based upon claims that the IPO violated the Securities Act. ***It is important to understand that gun jumping***

or the use of an e-mail, recorded presentation or other writing in violation of Section 5 by itself gives some or all investors buying in the IPO the right to demand their money back, regardless of whether the offending materials contained any misstatement or omission, or were relied on in any way by the investor. This is a draconian remedy, designed to force strict compliance with the prospectus disclosure requirements. As a result, in addition to the Company and its significant investors, officers and directors, underwriters and their counsel take these situations very seriously and, if a violation or potential violation has occurred, may insist on delaying the IPO or excluding from the IPO (if feasible) any potential investors who may have directly or indirectly received or been aware of the potentially impermissible offer.

RECOMMENDATIONS

Investment Community

Prior to initially publicly filing the registration statement, (1) the Company should not contact analysts or potential investors, other than analysts at the investment banks who may underwrite the IPO, and (2) the Company should decline or delay unsolicited discussions with analysts and potential investors. After the registration statement is filed, the Company should coordinate investor contacts through the lead investment bank(s).

Employees, Customers, Suppliers and Partners

Communications with employees, customers, suppliers and partners should be limited to ordinary course operational matters consistent with historical communications and should not include any description or discussion of the potential IPO. Drafts of written communications or prepared remarks should generally be reviewed and approved in advance by counsel and underwriters.

Press Releases

Press releases should be limited to factual historical information that the Company has a record of announcing. Drafts should be reviewed by its underwriters and counsel.

Earnings Calls and Other Communications with Bond Investors

If the Company has a practice of holding quarterly earnings calls, that practice may continue (and the Company can continue to make disclosures to bond investors consistent with past practice), but Company representatives should not discuss the IPO on the call and the call should not include a Q&A portion (and other disclosures specific to bond investors, if any, should not reference the IPO). The Company also should not archive the call on its website, even if that had been the Company's historical practice.

Website

The Company and its counsel should review and "scrub" the Company's website. Links to all Company investor presentations and to any third party's analysis of the Company or any third party's archived copy of any Company investor presentation should

be removed. The SEC staff is likely to review the Company's website. The website should be monitored throughout the IPO process and thereafter.

Brochures

While in registration, the Company should not distribute "investor packets."

Speeches and Conference Presentations

The Company should discuss scheduled (and requests to participate in future) conferences, forums and other similar events with its underwriters and counsel. The risks tend to be reduced if an event was planned in advance of the commencement of the IPO or if a Company representative has regularly presented at that event in the past. In addition, industry conferences present less risk than presentations to investor groups. The Company should not distribute any written materials at any such events, unless the materials have been approved for such distribution by its underwriters and counsel. In particular, written copies of investor conference presentation slides or other background materials should not be distributed. In addition, counsel should be consulted if the conference will be webcast. Unless counsel otherwise specifically advises, the Company should assure that its presentation is not recorded and is not made available for later viewing over the conference's website or otherwise, which could cause the presentation to be treated as an impermissible written offer. In addition, the Company should discuss participation in any "1-on-1" or "fireside chats" at any such conference, forum or similar event with the underwriters and counsel. The Company and its counsel should review all existing Company investor presentations maintained on any third-party website and seek to have these removed where possible.

Interviews, Articles and Social Media Campaigns

As a general rule, the Company should avoid any statements that can be attributed to the Company or any of its employees, directors or significant investors that mention the IPO, financing plans generally, the Company's valuation, the size of the market in which the Company operates or other similar statements that could be construed as targeting the investor community, as opposed to customers, suppliers, distributors and other industry professionals. Press coverage in industry publications with non-executive officers tend to raise fewer concerns provided they are consistent with past practice in timing, manner and form. All articles and interviews involving senior management should be reviewed by counsel, as should any articles or requests for interviews from publications widely disseminated to the general population or widely read by the investor community (e.g., Forbes, Fortune, The Wall Street Journal, New York Times, USA Today, TV coverage, etc.). In commenting for the press regarding developments that are properly disclosable, the Company and its senior management should carefully avoid general statements about the Company's prospects, value, financing plans, and overall future, particularly statements quantifying market size, value and future prospects. News stories with a long timeline prior to publication can be particularly troubling if publication occurs during the IPO process and, since these types of stories often focus more generally on the Company and its prospects, they generally should be avoided.

Publicity by Affiliates/Stockholders

The SEC may attribute to the Company statements made by an affiliate of the Company. Accordingly, when describing the Company in their promotional materials or investor presentations, significant investors should be encouraged to adhere to the restrictions described in this memorandum.

Testing-the-Waters Communications

Coordinate any such communications with the lead underwriters and keep track of the dates and persons who received any such communications. Such communications should be limited to oral communications.

Directed Share Program

The Company should not discuss any potential directed share program or the IPO in general with employees, partners or other possible participants without first seeking the advice of counsel. It is important that no e-mails or other written communications (other than a preliminary prospectus containing a price range and other writings specifically authorized by counsel and the underwriters) be sent to possible participants in a directed share program at any time.

FINANCIAL STATEMENTS & NON-GAAP MEASURES

REQUIRED FINANCIAL STATEMENTS

Registration statements require Regulation S-X compliant audited financial statements, as well as AS 4105 reviewed interim financial statements where applicable.

As a general rule, an IPO registration statement must include three years of audited financial statements (an EGC may present only two years), plus financial statements for the most recent interim period and the same period in the prior fiscal year. Companies preparing for an IPO should confirm availability of required PCAOB audited and interim financial statements for IPO issuer entity (parent or operating subsidiary financials are generally not sufficient).

The following table summarizes the general financial statement requirements for an IPO.

Basic Financial Statement Requirements	
Audited Financial Information	• Audited balance sheets as of the end of the two most recent fiscal years; if the issuer has been in existence less than one year, an audited balance sheet as of a date within 135 days of the date of the filing of the registration statement • Audited income statements, statements of comprehensive income, statements of cash flows and stockholders' equity covering each of the **three** most recent fiscal years (or **two** most recent fiscal years for EGCs), or for the life of the issuer (and its predecessors), if shorter
Unaudited Financial Information	• Interim unaudited balance sheet as of the most recent three-, six- or nine-month period following the most recent audited balance sheet. • Interim unaudited statements of income, comprehensive income, cash flows and stockholders' equity for any stub period covered by any interim balance sheet, together with statements of income and cash flows for the corresponding three-, six- or nine-month stub period of the prior year.
Acquired Company Financial Information and Pro Forma Financial Information	Audited financial statements for a significant acquisition of a business that has taken place 75 days or more before the offering or becomes "probable" and pro forma financial information complying with Article 11 of Regulation S-X

Staleness of Financial Statements for IPOs

SEC rules require registrants to include up-to-date financial statements in their registration statements. Except as noted above, registration statements may not be filed with financial statements that have become "stale". Under the financial staleness rules, audited annual financial statements must be provided for an issuer's prior fiscal year beginning on the 46th day of the issuer's current fiscal year, while unaudited interim period financial statements must be updated beginning on the 135th day following the end of the most recent interim period for which financial statements are provided.

The below chart sets out the general financial statement staleness rules for initial public offerings, with financial statements becoming stale at close of business on the dates shown below for calendar year companies. ***Note that financial statement staleness is calculated differently for already-public companies. See the SEC Filing & Staleness Calendar on page D-1 for a complete list of financial statement deadlines.***

Executive compensation disclosure for the prior fiscal year goes stale on the ***first day of the following fiscal year***. This means that any registration statement filing or amendment filed on or after the first day of the fiscal year must contain executive compensation information for the prior fiscal year, whether or not the prior fiscal year's audited financial statements are required to be included.

In addition, PCAOB rules only permit accountants to provide traditional negative assurance until the end of the 134th day after the date of the most recent financials the auditors have either audited or reviewed under AS 4105. For first quarter offerings, auditors will not give full negative assurance after February 11th (the 134th day after the end of the issuer's third fiscal quarter). Thus, contemplated offerings after February 11th but before first quarter financial information is available should be discussed with the deal team.

Omitting Certain Financial Statements from Initial Submission

Typically, the SEC requires all financial statements outlined above to be included in a draft registration statement prior to initial submission. However, companies conducting an initial public offering are permitted to omit from their ***confidentially submitted draft registration statements*** annual and interim financial information for historical periods if they reasonably believe such omitted periods will not be required to be included at the time of the first public filing (for non-EGCs) or the offering (for EGCs).

In addition, financial statements of acquired companies and related pro forma financial information may be omitted from a registrant's initial confidential submission if such financial statements are not expected to be required at the time of the first public filing of the registration statement.

Quarterly Financial Information

While not required by SEC rules, underwriters will typically suggest including quarterly financial information on a quarterly basis for the previous eight quarters. This information helps prospective investors to build their valuation models. Discuss the inclusion of quarterly financial information early on with your lead underwriters, including the level of auditor comfort to be provided.

Flash Financial Information

In the event the road show marketing occurs after quarter-end, but before the prior financial statements go stale, the underwriters will often recommend including in the prospectus preliminary, unaudited financial information related to the most recently completed quarter. Typically, these "flash" results are presented as narrow ranges of key financial and operating metrics. Because auditors will not provide comfort on these estimates or preliminary results, the CFO will need to certify as to their accuracy through the provision of a CFO Certificate.

PCAOB Auditor Independence

Your audit firm must be registered with the PCAOB and satisfy the "independence" requirements under SEC and PCAOB rules. If you are currently using an audit firm that would not qualify (or that is otherwise not suitable for a public company), you should consider making a change as soon as possible to allow the new firm sufficient time to prepare and audit the required financial statements. Auditor independence can take time to verify and to address any issues. Companies planning for an IPO should ask their auditor to confirm independence well in advance of kicking off the formal IPO process and should ensure their auditor continuously monitors for any new engagements that would implicate independence.

Acquired Company Financial Statements

Significance Tests.

SEC rules require the inclusion of separate audited annual and unaudited interim pre-acquisition financial statements of acquired businesses in registration statements in certain circumstances. If a significant acquisition of a business has taken place 75 days or more before the offering or becomes "probable", audited financial statements and pro forma financial information complying with Article 11 of Regulation S-X is required. A "significant acquisition" is any acquisition that exceeds 20% ***in any of the three tests*** outlined below:

	Numerator	Denominator
Investment Test	Registrant's and its other subsidiaries' investments in, and advances to the acquired company.	Total consolidated assets of the registrant and its subsidiaries
Asset Test	Total assets of the acquired company (after intercompany eliminations) as of end of the most recently completed fiscal year.	Registrant's and its subsidiaries' consolidated total assets (after intercompany eliminations) as of the end of the most recently completed fiscal year.
Income Test (the lower of the two components below determines the outcome of the income test)		
Net Income Component	Absolute value of the acquired company's consolidated income or loss from continuing operations before income taxes (after intercompany eliminations) for the most recently completed fiscal year.	Absolute value of the registrant's and its subsidiaries' consolidated income or loss from continuing operations before income taxes (after intercompany eliminations) for the most recently completed fiscal year.
Revenue Component	Acquired company's consolidated total revenues (after intercompany eliminations) for the most recently completed fiscal year.	Registrant's and its subsidiaries' consolidated total revenues (after intercompany eliminations) for the most recently completed fiscal year.

Financial Statement Requirements.

Depending on the results of the above-listed significance tests, financial statements of the acquired business and pro forma financial information may be required. The below chart sets forth the requirements for inclusion of acquired company financials:

Significance	Financial Statement Requirements	Pro Forma Financial Information Requirement
20% or Less	None.	None.
Greater than 20% < 40%	Most recent fiscal year audited, as well as unaudited for the subsequent interim period. No comparative interim period needed.	Pro forma financial information prepared in accordance with Article 11 for the registrant's most recently completed fiscal year and subsequent interim period.
Greater than 40%	Audited financial statements for the two most recent fiscal years, as well as most recent unaudited interim period and the comparative interim period of the prior year.	Pro forma financial information prepared in accordance with Article 11 for the registrant's most recently completed fiscal year and subsequent interim period.

Note as well that ***multiple insignificant acquisitions*** of unrelated businesses that collectively aggregate more than ***50% significance*** will require one year of audited financial statements and unaudited financial statements for the subsequent interim period,

as well as pro forma financial information for the registrant's most recently completed fiscal year and subsequent interim period.

In addition, pro forma financial information is also required when a material subsidiary that exceeds 20% significance is ***disposed of***.

NON-GAAP FINANCIAL MEASURES

Non-GAAP financial measures are numerical measures of a registrant's historical or future financial performance, financial position or cash flows that (i) exclude amounts, or are subject to adjustments that have the effect of excluding amounts, or (ii) include amounts, or are subject to adjustments that have the effect of including amounts, that are included in or excluded from, as the case may be, the most directly comparable GAAP measure in the registrant's statement of income, balance sheet or statement of cash flows (or equivalent statements).

Non-GAAP financial measures do not include operating and other statistical measures (for example, unit sales, numbers of employees, etc.) or ratios or statistical measures calculated using exclusively GAAP financial measures (for example, operating margin).

Commonly used non-GAAP financial measures include EBIT, EBITDA, Adjusted EBITDA, adjusted net income and constant currency metrics.

Non-GAAP performance measures cannot exclude "normal, recurring, cash operating expenses necessary to conduct the Company's business. In addition, non-GAAP liquidity measures cannot exclude cash settled items and cannot be presented on a per share basis regardless of how the metric is characterized by the issuer (for example, per-share Adjusted EBITDA may not be presented). As a result, non-GAAP measures presented to shareholders may differ from those in debt documents.

Presentation of Non-GAAP Financial Measures in Registration Statements

Required Disclosure.

Whenever a registrant presents a non-GAAP financial measure in a filing, it must:

- Present, with equal or greater prominence, the most directly comparable financial measure calculated and presented in accordance with GAAP;
- Reconcile the differences between the non-GAAP financial measure and the comparable GAAP financial measure;
- Disclose the reasons why the registrant's management believes the presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial conditions and results of operations; and
- To the extent material, disclose the additional purposes, if any, for which the registrant's management uses such non-GAAP financial measure.

Certain Prohibitions.

The use and presentation of non-GAAP financial measures are a common focus of the SEC when reviewing registration statements and issuing comment letters. In particular, the SEC will frequently comment on any of the following, which are prohibited in registration statements under Regulation S-K:

- Excluding charges or liabilities that required, or will require, cash settlement from non-GAAP liquidity measures, other than EBIT and EBITDA;
- Adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual if such item is reasonably likely to recur within two years or there was a similar item within the prior two years;
- Presenting non-GAAP financial measures in its financial statements or accompanying notes;
- Presenting non-GAAP financial measures in any pro forma financial information required by SEC rules; and
- Using titles of non-GAAP financial measures that are the same as, or confusingly similar to, titles used for GAAP measures.

SEC GUIDANCE SPOTLIGHT:

Question: Are there examples of disclosures that would cause a non-GAAP measure to be more prominent?

Answer: Yes. This requirement applies to the presentation of, and any related discussion and analysis of a non-GAAP measure. Whether a non-GAAP measure is more prominent than the comparable GAAP measure generally depends on the facts and circumstances in which the disclosure is made. The staff would consider the following to be examples of non-GAAP measures that are more prominent than the comparable GAAP measures:

- Presenting an income statement of non-GAAP measures.
- Presenting a non-GAAP measure before the most directly comparable GAAP measure or omitting the comparable GAAP measure altogether, including in an earnings release headline or caption that includes a non-GAAP measure.
- Presenting a ratio where a non-GAAP financial measure is the numerator and/or denominator without also presenting the ratio calculated using the most directly comparable GAAP measure(s) with equal or greater prominence.
- Presenting a non-GAAP measure using a style of presentation (e.g., bold, larger font, etc.) that emphasizes the non-GAAP measure over the comparable GAAP measure.
- Describing a non-GAAP measure as, for example, “record performance” or “exceptional” without at least an equally prominent descriptive characterization of the comparable GAAP measure.
- Presenting charts, tables or graphs of non-GAAP financial measures without presenting charts, tables or graphs of the comparable GAAP measures with equal or greater prominence or omitting the comparable GAAP measures altogether.
- Providing discussion and analysis of a non-GAAP measure without a similar discussion and analysis of the comparable GAAP measure in a location with equal or greater prominence.

Key Takeaways

The SEC deploys a prescriptive approach with regards to non-GAAP financial measures and regularly comment on the use and presentation of such items. When drafting your registration statement, it is important to remember that order matters. Present the GAAP measure before the related non-GAAP measure. Merely presenting the GAAP measure once, followed by pages of only non-GAAP measures, discussion and analysis is inconsistent with the guidance and would likely draw SEC scrutiny.

When preparing non-GAAP financials, companies should not exclude normal, recurring, cash operating expenses that are necessary to operate their business in their non-GAAP performance measures. Note that an expense could be regarded as recurring even where it occurs occasionally, including at irregular intervals. For example, the SEC staff may object to the exclusion of “restructuring expenses” if they have historically occurred occasionally.

Companies should carefully review the applicable rules relating to the use of non-GAAP financial measures (Regulation G and Item 10(e) of Regulation S-K), the SEC staff’s compliance and disclosure interpretations guidance on non-GAAP financial measures, as well as recent SEC comment letter trends on the topic when preparing their disclosures.

OBLIGATIONS AS A PUBLIC COMPANY

REPORTING AND DISCLOSURE OBLIGATIONS

Any public company must file periodic reports with the Securities and Exchange Commission, consisting, for domestic issuers, of annual reports on Form 10-K and quarterly reports on Form 10-Q, as well as current reports on Form 8-K. Foreign private issuers file annual reports on Form 20-F and current reports on Form 6-K. The Company should ensure that it has procedures in place to prepare its periodic reports in a timely manner and circulate them for comment among Company officials, its Disclosure Committee (if applicable), and outside advisors.

Periodic Reports

Form 10-K.

An annual report on Form 10-K must be filed on an annual basis, within (i) 60 days after the end of the fiscal year for large accelerated filers, (ii) 75 days after the end of the fiscal year for accelerated filers, and (iii) 90 days after the end of the fiscal year for all other registrants. An “accelerated filer” is a company that meets the following conditions at the end of each fiscal year: (i) has an aggregate worldwide market value of voting and non-voting common equity held by non-affiliates (a “public float”) of $75 million or more, but less than $700 million, as of the last business day of the most recently-completed second fiscal quarter; (ii) has been subject to the reporting requirements of the Exchange Act for at least twelve calendar months; and (iii) has filed at least one annual report under the Exchange Act. A “large accelerated filer” is an accelerated filer that has a public float of $700 million or more as of the last business day of the most recently-completed second fiscal quarter.

The form contains various information about the Company, including descriptions of its business, properties, financial condition and risk factors. It also includes audited financial statements, accompanied by management’s discussion and analysis of financial condition and results of operations for the last three years, which must include a description of known trends and uncertainties that are reasonably expected to have a material impact. Certain information relating to management, executive compensation, related party transactions, and principal stockholders that is required by Part III of Form 10-K may be incorporated by reference from the Company’s proxy statement if the proxy statement is filed within 120 days after the end of the fiscal year. A company that intends

to incorporate by reference Part III information from its proxy statement but does not file its proxy statement within the 120-day period must amend its Form 10-K prior to the end of the 120-day period to provide the information that was to have been incorporated by reference. The Form 10-K must be signed by the Company, its principal executive officer, principal financial officer, principal accounting officer and a majority of the directors serving on the Company's board of directors (the "Board"). Officers and directors should review carefully the draft Form 10-K submitted to them, involve the professionals they deem necessary to assure the Form 10-K's accuracy and completeness, and allow time to review and discuss the document at a meeting of the Board prior to filing with the SEC. This review is particularly recommended of members of the audit committee and members of other committees of the Board responsible for reviewing the Company's financial statements and related disclosure.

Form 10-Q.

Quarterly reports on Form 10-Q must be filed after each fiscal quarter (other than the last quarter of the fiscal year), within: (i) 40 days after the end of the fiscal quarter for large accelerated filers and accelerated filers, and (ii) 45 days after the end of the fiscal quarter for all other registrants. The major component of a Form 10-Q is unaudited financial statements for the most recent fiscal quarter and for the year-to-date (and for corresponding periods in the preceding fiscal year), accompanied by management's discussion and analysis of financial condition and results of operations for those periods. Risk factors also must be updated to reflect any material changes. Some companies include all of their risk factors, updated as necessary, in each Form 10-Q, while other companies opt to disclose only new risk factors that have arisen since the filing of the Form 10-K and any previously disclosed risk factors with material changes. The Form 10-Q must be signed by the Company and by its principal financial officer or principal accounting officer.

Legal Proceedings and Loss Contingency Disclosure.

Form 10-K and Form 10-Q each requires the disclosure of certain legal proceedings pursuant to Item 103 of Regulation S-K and loss contingencies pursuant to applicable accounting standards. The term "Legal Proceedings" is broader than just litigation, it includes arbitrations, court orders and administrative hearings. However, threatened legal proceedings generally do not need to be disclosed under Item 103 as the Item calls for "pending" legal proceedings, subject to certain exceptions for proceedings known to be contemplated by the government and claims known to be contemplated that would have to be aggregated with other similar claims under Item 103(b)(2). Courts and the SEC look at two factors to determine whether a pending or threatened legal proceeding is material to a reasonable investor: (1) the probability of incurring losses in such a proceeding and (2) the anticipated magnitude of those losses.

In addition to the Item 103 disclosure there is Loss Contingency disclosure required by applicable accounting standards in the footnotes to a company's financial statements. These are two different types of disclosure with different objectives. The loss contingency disclosure is directed at understanding management's view of the

likelihood of a loss and the potential financial statement impact of the potential loss. In comment letters, the SEC's focus is frequently on disclosure (or lack thereof) on reasonably possible losses or ranges of losses.

Sarbanes-Oxley Certifications.

In addition to signing Forms 10-K and 10-Q, principal executive officers and principal financial officers are required to make certain certifications that are filed with each Form 10-K and 10-Q pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"). Pursuant to Section 404(a) of Sarbanes-Oxley, each annual report must contain a statement by management that it has responsibility for establishing and maintaining adequate internal controls for financial reporting and an assessment of the effectiveness of such controls as of the end of each fiscal year. Section 404(b) requires that the Company's independent auditor attest to management's assessment of the effectiveness of those internal controls. Newly public companies are provided a transition period such that a newly public company is not required to provide management's assessment or the auditor attestation until its second annual report on Form 10-K.

Cybersecurity Risk Disclosures.

In July 2023, the SEC adopted rules that require public companies to include cybersecurity risk management, strategy and governance disclosures in their Form 10 Ks. Specifically, under the rules, the Company is required to disclose in its Form 10-K (i) its processes for assessing, identifying and managing material cybersecurity risks, including whether those processes cover cybersecurity risks from its third-party service providers, (ii) how its board oversees cybersecurity risks and (iii) its management's role in assessing and managing its material cybersecurity risks, including the processes by which its management are informed about and monitor cybersecurity incidents.

The rules also require companies to file a current report on Form 8-K to report any material cybersecurity incident generally within four business days after the company has determined it experienced such an incident. Such Form 8-K must describe the nature, scope and timing of the incident and the impact or reasonably likely impact of the incident, including financial impact, but need not disclose information that would impede the company's response or remediation of the incident.

Current Reports

Form 8-K.

A current report on Form 8-K generally must be filed with the SEC within 4 business days after certain significant corporate events. Examples of Form 8-K reportable events include entry into, termination or material amendment of a material agreement, completion of significant acquisitions or dispositions of assets, occurrence of a material cybersecurity incident, departure and appointment of, and compensation arrangements with, certain officers and directors and amendments to the Company's charter or bylaws, among others. Form 8-K may also be used as a way to voluntarily report events that

need not otherwise be immediately reported. Voluntarily reported information may either be "furnished" under Item 7.01 or "filed" under Item 8.01 of Form 8-K.

Information that is "furnished" under Item 7.01 will not be subject to liability under Section 18 of the Exchange Act, unless the company specifically states that the information is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act. (General Instruction B.2. of Form 8-K.) See **Annex A** regarding the differences between furnishing and filing reports and other information with the SEC.

Timeliness in Filing Periodic and Current Reports

Failing to file required periodic or current reports or failing to file such reports within the time frames set forth in the SEC rules can have adverse consequences.

Form S-3.

Form S-3 is a short form registration statement that permits incorporation by reference of Securities Exchange Act of 1934, as amended (the "Exchange Act") reports. In order to be eligible to use Form S-3, the registrant must have timely filed all required Exchange Act reports during the preceding 12 months (except for certain reports required on Form 8-K for which the timeliness of the filing will not affect S-3 eligibility) and meet certain other minimum requirements. If a registrant making offers and sales of securities under an effective Form S-3 fails timely to file an Exchange Act report, it may not continue making offers and sales under the Form S-3 registration statement after it files its next annual report on Form 10-K, but it may do so before that Form 10-K is filed. In addition, in order to qualify as a well-known seasoned issuer (a "WKSI"), the issuer must be S-3 eligible. In order to be able to use Form S-3, an issuer must satisfy certain registrant requirements, including, among other things, that the issuer must be a U.S. corporation, have a class of securities registered under Section 12 of the Exchange Act, and have timely filed all Exchange Act reports required to be filed during the past 12 months. In addition, the issuer must comply with applicable transaction requirements that are based on the size of the issuer's public float, the type of securities being offered and whether the offering is a primary or secondary offering. A key benefit to being a WKSI is that a registration statement filed on Form S-3 will become effective automatically upon filing and is therefore not delayed by SEC review.

Rule 144.

Subject to some exceptions, it is a condition to the use of the safe harbor under Rule 144 that the Company has current public information, which generally means that it has filed all of its required reports under the Exchange Act during the preceding 12 months. Rule 144 is applicable for resales by affiliates that are not registered and by non-affiliates that purchased shares in a private placement.

Non-Periodic Public Disclosures

Because of the difficulties of managing information dissemination, it is important that the Company adopt and maintain internal procedures regarding communications with the financial community and the public. A limited number of persons should be authorized to communicate with the financial community, and all employees should be instructed to refer inquiries to the responsible person(s).

Duty to Disclose.

There is no general obligation to disclose material information. Under the U.S. securities laws, the Company must first have a duty to disclose in order for there to be an actionable claim. A public company is generally only required to disclose information when it files Exchange Act reports, when it sells securities, and when it repurchases its securities. In addition, if it discovers that an earlier statement was materially inaccurate when made, it has a duty to correct that statement. There may also be a duty to update statements that, while correct when made, have a forward-looking connotation that ceases to be correct in light of subsequent events. However, there is a trend toward more frequent disclosure and, if the Company does elect to make a disclosure, it must do so candidly and completely.

In addition, management must evaluate, with the participation of the Company's principal executive and principal financial officers, or persons performing similar functions, the effectiveness of its disclosure controls and procedures as of the end of each fiscal quarter.

Press Releases.

A public company generally should make timely disclosure to the investing public of developments in those affairs that are "material," whether favorable or unfavorable. Such disclosures are normally made through press releases, which may be supplemented by communications directly to stockholders and the filing of a Form 8-K. Press releases require a high degree of accuracy, completeness and balance between positive and negative factors. "Material" facts are those that a reasonable investor would consider important when making an investment decision. A new fact is material if there is a substantial likelihood that the disclosure would be viewed by a reasonable investor as significantly altering the "total mix" of available information, which requires balancing the probability of an event and the anticipated magnitude of such event.

Company Web Sites and Social Media.

Corporate web sites and social media channels, such as X (formerly Twitter), Threads, LinkedIn or Facebook, can be used by public companies to disseminate material information, without running afoul of Regulation FD. For purposes of complying with Regulation FD (which is further discussed below), a company makes public disclosure when it distributes information through a recognized channel of distribution.

Whether a company's web site or social media channel is a recognized channel of distribution will depend on the steps that the company has taken to alert the market and investors to its web site or social media channel and the company's disclosure practices. Steps that a company can take to establish its web site or social media channel as a recognized channel for disclosing information include: (a) listing a company's web site address or identifying the specific social media channel(s) a company intends to use for such investor communications in its periodic reports and press releases, (b) establishing a pattern of posting important information on its corporate web site or social media channel(s), (c) informing investors that they can find important information about the company on its web site or social medial channel(s), and (d) using "push" technology, such as RSS or other social media feeds, to alert investors when new information has been posted and informing investors that these feeds are available and how to subscribe.

Personal social media sites of individual directors, officers or employees of a public company would not ordinarily be assumed to be channels through which the company would disclose material corporate information. Such individuals, however, should be aware that posting information about their company on personal media sites could potentially implicate Regulation FD, and therefore, such persons must exercise caution when communicating through social media.

On September 29, 2018, the SEC announced that Elon Musk, CEO and then-Chairman of Tesla, Inc., had agreed to pay a $20 million fine and step down from his position as Tesla's Chairman for three years to settle securities fraud charges brought by the SEC against him. The SEC charged that Mr. Musk's highly publicized August 7, 2018 tweet stating that he was considering taking Tesla private at $420 per share and that funding for the transaction had been secured, as well as subsequent tweets and disclosures, violated Section 10(b) of the Exchange Act and Rule 10b-5. According to the SEC's complaint, Mr. Musk's tweets, which contained alleged false and misleading statements and omissions of material facts, caused Tesla's stock price to jump by more than 6% on August 7, 2018 and led to significant market disruption. Further compounding the alleged violations, Mr. Musk made no public attempts to clarify his August 7th statements until August 13, 2018. Tesla also agreed to pay a $20 million penalty in connection with a settlement of related SEC charges that Tesla failed to have required disclosure controls and procedures covering Mr. Musk's tweets. Specifically, the SEC had charged Tesla with failing to have disclosure controls or procedures in place to: (i) assess in a timely manner whether the information Mr. Musk disseminated via X (formerly Twitter) was required to be disclosed in reports Tesla files under the Exchange Act and (ii) ensure that the information Mr. Musk published via X (formerly Twitter) was accurate and complete. This case is an important reminder for companies to review their disclosure controls and procedures to ensure appropriate oversight over their executives' public communications via social media.

Analysts and the Media.

<u>Regulation FD</u>

Under Regulation FD, the Company must disclose material, non-public information broadly to the public if it is conveyed to any securities market professional (e.g., broker-dealers, investment advisers, institutional investment managers, mutual funds, hedge funds, and buy-side or sell-side analysts) or stockholder. Any public disclosure required under Regulation FD shall be made simultaneously, if the disclosure is intentional, or promptly, if the disclosure is non-intentional. Selective disclosure may be made to the following categories of individuals without triggering the requirement to disseminate the information more widely: those who owe a duty of confidence to the Company (e.g., employees, lawyers and accountants), those who agree to keep the information confidential and, subject to certain limitations, those who receive a communication in connection with a registered public offering.

Analysts

Members of the financial community may contact the Company from time to time to obtain information. The Company is permitted to have individual or group discussions with analysts covering background or general information, but care should be taken not to disclose material, non-public information to someone unless such information is simultaneously disseminated to the public generally (as described above) or such individual or group has agreed to keep such information confidential. If, for example, the Company privately discloses or confirms to one analyst or stockholder (whether intentionally or accidentally) an earnings or revenue projection or any other material, non-public information, this information should be disclosed to the public at large by a press release or a Form 8-K, or both. Investors generally will only agree to keep information confidential for a short period of time given the restrictions on trading that holding such information poses.

Non-GAAP Financial Measures

Overview.

There are two primary rules that govern the use of non-GAAP measures.

Regulation G requires that any time publicly disclosed material information includes a non-GAAP financial measure, the issuer must accompany the non-GAAP measure with the most directly comparable GAAP measure and a reconciliation. It also requires that the measure not be misleading, which provides the Staff of the Division of Corporation Finance of the SEC (the "Staff") with broad discretion to challenge non-GAAP measures, including measures that (i) exclude items the Staff views as normal, recurring, cash operating expenses necessary to operate the business, (ii) are not presented consistently from period to period, (iii) exclude charges, but not gains, (iv) alter revenue recognition and measurement criteria required to be applied in accordance with GAAP or (v) fail to clearly label or explain adjustments, including separately identifying and explaining tax effects.

Item 10(e) of Regulation S-K contains several additional requirements whenever a non-GAAP financial measure is included in an SEC filing, including in Item 10(e)(1)(i) that

the comparable GAAP measure must be given equal or greater prominence and that management must disclose the reasons that the non-GAAP measure provides useful information to investors. In May 2016, the Staff issued updated guidance suggesting that equal or greater prominence will be interpreted to mean that the GAAP measure must be given greater prominence. Item 10(e)(1) also includes certain prohibitions, including that an issuer may not exclude cash settled items from liquidity measures (subject to certain exceptions) or identify items as non-recurring, infrequent or unusual if such items are reasonably likely to recur within two years or have occurred within the prior two years. Note, however, that, subject to Regulation G, the fact an issuer is not permitted to describe a charge or gain as non-recurring, infrequent or unusual in such circumstances, does not mean that the issuer cannot adjust for that charge or gain, it just means the issuer may not identify the item as non-recurring.

In December 2022, the Staff updated its guidance on non-GAAP measures. In the guidance, the Staff clarified that the nature and effect of a non-GAAP adjustment and how it relates to a company's operations, industry and regulatory environment determine whether an expense is a normal, operating expense and further clarified that an operating expense that occurs repeatedly or occasionally, including at irregular intervals, should be treated as a recurring operating expense. The guidance provided additional examples of misleading non-GAAP measures, including those presenting a non-GAAP measure of revenue on a net basis when gross presentation is required by GAAP, or vice versa, and labeling a non-GAAP measure the same as a GAAP measure even though it is calculated differently than the similarly labeled GAAP measure. The guidance also provided additional examples of non-GAAP measures presented with greater prominence than their comparable GAAP measure, including a chart of a non-GAAP measure presented without a corresponding chart with the related GAAP measure and a non-GAAP reconciliation that starts with a non-GAAP measure. The Staff also confirmed in the guidance that a non-GAAP measure could still be misleading notwithstanding that it is accompanied by extensive, detailed disclosure about the nature and effect of each adjustment.

Forward-Looking Disclosures.

With respect to forward-looking information, the reconciliation must be quantitative, to the extent available without "unreasonable efforts." If the GAAP financial measure is not accessible on a forward-looking basis, the issuer must disclose that fact and provide reconciling information that is available without an unreasonable effort. Furthermore, the issuer must identify information that is unavailable and disclose its probable significance. In the event a quantitative reconciliation is not available, the reconciling information must disclose the types of gains, losses, revenues or expenses that would need to be added to or subtracted from the non-GAAP financial measure to arrive at the most directly comparable GAAP measure, even though the issuer cannot quantify all of those items. At a minimum, issuers should provide the types of gains, losses, revenues or expenses that would need to be added to or subtracted from the non-GAAP financial measure to arrive at the most directly comparable GAAP measure and state that those adjustments may be significant. Issuers should also show the reconciliation based on the current forecast, including readily quantifiable adjustments baked into the projections, and note

that if in future periods there are additional gains, losses, revenues or expenses of the type noted, then those would be added to or subtracted from the non-GAAP financial measure as well and such amounts may be significant.

Earnings Releases.

An earnings release is not considered filed with the SEC; however, both Regulation G and Item 10(e)(1)(i) apply to earnings releases. Item 10(e)(1)(ii) does not apply, which provides more flexibility with respect to the presentation of measures the Staff may consider liquidity measures (e.g., unlevered free cash flow and non-GAAP earnings per share). Under the May 2016 equal or greater prominence guidance, issuers may receive a Staff comment if the GAAP figure does not precede the non-GAAP figure, including in headlines or if the non-GAAP measure is discussed without similar discussion of the GAAP results. In the same guidance, the Staff also indicated that EBITDA based measures should not be presented on a per share basis.

On December 26, 2018, the SEC settled enforcement proceedings against ADT Inc. involving certain ADT earnings releases that did not comply with the SEC's non-GAAP disclosure requirements. Specifically, the SEC's cease-and-desist order stated that when ADT presented non-GAAP financial measures in the headlines to its 2017 full-year and 2018 first quarter earnings releases without giving the comparable GAAP financial measures equal or greater prominence, ADT violated Item 10(e)(1)(i)(a) of Regulation S-K, Section 13(a) of the Exchange Act and Rule 13a-11 thereunder. Among other non-GAAP financial measures, ADT presented adjusted EBITDA in the headlines of both earnings releases and stated that EBITDA had increased by a stated percentage over the comparable prior period without disclosing net income or loss, the comparable GAAP financial measure, in the headlines. ADT paid a $100,000 fine in connection with the settlement. This enforcement action is an important reminder that the SEC regards compliance with applicable non-GAAP disclosure requirements as a serious matter and will take enforcement action in appropriate cases.

Earnings Calls.

Regulation G applies to earnings calls. However, the requirement to include a reconciliation and the most directly comparable GAAP measure is satisfied by posting that information on the issuer's web site at the time of the call and referring investors to the web site on the call. If a slide deck is used on the call and later posted to the web site, the slide deck should include the reconciliation within the deck.

Exchange Act Reports and Registration Statements.

Regulation G and Item 10(e) apply both to registration statements and Exchange Act reports filed with the SEC.

Safe Harbor for Forward-Looking Information

There are three alternative ways to obtain the benefits of the forward-looking safe harbor under the Private Securities Litigation Reform Act ("PSLRA"). The safe harbor is

available if: (1) the statement is identified as a forward-looking statement and "accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement," (2) the forward-looking statement is immaterial, or (3) if the plaintiff fails to establish that defendants had actual knowledge of the falsity of the statement. Because the third alternative requires an inquiry into the state of mind of the defendant, it is unlikely to have significant value on a motion to dismiss. As a result, the first alternative is generally perceived as the most valuable prong of the safe harbor.

As a general matter, there are three basic requirements that must be met in order to satisfy the first alternative.

1. Forward-looking statements must be ***identified as forward-looking statements***, which some courts have construed as meaning more than just identifying with words such as "expect," "will," "anticipate," etc.

   - ***Best practice*** is to mention specifically each topic for which the issuer is providing forward-looking information in the particular document.

2. Forward-looking statements must be ***accompanied*** by meaningful cautionary statements identifying important risk factors. While most courts have found that the safe harbor protection applies to a statement in a written document that references cautionary language from an SEC filing, the PSLRA does not specifically permit a document containing forward-looking statements to cross-reference another document. As a result, many practitioners worry that such a cross-reference may not always be sufficient to satisfy the requirement that the cautionary language ***accompany*** the forward-looking statements.

   - ***Best practice*** is both to (1) note specific risks relevant to the included forward-looking information and (2) cross-reference the specific Risk Factors section of the most recent Exchange Act report.

3. Forward-looking statements must be accompanied by ***meaningful cautionary statements identifying important risk factors***. While identifying the particular factor that ultimately causes the forward-looking statement not to materialize is not necessary for such statement to be protected by the safe harbor, courts have struggled to determine what constitutes meaningful cautionary language. It is, however, clear that general boilerplate risk factors that are not updated over time, or that would be equally applicable to any number of companies within the industry, will not be sufficient. Identifying a general risk when there is a known specific risk is also more likely to be viewed as mere boilerplate (*See e.g., Slayton v. American Express*).

   - ***Best practice*** is to specifically tailor substantive risk factors to the particular forward-looking statements. The more specific and concrete the cautionary language is, the more likely a court will find the language to be meaningful. The best way to demonstrate that the risk factors are not mere boilerplate is to

update them frequently. If updates are not needed for long periods of time, it is generally a sign that the risk factors are too broad.

Under the PSLRA ***oral forward-looking statements*** do not need to be accompanied by meaningful cautionary language if (1) they are accompanied by a warning that actual results may differ materially from the forward-looking statements and (2) the warning is accompanied by an oral statement referring listeners to a readily available document, such as the Risk Factors section of the most recent Exchange Act report, that contains adequate cautionary language (*See e.g. In re Coinstar Securities Litigation* (W.D. Washington Oct. 6, 2011) where the court determined virtually identical statements were protected by the safe harbor when accompanied by a verbal warning and an oral statement referencing a readily available written document containing cautionary language but were not protected in a subsequent communication where such statements were not so accompanied. The court also refused to take judicial notice of a PowerPoint slide that was displayed during the oral presentation because its authenticity was disputed). As a result, each oral presentation should generally follow the script on Annex C for an oral disclaimer.

In addition to the safe harbor, Rule 175 of the Securities Act and the "bespeaks caution" doctrine, which renders a forward-looking statement immaterial if meaningful cautionary statements accompany it, may also offer some protection.

- ***Best practice*** is to omit reference to the PSLRA in the cautionary statement because (1) the statute does not require the reference, (2) the safe harbor expressly does not apply to statements made in connection with a tender offer, going private transaction, IPO and certain limited other cases and (3) such a reference could diminish an issuer's ability to rely on the "bespeaks caution" doctrine.

See **Annex B** for examples of forward-looking statement legends.

Proxy Materials

The Company will generally solicit proxies from its stockholders in connection with its annual stockholder meeting and in connection with any special stockholder meeting. The proxy solicitation materials must disclose information relating to management, executive compensation, related party transactions, and principal stockholders, and must be furnished to the SEC in advance of their delivery to stockholders. Under the SEC's proxy rules, the Company is obligated to include in its proxy statement any proposals submitted in a timely manner by stockholders who meet certain minimum qualification standards unless the proposal fits within certain limited exceptions.

In addition, companies are required, among other things, to (i) include additional disclosure on executive compensation in proxy materials, (ii) hold a non-binding

stockholder "say on pay" vote at least once every three years and (iii) hold a stockholder vote at least once every six years on whether to have a "say on pay" vote every one to three years. Emerging growth companies are not required to hold such votes. See Section III.B. for further details.

CEO Pay Ratio.

Public companies, except emerging growth companies, smaller reporting companies and foreign private issuers, must disclose the ratio of median employee compensation to principal executive officer compensation (the "CEO pay ratio"). A newly public company is required to begin disclosing CEO pay ratio starting with the ratio for its first fiscal year following the year in which it becomes a reporting company.

Hedging Disclosures.

All public U.S. operating companies, including emerging growth companies, smaller reporting companies and business development companies, are required to provide a description of any practices or policies they have adopted regarding the ability of their employees, officers and directors to engage in certain hedging transactions. Foreign private issuers and listed closed-end funds are exempt from the requirement.

Pay Versus Performance.

In August 2022, the SEC finalized its pay versus performance disclosure rule, as required by the Dodd-Frank Act. The rule requires tabular disclosure of the relationship between the compensation "actually paid" to a company's named executive officers and the company's financial performance, over a five-year (three-year for smaller reporting companies) period, subject to a phase-in for the 2024 proxy statement. Newly public companies are not required to provide pay versus performance disclosure on fiscal years prior to the year such company began reporting under the Exchange Act. The performance data disclosed in the table must include the company's total shareholder return, the total shareholder return of the company's peer group and the company's net income, and a company-selected financial performance measure. Graphical or narrative disclosure of the relationships between the compensation and the financial performance measures must accompany the table. Companies that are not smaller reporting companies must also include a tabular list of the three to seven most important financial performance measures used by them to link the compensation to performance for the most recently completed fiscal year. The rule, which is set out in item 402(v) of Regulation S-K, first became applicable to proxy and information statements for fiscal years ending on or after December 16, 2022.

Clawback Policy.

In October 2022, the SEC adopted rules, as required by the Dodd-Frank Act, requiring securities exchanges to establish listing standards that require listed issuers to adopt and comply with a policy (a "clawback policy") for the recovery of erroneously awarded incentive-based compensation—that is, incentive-based compensation awarded based on a misstated financial performance measure (including stock price and

total shareholder return). The rules also require listed issuers to disclose information about their clawback policy and their compliance with the policy. The rules, which apply to most listed issuers, including those that are emerging growth companies, smaller reporting companies and foreign private issuers (with exemptions only for the listing of certain securities), apply only to the recovery of such compensation from "executive officers."

Under the rules, a listed issuer that is required to prepare an accounting restatement, including a "little r restatement" (i.e., a restatement to correct an immaterial error to prior period financial statements that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period), would be required to recover from any current or former executive officers the incentive-based compensation that was erroneously awarded to such person during the three fiscal years preceding the date such restatement was required (as well as any transition period resulting from a change in the issuer's fiscal year within or immediately following those three completed fiscal years). Under the rules, recovery of erroneously awarded compensation is without regard to any misconduct by an executive officer in connection with the error that triggers the restatement. Delisting is the ultimate sanction for not adopting or complying with a clawback policy.

A listed issuer is required to file its clawback policy as an exhibit to its annual report filed with the SEC and is required to disclose in its annual report or proxy statement certain information about compliance with its clawback policy. Listed issuers must begin to comply with the rules' disclosure requirements in proxy statements and annual reports filed on or after they adopt their clawback policy.

Nasdaq "Golden Leashes" Disclosure Rule.

For Nasdaq-listed companies, the Company must disclose, at least annually, the parties to, and the materials terms of, all agreements and arrangements between any director or nominee and any person or entity, other than the Company, relating to compensation or other payments in connection with candidacy or service as a director (so-called "golden leash" arrangements). In a typical golden leash arrangement, an activist stockholder would compensate its nominee(s) for service on the board based on certain company or stock performance criteria. The Company may make this disclosure on its web site (or through it by hyperlinking to another web site) or in its proxy statement or information statement for any stockholders' meeting at which directors are elected (or, if the Company does not file proxy or information statements, in its Form 10-K or 20-F). The Nasdaq rule does not prohibit such golden leash arrangements. Note that the rule also generally overlaps with certain SEC disclosure requirements (e.g., Items 401(a) and 402(k) of Regulation S-K, Item 5(b) of Schedule 14A, and Item 5.02(d) of Form 8-K).

Annual Report to Stockholders

In connection with the Company's annual meeting of stockholders, an annual report must be distributed to stockholders prior to or contemporaneously with the definitive proxy materials. The annual report must contain audited financial statements

and management's discussion and analysis of financial condition and results of operations. Some issuers choose to send stockholders a copy of their Form 10-K as an annual report, instead of producing a separate, glossy report for this purpose. The annual report must also be submitted electronically to the SEC via EDGAR under Form ARS. The electronically submitted annual report must capture the same graphics, styles of presentation and prominence of disclosures as the version given to stockholders. The electronic submission must be made available on EDGAR no later than the date on which the report is first sent or given to stockholders. The Staff has yet to provide guidance as to whether a Form 10-K that is used as such an annual report is required to be refiled with the SEC under a Form ARS.

SARBANES-OXLEY AND OTHER COMPLIANCE REQUIREMENTS

Sarbanes-Oxley Requirements

Under Sarbanes-Oxley, standards were adopted on a number of topics, including: (i) loans to directors and executive officers, (ii) audit committees and audit committee member independence, (iii) disclosure controls and procedures and internal control over financial reporting, (iv) disclosure of non-GAAP information, (v) off-balance sheet financing, (vi) codes of ethics, (vii) improper influence on the conduct of audits, (viii) forfeiture of bonuses/ profits, (ix) officer and director bars and penalties, and (x) whistleblower protections. Although the complexity and breadth of the Sarbanes-Oxley standards do not permit a detailed description of those standards in this memorandum, some were adopted through rules of the national securities exchanges and are described in Part IV below. We also have described below a few of the other standards which are of particular significance:

Loans to Directors and Executive Officers.

Sarbanes-Oxley prohibits the Company from extending, maintaining, arranging for or renewing a personal loan to or for any director or executive officer. Margin loans by registered broker-dealers, consumer credit, charge cards, open end credit plans, and home improvement and manufactured home loans are permitted if the credit is extended in the ordinary course of business, is of a type generally offered to the public and is made either on market terms or on terms no more favorable than those offered to the general public. Loans to directors and executive officers would have to be repaid before the Company publicly files its IPO registration statement.

Forfeiture of Bonus/ Profits.

If the Company is required to restate its financial results due to material noncompliance with any financial reporting requirement under the securities laws resulting from misconduct, the chief executive officer and chief financial officer must reimburse the Company for any bonus or other incentive-based or equity-based compensation received and any profits realized from the sale of Company securities during the 12-month period following the first publication of the financial document being restated.

Additional Disclosure.

Public companies must disclose in their periodic reports whether they have adopted a code of ethics for senior financial officers, and if not, why they have not done so. A public company must also disclose whether its audit committee has at least one member who is a financial expert, and if not, why not.

Sarbanes-Oxley also implemented rules relating to document retention and destruction that require certain relevant materials to be preserved when litigation or an investigation is pending within a federal agency or department or is reasonably foreseeable, or as relates to certain corporate audit records.

Internal Controls

The Exchange Act requires that all companies with a registered class of securities impose internal controls designed to assure the adequacy and integrity of the company's financial statements, reports and internal accounting procedures. The Exchange Act requires the Company to make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect the Company's transactions and dispositions of assets. The Company must also devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (1) transactions are executed in accordance with management's general or specific authorization, (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets, (3) access to assets is permitted only in accordance with management's general or specific authorization and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to differences.

On October 16, 2018, the SEC issued a Report of Investigation detailing the SEC Enforcement Division's consideration of the internal accounting controls of nine companies that were victims of "business email compromises," a form of cyber fraud in which perpetrators posed as company executives or vendors and used emails to dupe company personnel into sending large sums to bank accounts controlled by the perpetrators. The companies described in the report lost a combined total of nearly $100 million after their internal accounting controls failed to protect against two types of fraudulent email schemes: (i) emails from fake executives, and (ii) emails from fake vendors. The SEC issued the report, foregoing a traditional enforcement action, to draw attention to the prevalence of these cyber-related scams and as a reminder that all public companies should consider cyber-related threats when devising and maintaining a system of internal accounting controls.

As discussed in Section I.A.4, under Section 404 of Sarbanes-Oxley, the Company must provide its report on internal controls in its Form 10-K. Generally, the internal report of management must (1) state management's responsibility for establishing and maintaining adequate internal control over financial reporting, (2) identify the framework management uses to evaluate the effectiveness of those controls, (3) contain

management's assessment of the internal controls' effectiveness and (4) state that the independent auditors have issued an attestation report.

JUMPSTART OUR BUSINESS STARTUPS ACT OF 2012

On April 5, 2012, the JOBS Act was signed into law. The purpose of the JOBS Act is to expand and ease the methods of capital raising by, and relax the regulatory burdens on, smaller companies. One component of the JOBS Act initiative implements measures designed to ease the cost and burden of reporting requirements for public companies that are designated as emerging growth companies.

Definition of an Emerging Growth Company

A company qualifies as an emerging growth company if it has total annual gross revenues of less than $1.235 billion during its most recently completed fiscal year. A company will retain emerging growth status and the reduced regulatory requirements associated with it until the earliest of:

(a) The end of the fiscal year in which its total annual gross revenues are $1.235 billion or more.

(b) The end of the fiscal year in which the fifth anniversary of its IPO occurred.

(c) The date on which the company has, during the previous rolling three-year period, issued publicly or privately more than $1.0 billion in non-convertible debt securities.

(d) The date on which the company qualifies as a large accelerated filer.

Exemptions for Emerging Growth Companies

Shareholder Votes on Compensation.

Emerging growth companies are not required to hold stockholder advisory votes on "say on pay," the frequency of "say on pay," and "say on golden parachutes." "Say on pay" is an advisory vote whereby stockholders vote on whether to approve the compensation of named executive officers every one to three years. The frequency vote is an advisory vote whereby stockholders vote on whether the "say on pay" vote should be held every one, two or three years. The "say on golden parachutes" vote arises in the event of an M&A transaction and requires an advisory vote of the stockholders on payments made to any named executive officer in connection with such transaction. However, once issuers lose their emerging growth company status, they must begin to hold say on pay votes no later than:

(i) Three years after losing emerging growth company status if a company was an emerging growth company for less than two years after completing its IPO; or

(ii) One year after losing emerging growth company status for all other emerging growth issuers.

Executive Compensation Metrics.

As required by the Dodd-Frank Act, emerging growth companies are not required to disclose:

(i) The relationship between executive compensation actually paid and the financial performance of the company; or

(ii) The ratio between the annual total compensation of the CEO and the median of the annual total compensation of all employees of the company.

Regulation S-K Item 402 Disclosures.

An emerging growth company need only comply with the provisions of Item 402 applicable to smaller reporting companies, which, for example, do not include a Compensation Discussion and Analysis.

Other Exemptions.

Emerging growth companies are also exempt from:

(i) Compliance with new or revised accounting standards until those are applicable to private companies.

(ii) Section 404(b) of the Sarbanes-Oxley Act of 2002, which requires auditor attestation of a company's internal controls and procedures. However, emerging growth companies are required to present management's assessment and conclusions regarding the effectiveness of internal controls and procedures.

(iii) Any Public Company Accounting Oversight Board (PCAOB) rules regarding mandatory audit firm rotation or an expanded auditor report, and any other PCAOB rules adopted after the date of enactment unless the SEC determines new rules are necessary for protecting the public.

(iv) Inclusion of Critical Audit Matters ("CAMs") in audit reports. However, auditors may early adopt CAM requirements or apply them voluntarily to audits for which they are not required.

Opting Out of Emerging Growth Company Status.

Section 107(a) of the JOBS Act generally permits emerging growth companies to opt out of one or more of the exemptions described above and instead comply with the

requirements that apply to other issuers. However, a company is required to notify the SEC in its initial registration statement whether it will take advantage of the extended transition period for complying with new or revised accounting standards.

NYSE REQUIREMENTS

In addition to statutory and regulatory requirements, NYSE-listed companies must comply with certain disclosure and corporate governance requirements imposed by the NYSE.

Disclosure Rules

The NYSE requires issuers to release quickly to the public any information that might reasonably be expected to materially affect the market for its securities. Information that should be immediately disclosed includes annual and quarterly earnings, dividend announcements, mergers, acquisitions, tender offers, stock splits, and major management changes. Information required to be disclosed immediately must be released via a press release or any other Regulation FD-compliant method.

If the Company can keep discussions of material information confidential, it does not need to release it immediately. However, when the Company has to involve more than a small group of top management and the Company's confidential advisors in such discussions, disclosure is generally required. If the NYSE determines that market activity suggests undisclosed material information, the NYSE may require the Company to provide such information to the NYSE or to publicly disclose such information immediately. Furthermore, the Company is expected to act quickly to dispel unfounded rumors that cause unusual market activity or price variations.

The Company must inform the NYSE by telephone if it intends to make a material public announcement (including a statement dispelling unfounded rumors) between 7:00 AM and 4:00 PM Eastern Time (at least ten minutes prior to the announcement). Under NYSE listing rules, the Company is prohibited from issuing material news after the close of trading until the earlier of 4:05 PM Eastern Time or the publication of the Company's official closing price on the NYSE, except when disclosing material information following a non-intentional disclosure in order to comply with Regulation FD. In addition, if the Company intends to make a material public announcement shortly after market close, the NYSE encourages it to delay doing so until the earlier of publication of the official closing price on the NYSE or fifteen minutes after the official closing time in order to facilitate an orderly closing process to trading on the NYSE.

The NYSE's material news policy requires listed companies to provide the NYSE with advance notice at least ten minutes before making a public announcement ***at any time*** with respect to a dividend or stock distribution. This advance notice requirement for dividends and stock distributions is in addition to the requirement to notify the NYSE at least ten days in advance of the related record date.

The NYSE may also impose a temporary trading halt of the Company's securities if it deems it necessary to allow for full dissemination of the released information and to

maintain an orderly market. Trading halts are instituted, among other reasons, to ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, providing investors with the opportunity to evaluate the information.

Corporate Governance

Governing Documents.

The Company must adopt and disclose corporate governance guidelines. The guidelines must cover director qualification standards, director responsibilities, director access to management and independent advisors, director compensation, director orientation and continuing education, management succession, and annual performance evaluation of the Board.

The Company must also adopt and disclose a code of business conduct and ethics that applies to directors, officers, and employees. The code must cover conflicts of interest, corporate opportunities, confidentiality, fair dealing, protection and proper use of company assets, compliance with laws, rules, and regulations (including insider trading laws), and reporting of illegal or unethical behavior. Any waivers of the code for directors or executive officers must be approved by the Board or a committee of the Board and must be disclosed within four business days of such approval by filing a current report on Form 8-K or including such disclosure on the Company's web site (in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K).

The Company's corporate governance guidelines and code of business conduct and ethics must also be made available on or through the Company's web site.

The chief executive officer of the Company is required to certify to the NYSE each year that the Company has not violated any of the NYSE corporate governance listing requirements.

Directors.

Except in the case of a "controlled company," the NYSE requires that the Company's board be composed of a majority of independent directors (as defined in Annex C), subject to applicable phase-in rules. A company listing in connection with its IPO has 12 months from the date of listing to comply with the majority independent board requirement in NYSE Listed Company Manual Section 303A.01. A company that has ceased to be a "controlled company" will be permitted to phase-in its majority independent board on the same schedule as companies listing in conjunction with their IPO (i.e., one year from loss of "controlled company" status).

The non-management directors must meet at regularly scheduled executive sessions without management. In addition, the independent directors must meet without the non-independent directors at least once a year. The Board must not be divided into more than three classes of directors. If the Board is divided into classes, each class should be of approximately equal size and tenure, and each director's term of office should not exceed three years.

Committees.

The Board is required to have an audit committee and, except in the case of a "controlled company" (a company of which more than 50% of the voting power for the election of its directors is held by a single person, entity or group), a compensation committee, and a nominating/corporate governance committee. Subject to applicable phase-in rules, the audit committee must be composed of at least three members, all of whom must meet the heightened standards detailed on **Annex C**. All audit committee members must be financially literate or become financially literate within a reasonable time after their appointment to the audit committee, and at least one member must have accounting or related financial management expertise. The Company must conduct an appropriate review of all related party transactions for the potential conflict of interest situations on an ongoing basis through the audit committee or a comparable independent body of the Board. Subject to applicable phase-in rules following an IPO and the loss of "controlled company" status, the compensation committee and the nominating/corporate governance committee must be composed solely of independent directors. In affirmatively determining the independence of any director who will serve on the compensation committee, the Board must consider all factors specifically relevant to determining whether a director has a relationship to the Company that is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to: (i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed company to such director; and (ii) whether such director is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.

Each committee must have and disclose a written charter that addresses the committee's duties and responsibilities and that includes a procedure for an annual performance evaluation of the committee. Copies of each committee charter must also be made available on or through the Company's web site.

In addition to having an audit committee and an outside independent auditor, subject to applicable phase-in rules, the Company must have an internal audit function, which may be outsourced to a firm other than the Company's independent auditor.

Stockholders.

The Company is generally required to hold an annual stockholders' meeting during each fiscal year. Stockholders' meetings must be publicized if they will affect the rights or privileges of stockholders or if they are otherwise non-routine. The Company must also notify the NYSE of stockholders' meetings at least ten days in advance of the record date. If the Company changes its record date, it must again notify the NYSE at least ten days in advance of the new record date. Record date notifications must be communicated directly to the NYSE and publication of a record date by means of a press release or SEC filing does not constitute notice to the NYSE. The Company is required to actively solicit proxies for all stockholder meetings. The Company is not required to provide hard copies of its proxy materials to the NYSE if the proxy materials (including the proxy card) are

filed with the SEC on EDGAR. However, if the Company's proxy materials are available on EDGAR but not filed on Schedule 14A, the Company must provide information sufficient to identify such filing to the NYSE no later than the date on which such materials are first sent to any stockholder.

Stockholders must be given the opportunity to vote on the approval of all equity-compensation plans (except for employment inducement awards for new employees and tax qualified employee benefit plans) and all material revisions to such plans. Stockholder approval must also be obtained prior to (1) certain issuances of stock to certain related parties; (2) issuances that will result in a change of control of the Company; and (3) issuances of common stock (or securities convertible into or exercisable for common stock) amounting to 20% or more of the number of shares or voting power of the common stock outstanding, unless the issuance is a public offering for cash or certain bona fide private financings.

Other Required Disclosures and Notifications

Notifications of Certain Corporate Events.

The Company is required to promptly notify the NYSE (generally within five business days) of certain corporate events such as a change in the independence status of a director, a change in board or committee membership, certain matters with respect to reliance on exemptions or cure periods for committee membership, a change in status as a "controlled company," foreign private issuer or smaller reporting company, and non-compliance with the NYSE's corporate governance rules. The Company is required to provide these notifications by submitting an Interim Corporate Governance Affirmation.

In addition, various corporate events, including a change in transfer agent or registrar, a change in auditor, a change in executive officers, material dispositions, cash dividends, stock splits, stock dividends and rights offerings, a change in the general nature of the Company's business, redemptions or other retirement or cancellation of a listed security, certain increases in the number of shares outstanding, a change in the Company's name, and a change in the form or nature of a listed security, will trigger a requirement to notify the NYSE.

NASDAQ REQUIREMENTS

In addition to statutory and regulatory requirements, Nasdaq-listed companies must comply with certain disclosure and corporate governance requirements imposed by Nasdaq.

Disclosure Rules

Subject to certain exceptions noted below, Nasdaq generally requires that issuers disclose promptly (via any Regulation FD compliant method) any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Companies must notify Nasdaq of the release of any such information at least 10 minutes prior to its release to the public if the information involves certain material

events and is made between 7:00 am to 8:00 pm ET. If the public release is made outside of these hours, companies must notify Nasdaq of the material information prior to 6:50 am ET.

These events include: (a) financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance"; (b) corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships; (c) new products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order); (d) senior management changes of a material nature or a change in control; (e) resignation or termination of independent auditors, or withdrawal of a previously issued audit report; (f) events regarding the company's securities (e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities; (g) significant legal or regulatory developments; and (h) any event requiring the filing of a Form 8-K.

Nasdaq does not require issuers to make public disclosure of material events under certain circumstances, such as when it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its corporate objectives. Nasdaq issuers, however, remain obligated to disclose such information to Nasdaq upon request. Furthermore, if rumors or unusual market activity indicate that information on impending developments has become known to the investing public, a clear public announcement may be required as to the state of such developments.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's listed securities, the Nasdaq MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. Trading halts are instituted, among other reasons, to ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, providing investors with the opportunity to evaluate the information.

Corporate Governance

Governing Documents.

The Company must adopt a publicly available code of conduct that satisfies the Sarbanes-Oxley definition of a "code of ethics." The code of conduct must apply to all directors, officers, and employees, although the Company may adopt multiple codes applicable to different types of employees. Any waivers to the code of conduct for directors or executive officers must be approved by the Board or a committee of the Board and publicly disclosed by filing a current report on Form 8-K or including such disclosure on the Company's web site (in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K).

Directors.

Except in the case of a "controlled company" (a company of which more than 50% of the voting power for the election of its directors is held by a single person, entity or group), Nasdaq requires that the Company's board be composed of a majority of independent directors (as defined in **Annex D**), subject to applicable phase-in rules. A company listing in connection with its IPO has 12 months from the date of listing to comply with the majority independent board requirement in Rule 5605(b). A company that has ceased to be a "controlled company" will be permitted to phase-in its majority independent board on the same schedule as companies listing in conjunction with their IPO (i.e., 12 months from loss of "controlled company" status). Independent directors must also hold executive sessions without the rest of the board, at least twice a year.

Committees.

Subject to applicable phase-in rules, the Company must establish an audit committee, with at least three members, comprised solely of board members that meet a special, heightened standard of independence (see **Annex D**). The audit committee must adopt a formal charter, granting the committee certain authority and responsibilities. All audit committee members must be able to read and understand fundamental financial statements, and at least one member must have employment experience in finance or accounting or have other experience qualifying that member as a financial expert. The Company must conduct an appropriate review of all related party transactions for potential conflict of interest situations on an ongoing basis through the audit committee or a comparable independent body of the Board.

In addition, except in the case of a "controlled company" and subject to applicable phase-in rules following an IPO, the Company must also establish a compensation committee with at least two members. Subject to applicable phase-in rules following an IPO and the loss of "controlled company" status, the compensation committee must be composed solely of independent directors. In affirmatively determining the independence of any director who will serve on the compensation committee, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the Company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to: (i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and (ii) whether such director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company. The compensation committee must be given specific authority with respect to retention of, and obtaining advice from, compensation consultants, legal counsel or other advisers.

Nasdaq does not require listed companies to have a nominating committee. Pursuant to Nasdaq Rule 5605(e) and subject to applicable phase-in rules following an IPO and the loss of "controlled company" status, if such a committee does exist, it must be comprised solely of independent board members. If such committee does not exist, however, a majority of the independent directors must nominate new directors.

Stockholders.

Each year the Company must (1) distribute an annual report to its stockholders (interim reports need merely be made available to stockholders), (2) hold an annual meeting of stockholders and provide notice of that meeting to Nasdaq, and (3) solicit proxies and provide proxy statements for all meetings of stockholders. The Company must also provide copies of such solicitation documents and all SEC filings to Nasdaq (this is accomplished if the Company uses EDGAR to file with the SEC).

Under Nasdaq rules, certain stock issuances will require stockholder approval, including (1) issuances that will result in a change of control (which would occur when, as a result of the issuance, an investor or group would own, or have the right to acquire, 20% or more of the outstanding number of shares or voting power of common stock and such ownership or voting power would be the largest ownership position); (2) issuances of common stock (or securities convertible into common stock) amounting to 20% or more of the outstanding number of shares or voting power of the outstanding common stock prior to issuance at a price that is less than a “Minimum Price,” unless the issuance is a public offering; and (3) certain issuances in connection with the acquisition of stock or assets of another company. Under Nasdaq rules, “Minimum Price” means a price that is the lower of (i) the closing price (as reflected on Nasdaq.com) immediately preceding the signing of a binding agreement; or (ii) the average closing price of the common stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the binding agreement. Stockholder approval is also required when equity compensation plans (except for employment inducement awards for new employees and tax qualified employee benefit plans) are made or materially amended.

The Company cannot issue any class of security, or take any other corporate action, that has the effect of nullifying, restricting, or disparately reducing the per share voting rights of its common stock. For example, board rights granted to investors must be proportional to investment. The Nasdaq should be consulted in circumstances where an investor is seeking board rights with respect to a proposed investment that would represent less than 5% of the Company’s outstanding shares of common stock.

Other Required Disclosures and Notifications

Notifications of Certain Corporate Events.

Various corporate events, including cash dividends, stock splits, stock dividends and rights offerings, listing of additional shares, mergers, tender offers, increases or decreases of 5% or more in the number of shares outstanding, a change in the Company’s name, a change in security title or par value, a change in state of incorporation, and noncompliance with corporate governance rules, will trigger a requirement to notify Nasdaq. A list of corporate events and the applicable notification forms and deadlines are available on Nasdaq’s on-line Listing Center.

FIDUCIARY DUTIES

Under Delaware Law

Under Delaware law, the Company's directors have certain fiduciary duties to the Company and its stockholders. These duties fall into two broad categories: a duty of care and a duty of loyalty. Delaware courts have also articulated a third possible duty, the duty of disclosure. Directors who satisfy these fiduciary duties will not be subject to personal liability.

Duty of Care.

The duty of care requires a corporate director to act in good faith and on the basis of adequate information when making a business decision. A director should act with the care that an ordinary prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interests of the Company. The standard for determining whether a business judgment made by the board was an informed one is gross negligence, defined as "reckless indifference or a deliberate disregard of the whole body of stockholders or actions which are without the bounds of reason." Giving greater precision to concepts such as "good faith" and "prudence" or applying them to a particular factual situation is more of an art than a science.

To make these concepts of "good faith" and "prudence" more vivid, it may be useful to consider the well-known Delaware case of Smith v. Van Gorkom, in which the directors of a Delaware corporation were asked to approve a management-initiated sale of the corporation. None of the directors (other than management) knew that the proposal would be considered by the board until the meeting was convened; the chief financial officer's view that the proposal was insufficient was not shared with the directors; the corporation's regular investment banker was not consulted; no questions were asked of the management officers outlining the proposal; the entire board meeting took two hours; no papers were presented; and the agreement as signed did not reflect all that the directors had contemplated. Even though no higher bid could be obtained by investment bankers hired by the board at the request of dissenting members of management and even though the sales price was approved by the stockholders, the court held that the directors did not fulfill their duty of care. Commentators believe that the court relied on four deficiencies in the process: (1) haste, (2) lack of board preparation, (3) lack of questioning or involvement by the board and (4) lack of a paper record.

In fulfilling his or her duty of care, a director should generally be entitled to rely on opinions and reports made available to him or her by officers and employees of the Company, or by committees of the board on which he or she does not serve (absent knowledge that would make the reliance unwarranted). Management should supply directors with sufficient and accurate information about the business of the corporation, and directors should request additional information that they feel is necessary in order to be fully informed. A director who relies on those to whom matters are delegated has a responsibility to keep informed of their efforts.

In the absence of self-dealing transactions, if directors fulfill the procedural aspects of the duty of care, they will be entitled to the benefit of the presumption of the "business judgment rule" under which the merits of their decision will not be questioned. The business judgment rule presumes that in making a business decision, the disinterested directors acted on an informed basis, in good faith, and in an honest belief that the action was taken in the best interests of the corporation. This rule, well established in Delaware law, protects a disinterested director from personal liability to the corporation (and its stockholders), even though a corporate decision made by the directors turns out to be unwise or produces unsuccessful results. Even if an interested party transaction is involved, although an "entire fairness" standard of review applies, the business judgment rule may still be applicable so that a court will not substitute its judgment for that of the board. A limited circumstance in which the business judgment rule may not apply is when there is a change-in-control transaction in which the courts apply an "enhanced scrutiny" standard that looks at both the board's process and actions.

Duty of Loyalty.

The duty of loyalty is the general corporate law concept that requires a director to act in the good faith belief that his or her actions are in the best interests of the corporation and its stockholders, and not in his or her own interest or in the interest of any other person or organization. Simply put, a director should not (1) use his or her position for personal profit, gain or other personal advantage, (2) intentionally act with a purpose other than that of advancing the best interests of the corporation, (3) act with the intent to violate the law or (4) intentionally fail to act when he or she has a known duty to act. Examples of breaches of the duty of loyalty include (a) engaging in a self-dealing transaction that either is not approved by a majority of the corporation's independent directors or stockholders or is not entirely fair to the corporation, (b) taking a corporate opportunity for himself or herself without giving the corporation's independent directors a chance to reject the corporate opportunity and (c) systematically failing to exercise oversight or to attempt to assure that a reasonable information and reporting system exists.

Duty of Disclosure.

While it is unclear whether the courts technically consider the duty of disclosure to be a separate fiduciary duty, directors in certain circumstances have a duty to provide complete and accurate information to the stockholders. This duty of disclosure establishes as a matter of state corporate law information requirements akin to the SEC's proxy rules.

INSIDER TRADING

The operation and impact of the securities law antifraud rules are too extensive and intricate to cover in detail in this memorandum, but, at a minimum, Company insiders should be aware of the following:

Rule 10b-5

Rule 10b-5 is the general "antifraud" rule promulgated under Section 10(b) of the Exchange Act. Rule 10b-5 makes it unlawful for any person, in connection with the purchase or sale of any security, (i) to employ any device, scheme or artifice to defraud, (ii) to make any untrue statement of a material fact or to omit to state a material fact necessary to make any statements made not misleading or (iii) to engage in any act, practice or course of business that would operate as a fraud or deceit upon any person. The federal mail and wire fraud statutes are usually also implicated when securities fraud is alleged.

Claims under Rule 10b-5 require proof that the defendant acted with scienter, and that the injured plaintiff reasonably relied on the misrepresentation or omission of a material fact to its detriment. The U.S. Supreme Court has defined scienter as "a mental state embracing intent to deceive, manipulate, or defraud."

Insider Trading

The Company, its insiders and others may face civil and criminal liability for insider trading if they trade in Company securities while in the possession of material, non-public information. "Non-public" information is information that has not been publicly released, and such information is "material" if a reasonable investor would consider it important in reaching an investment decision. What is and is not material information is, of course, often extremely difficult to determine. As indicated above, under certain circumstances, material information may be temporarily withheld from the public if, for example, the facts are in a state of flux and a more appropriate moment for disclosure is imminent, or if disclosure would prejudice the ability of the Company to pursue a legitimate corporate objective. During any such period, both the Company and insiders must refrain from trading until the information is publicly disclosed.

"Trading" is broadly defined to include (1) the purchase or sale of the Company's securities, (2) the purchase or sale of puts, calls or other options with respect to the Company's securities, (3) the initial establishment or a subsequent modification of a Rule 10b5-1 trading plan, (4) the trading of any Company securities in which an insider has any beneficial interest, direct or indirect, whether or not the securities are actually held in the insider's name and (5) revealing material, non-public information to outside individuals, or "tipping," to enable such individuals to trade in the Company's securities on the basis of undisclosed information.

Note that the SEC has also pursued insider trading cases where MNPI related to one company served as the basis of trading in a second, unrelated company. This type of trading has been termed "shadow trading." On April 5, 2024, in the SEC's first victory in a shadow trading case, a civil jury found the defendant, Matthew Panuwat, liable for insider trading for using MNPI about his employer (namely, that the employer was going to be acquired) to trade in the securities of a purportedly comparable company that was not a direct competitor or business partner of his employer. Shadow trading transactions present incremental difficulty to compliance personnel in detecting misuse of MNPI

because of the difficulty of determining whether MNPI that an employee obtains about one issuer results in MNPI about other issuers. Sometimes, the connection may be obvious – e.g., MNPI about a large defense contractor winning a major Department of Defense contract is likely to affect the contractor's major subcontractors. The connections in other fact patterns may be more difficult to detect.

Release of material information to the media does not immediately free insiders to trade in the Company's securities. Insiders must refrain from trading until the market has had an opportunity to absorb and evaluate the information. There are certain periods during which an insider should be particularly sensitive to insider trading problems. These include the period near the end of each fiscal quarter until earnings results and dividends, if any, are announced and any other period when the release of information concerning an important Company development is expected.

As a general matter and subject to any applicable company trading windows and/or blackout periods, the period commencing one to two full trading days following the release of quarterly or annual financial results and lasting until the beginning of the last month in the financial period may provide the safest time for trading by directors and officers of the Company. Even during such periods, however, an insider must consider whether he or she is in possession of material, non-public information and, if so, should refrain from trading.

As part of its insider trading policy, the Company may establish trading window or blackout periods in order to assist directors, officers and/or employees (such as members of the finance, accounting, and legal departments) who may be aware of material, non-public information to comply with their obligations under the securities laws. Companies generally have regularly scheduled quarterly blackout periods that commence during the final month of each fiscal quarter and end one to two trading days after the company has publicly announced its earnings for the quarter. In addition, companies may also impose special blackout periods in connection with potentially significant corporate developments (such as M&A or capital markets transactions) that constitute material, non-public information. The Company's insider trading policy should also make clear that the existence of a special blackout period should be treated as confidential information. The Company will typically end the special blackout period by publicly disseminating the material, non-public information. The appropriate universe of employees who will be subject to regularly scheduled or special trading window or blackout periods generally depends on the extent of such employees' access to sensitive information.

SEC rules require each issuer to disclose in its annual report whether it has adopted insider trading policies and procedures (including those governing trading by the issuer itself) and, if not, why it has not done so. Issuers that have adopted insider trading policies are required to file a copy of their insider trading policy as an exhibit to their Form 10-K (or Form 20-F). If all of an issuer's insider trading policies are contained in its code of ethics, the issuer may satisfy the exhibit requirement by filing the code of ethics.

Issuers (other than foreign private issuers) must also annually disclose certain information regarding options, stock appreciation rights and similar instruments granted

to named executive officers (with scaled disclosure requirements for emerging growth companies and smaller reporting companies) within four business days before or one business day after, (i) filing of a quarterly report on Form 10-Q or annual report on Form 10-K, or (ii) filing or furnishing a Form 8-K (other than a Form 8-K reporting only the grant of a material new option award that includes material nonpublic information). The disclosure, which must be in tabular format, would need to include the number of shares underlying the award, the date of the grant, the grant date fair value, the exercise price and the percentage change in the closing price of the shares underlying the award between the trading day before and after the relevant disclosure of material nonpublic information. Such issuers must also annually disclose their policies and practices on the timing of awards of options in relation to the disclosure of material nonpublic information, including whether and, if so, how the board or compensation committee takes material nonpublic information into account when determining the timing and terms of such awards.

In February 2018, in response to the increasing significance of cybersecurity incidents, the SEC issued interpretive guidance on cybersecurity disclosure. Among other things, the guidance encouraged companies to consider how their codes of ethics and insider trading policies take into account and prevent insider trading on the basis of material, non-public information related to cybersecurity risks and incidents. In addition, the guidance asked companies to consider whether and when it may be appropriate to implement insider trading blackout periods during the investigation and assessment of material cybersecurity incidents.

In addition to the restrictions discussed above, the SEC adopted Regulation BTR, which made it unlawful for any director or executive officer to purchase, sell or otherwise transfer, directly or indirectly, any equity or derivative security of the Company (which was acquired in connection with his or her services as director or executive officer) during a pension plan blackout period during which participants in the plan cannot engage in such a transaction. The Company is required to notify directors and executive officers of blackouts that may affect them. Any such blackout period notice must be filed with the SEC under Item 5.04 of Form 8-K.

Rule 10b5-1 Plans

Rule 10b5-1 provides an affirmative defense to a claim of trading on the basis of material, non-public information. A person’s purchase or sale is not “on the basis of” material, non-public information if (i) the purchase or sale is made pursuant to a written plan for trading securities that either provided for the basic terms of future sales or did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales, (ii) the plan was adopted (or modified, as applicable) in good faith at a time when the person was not aware of any material nonpublic information with respect to the relevant securities and (iii) the plan meets all other applicable requirements of Rule 10b5-1, including the requirement to act in good faith with respect to the plan.

Under Rule 10b5-1, qualifying plans adopted (or, with respect to amount, price or timing of trades, modified) by persons other than the issuer of the security must be subject

to cooling-off periods, which vary depending on the person who adopts the plan. Directors and officers (as defined in Rule 16a-1(f)) are subject to a cooling-off period ending 90 days after adoption or modification of a plan or, if later, two business days after filing the Form 10-Q or Form 10-K covering the fiscal quarter in which the plan was adopted, or for FPIs, in a Form 20-F or Form 6-K that discloses the issuer's financial results, subject to a maximum of 120 days following adoption or modification of a plan. Persons who are not directors and officers are subject to a 30-day cooling-off period. Persons other than issuers are also prohibited from having multiple/overlapping plans, subject to certain limitations, and may only adopt single trade plans (i.e., plans that only contemplate a single trade) once in 12 months. In addition, a qualifying plan adopted or modified (in the manner noted above) by directors and officers must include a representation that, on the date of the adoption or modification, the director or officer is not aware of any material nonpublic information about the securities or the issuer and is adopting the plan (or modified plan) in good faith.

Companies that file Form 10-Qs and Form 10-Ks are required to quarterly disclose in those reports the material terms (other than price) of Rule 10b5-1 plans and other trading plans adopted, modified (as noted above) or terminated by their directors and officers during the related quarter (last fiscal quarter for a Form 10-K).

Dissemination of Financial Information

In designing protocols regarding the sharing of sensitive corporate information within the organization, the Company should consider if there is a business need for the information to be disseminated to the employees who receive it. The Company should weigh the business justification against the risks of potential leaks and the need to subject each employee that receives such information to the quarterly trading or blackout periods under the Company's insider trading policy. If material, non-public information is inadvertently disclosed by an employee, the Company would be required to broadly disseminate the information to the market as soon as possible under Regulation FD.

- ***Best practice*** is for the Company to: (1) conduct periodic trainings on insider trading and Regulation FD, (2) send reminders regarding the treatment of confidential information, and (3) notify affected employees regarding the opening and closing of trading windows.

If the Company decides that the business justification for sharing sensitive corporate information with a larger group outweighs the risks of leaks and the burden of monitoring compliance, then, in addition to the best practices described above, the Company should also consider encouraging every insider to establish Rule 10b5-1 plans to limit the amount of purely discretionary trades. In addition, Rule 10b5-1 plans are particularly useful around the vesting of stock awards and related expiration events.

Liability Resulting From a Purchase and Sale or a Sale and Purchase Within Six Months

Section 16(b) of the Exchange Act requires a director or specified officer to forfeit to the Company any profit realized from any non-exempt purchase and sale, or any sale and purchase, of Company stock within any period of less than six months (so-called short-swing profit). The Section also applies to a person who beneficially owns (or is a member of a group that beneficially owns) more than 10% of a registered class of equity securities of the Company. For purposes of determining who is a 10% beneficial owner, the SEC uses the same definition it uses for purposes of Section 13(d), which looks to the power to vote or dispose securities and is discussed below. The purpose of Section 16(b) is to prevent the unfair use of inside information regarding the Company. However, Section 16(b) requires such forfeiture regardless of whether the insider in question acted in good faith or used inside information. The profits are subject to recovery either by the Company or by a stockholder on behalf of the Company, and, as a result of Forms 4 and 5, transactions by officers, directors and 10% stockholders are matters of public record.

Generally, in measuring the amount of short-swing profits, the courts simply match the highest sale prices against the lowest purchase prices within the six-month period. Note that this rule treats as profits not only gain from an ordinary purchase and a sale, but also "profits" realized from a sale followed by a purchase during the next six months at less than the prior sale price. Thus, there may be liability even though the director, officer or 10% stockholder in question had a net loss from all transactions during the period.

Section 16(b) covers the purchase and sale of Company stock of which a director, officer or 10% stockholder is deemed to be an indirect owner as well as that stock of which he is the direct owner. The analysis of what shares a person is deemed to own is described below as applicable in reporting ownership on Forms 3, 4 and 5. The case law on the subject is complex and, in some instances, takes an expansive view of what constitutes beneficial ownership.

Section 16(b) also covers transactions involving derivative securities, such as stock options, rights and convertible securities. A transaction involving a derivative security is deemed to be a transaction in the underlying security. The rules under Section 16(b) provide exemptions for some transactions. The acquisition of options under the Company's stock plans, for example, will generally not be a matchable purchase. The acquisition of shares upon exercise of those options is also generally not a matchable purchase. Open market purchases of shares constitute purchases, and the sale of shares acquired upon exercise of options, of course, as well as the sale of other shares owned by a director, officer or 10% stockholder, constitute sales for purposes of the Section. The acquisition or disposition of puts, calls or other rights to buy or sell Company stock (other than pursuant to Company stock plans) will generally be considered purchases and sales, and will be matched against sales and purchases of other derivative securities or of Company stock.

Section 16(b) does not apply if the relevant issuer is a foreign private issuer.

Prohibition of Short Sales of Securities

A director, specified officer or 10% beneficial owner may not sell any equity security of the Company if he or she does not own the security sold (i.e., a short sale).

This prohibition does not apply if the relevant issuer is a foreign private issuer.

EQUITY OWNERSHIP REPORTS

SEC Reporting Requirements

Form 3.

Upon effectiveness of the Company's 8-A registration statement in connection with an IPO (typically the day of the pricing or the following day), persons subject to Section 16 are required to file with the SEC a report on Form 3 reporting his or her beneficial ownership of Company stock, or the absence of such ownership. Persons that become subject to Section 16 at a later date are required to file a Form 3 within ten days after becoming subject to Section 16.

A person is an "officer" subject to Section 16 if he or she is the president, principal financial officer, principal accounting officer (or controller if there is no such accounting officer), a vice president in charge of a principal business unit, division or function, or any other person who performs a significant policy-making function for the Company. In addition, officers of any of the Company's parent company or subsidiaries may be deemed "officers" of the Company if they perform significant policy-making functions for the Company. Persons identified by the Company as "executive officers" pursuant to Item 401(b) of Regulation S-K are presumed to be "officers" for purposes of Section 16.

Individuals or entities who directly or indirectly beneficially own more than 10% of a class of the Company's equity securities registered under Section 12 of the Exchange Act will also have reporting obligations under Section 16. As noted above, for purposes of determining who is a 10% beneficial owner, the SEC uses the same definition it uses for purposes of Section 13(d), which looks to the power to vote or dispose securities.

Form 3 filing obligations do not apply if the relevant issuer is a foreign private issuer.

Forms 4 and 5.

When a change in beneficial ownership occurs that is not exempted from reporting, the director or officer must file a report on Form 4 with the SEC within two business days after the change occurs. Gifts of the securities must also be reported on Form 4 within two business days.

Certain transactions do not trigger a Form 4 filing obligation. These transactions include acquisitions under tax-qualified plans (but not as a result of intra-plan transfers), purchases under employee stock purchase plans, acquisitions under dividend reinvestment plans and mere changes in the form of beneficial ownership. Holdings that

result from these transactions will nonetheless need to be reflected in connection with events that are otherwise reported on a Form 4 or 5. Also, any transactions executed under a Rule 10b5-1 plan must be identified in a Form 4 and 5 by ticking a checkbox.

A Form 5 may also be required. Forms 5 are required to be filed to report certain transactions, most notably certain small acquisitions, and to report previously unreported transactions. An insider who is not required to file a Form 5 in a given year must file with the Company a written representation to that effect. Many insiders may never have to file a Form 5. Forms 5, if required, are due 45 days after the end of the Company's fiscal year. Some insiders elect to voluntarily file a Form 4 early, close to the time of the transaction, to report transactions that would otherwise be required to be reported on a Form 5 in order to avoid potential errors or missed filings.

After leaving office, a director or officer is also required to report any change in beneficial ownership that results from a non-exempt transaction within six months after any non-exempt, "opposite-way" transaction that occurred while the individual was a director or officer. So long as the director or officer had no non-exempt transactions in the six months prior to leaving office, he or she will have no post-termination Section 16 reporting obligations. An "exit report" may be voluntarily filed, but is not required.

Form 4 and 5 filing obligations do not apply if the relevant issuer is a foreign private issuer.

Disclosure.

Forms 3, 4 and 5 must be filed electronically via the SEC's EDGAR database and are required to be posted by the Company on its web site. Directors and officers who prepare their own reports should be required to send copies of Form 3 and of each Form 4 and Form 5, to the Company at the time of filing with the SEC. In addition, the manually signed signature pages for any electronic filings should be retained for five years in a manner that allows them to be easily retrieved. In lieu of obtaining manual, physical signatures from filers, the SEC permits electronic signatures if the signatory first manually signs a document attesting that the signatory consents to the use of electronic signatures in SEC filings. Insiders should note that the SEC requires disclosure under a separate caption in proxy statements and annual reports of the names of delinquent filers and the number of reports and transactions involved.

Forms 3, 4 and 5 and instructions for filing electronically via the SEC's EDGAR database should be made available through the Company's legal department. The Company's legal department or external counsel often facilitates the filings of Forms 3, 4 and 5 for directors and officers pursuant to a power of attorney.

Determining the Amount of Beneficial Ownership.

Other than for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered under Section 12 of the Exchange Act, for purposes of Section 16 the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship

or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities. Section 16 insiders are required to report all equity securities (not just registered equity securities) of the Company of which they are the beneficial owner, whether directly or indirectly. Direct ownership means any securities held by a person for his or her own benefit, no matter how acquired. These include any securities acquired upon the exercise of options under the Company's stock plans. Also reportable are derivative securities, such as options, warrants and other rights that derive their value from the Company's stock.

Indirect ownership means securities owned by others where an individual, while not the direct owner, has pecuniary benefits substantially equivalent to ownership. These include securities held for a person's benefit under a trust, partnership or other arrangement or in a corporation. Shares held by or for the benefit of a member of the insider's immediate family who shares his or her home are presumed to be indirectly owned, although in some circumstances the insider may disclaim beneficial ownership.

If a person can vest or revest title in himself or herself, such shares may also be indirectly owned, even though that person does not currently have the benefits of ownership described above.

Schedules 13D and 13G.

For the purposes of Section 13(d) and determining 10%-ownership status under Section 16, "beneficial ownership" means the power to vote or dispose of the equity securities, even though the person or group may have no economic interest in the securities. A person is also deemed to have beneficial ownership over any security that such person has the right (not subject to a material contingency outside of its control) to acquire either voting or dispositive power over within 60 days (or, if such right was acquired with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, at any point in the future even if the shares cannot be obtained for more than 60 days).

Persons or groups who beneficially own more than 5% of any registered class of equity securities of the Company must also file a Schedule 13D or 13G with the SEC, both initially and upon certain subsequent acquisitions of the Company's equity securities, with the deadlines for filing depending on whether the reporting person is filing a Schedule 13D or is filing a Schedule 13G as a qualified institutional investor, an exempt investor or a passive investor.

In determining percentage ownership for these purposes, calculations are not made on a fully-diluted basis. Instead, the numerator is the number of shares beneficially owned by the relevant investor. The denominator is the sum of the number of shares of the relevant class then outstanding plus shares subject to options, warrants, rights or conversion privileges which are held by the investor and exercisable within 60 days (or which were with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect) but not shares subject to options, warrants, rights or conversion privileges held by other

persons. As a result, in some circumstances, such as in high-vote/low-vote structures, the percentage of securities owned as calculated under the SEC's rules can far exceed an investor's economic or voting interest and result in investors with relatively small positions having to comply with filing obligations.

When calculating the 5% threshold, securities held by other members of any "group" that an investor is part of should also be included. The concept of "group" is broadly construed under the Exchange Act. Rule 13d-5 under the Exchange Act provides that a "group" is formed when "two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer." Whether or not a "group" has been formed in any particular case is a facts-and-circumstances analysis and has been the subject of recent SEC guidance and a substantial number of judicial decisions.

HSR Filings

In addition to the SEC reporting requirements described above, the Hart-Scott-Rodino Antitrust Improvements Act of 1975, as amended (the "HSR Act) requires that each party to an acquisition of voting securities, assets, and/or non-corporate interests (e.g., partnership or membership interests) meeting certain jurisdictional thresholds file a Notification and Report Form with the Federal Trade Commission's ("FTC") Premerger Notification Office and the Antitrust Division of the Department of Justice and observe a waiting period before consummating the acquisition. Whether a particular acquisition is subject to the requirements of the HSR Act depends on the value of the acquisition. On January 22, 2025, the FTC announced the annual changes to the HSR Act notification thresholds. The minimum size of transaction requiring an HSR filing was increased to $126.4 million (the "size-of-transaction" test). Where the size-of-transaction test is met, generally one party to a transaction also must have assets or annual revenues of at least $252.9 million and the other must have assets or annual revenues at least $25.3 million to trigger an HSR filing (the "size-of-person" test). Transactions valued at more than $505.8 million will be subject to pre-merger notification without regard to the sales or assets of the parties. The HSR Act thresholds are adjusted on an annual basis to account for changes in the gross national product.

Acquisitions of company shares by executives are potentially reportable if the value of the shares held by the executives will exceed the $126.4 million threshold, regardless of how the shares are acquired (e.g., open market purchases, delivery of shares pursuant to RSUs, exercise of options or warrants, reinvestment of dividends or interest earned in 401(k) plan accounts, etc.).

The HSR Act also provides several exemptions that may eliminate the need to make an HSR filing. For example, the "passive investment" exemption generally allows an investor to hold 10% or less of the outstanding voting securities of a given issuer or entity, without the need to file HSR if the acquisition is made "solely for the purpose of investment."

The failure to make a required HSR filing and observe the HSR waiting period can result in civil penalties of up to $53,088 per day.

SALES PURSUANT TO RULE 144

Restricted securities are securities acquired in unregistered sales from the issuer or an affiliate of the issuer. Holders of restricted securities cannot freely resell restricted securities to the public without an available exemption from registration. Rule 144 provides a safe harbor for the resale or transfer of restricted securities under certain conditions, which are further discussed below. Affiliates also generally must comply with Rule 144 when they sell securities of the issuer (regardless of how they were acquired), unless sold in a transaction registered under the Securities Act.

Sales of Stock and Gifts by Affiliates: Rule 144

A person who controls, or is deemed to control, a company is an “affiliate” of that company. Affiliate status is not clearly defined and is a facts and circumstances analysis, but the directors and executive officers of a company are generally presumed to be affiliates, as are persons who own a significant portion of a company’s stock (or persons who have an investment in the company with board representation). Spouses, children and other relatives living with an affiliate and entities with which an affiliate is associated, are likely to also be considered affiliates of a company. Affiliates should consult with counsel as to whether or not family members who are not covered under the foregoing descriptions might also be deemed to be affiliates. Absent significant stockholdings, non-policy making officers and officers and directors of subsidiaries are not ordinarily considered to be affiliates, unless their functions with respect to Company matters correspond to those of officers of the Company.

Sales by affiliates under Rule 144 must generally meet the following five requirements:

- *Current Public Information.* Rule 144 is only available if the Company is current in its reports (other than current reports on Form 8-K) to the SEC.
- *Holding Period.* Shares acquired, directly or indirectly, from the Company or an affiliate of the Company in a private placement must be held for twelve months (six months if the Company has been subject to reporting requirements under the Exchange Act for at least 90 days and is current in its reporting (other than current reports on Form 8-K)) before a sale in the public market may be made pursuant to Rule 144. The holding period does not apply to securities acquired in the open market or in an offering registered under the Securities Act.
- *Volume Limitations.* During any three-month period, the number of shares of Company stock sold by an affiliate under Rule 144 may not exceed the greater of (1) one percent of the Company’s outstanding stock or (2) the Company’s weekly average trading volume (determined by averaging volume for the four weeks preceding the week in which the Form 144 is filed or, if volume

increases, an amended Form 144). In computing whether their sales are within this quantity limit, affiliates must count not only their own Rule 144 sales but also Rule 144 sales during the preceding three months by (a) their relatives or the relatives of their spouse, if any such persons have the same home as the affiliate; (b) trusts or estates in which they or any of the relatives described above have a ten percent or more beneficial interest or serve as trustee or executor; (c) corporations in which they or any of the relatives described above own individually or collectively ten percent or more of either the equity interest or any class of equity securities; (d) donees or trusts established by them, for six months after the making of the gift or trust settlement; (e) pledgees of shares pledged by them, for six months after a default in the obligation secured by the pledge; and (f) persons with whom they act in concert.

- *Manner of Sale.* Sales by affiliates under Rule 144 must be made in “brokers’ transactions” (a technical term aimed at preventing solicitation of a buyer) or directly to a market maker.
- *Notice of Sale.* Further, if the amount of sales within the three-month period exceeds 5,000 shares or $50,000, an affiliate selling Company stock in reliance upon Rule 144 must electronically file a Form 144 with the SEC. The Form 144 must be transmitted for filing concurrently with either the placing with a broker of an order to execute the sale or the execution directly with a market maker of the sale.

Gifts of Company stock by affiliates should be made under arrangements that ensure that the donee will comply with Rule 144 (or some other exemption from registration, such as the private placement exemption) and afford the donor appropriate notice in connection with subsequent resales.

Non-affiliates may freely resell restricted securities under Rule 144 after one year from the date of acquisition, or after six months if the issuer has current public information available.

COMPANY PURCHASES OF ITS OWN STOCK

Section 13(e) of the Exchange Act authorizes the SEC to adopt rules and regulations governing an issuer’s purchase of any of its equity securities registered under Section 12 of the Exchange Act.

Safe Harbor

The SEC has provided a safe harbor from violation of the anti-manipulation provisions of the Exchange Act for certain repurchases by an issuer of its common stock in transactions other than tender offers, such as open-market purchases. See Rule 10b-18.

Tender Offers

When there is a pending third party tender offer for any of the Company's equity securities, the Company may not purchase any of its equity securities unless it first files a disclosure statement with the SEC setting forth certain information about its proposed purchases. The rule provides an exception for periodic repurchases in connection with an employee benefit plan or other similar plan so long as the purchases are made in the ordinary course and not in response to the third-party tender offer. See Rule 13e-1.

Tender offers by the Company must meet certain disclosure, dissemination and substantive requirements, many of which are similar to those imposed on third party tender offerors, including the requirement to file and disclose information on Schedule TO. See Rule 13e-4.

Going Private

If a transaction by the Company or any of its affiliates has the purpose or the likely effect of causing either a delisting or deregistration of a class of equity securities or the suspension of the Company's obligation to file reports under the Exchange Act, the Company must make very detailed disclosures regarding the purpose and likely effect of the transaction and must meet specific dissemination and substantive requirements. See Rule 13e-3.

Regulation M

Under Regulation M, the Company is not permitted to bid for, purchase, or attempt to induce any person to bid for or repurchase, any of its securities (the "target securities") if at the time of such repurchase the Company is engaged in a distribution of the target securities or any securities convertible into the target securities. Under Regulation M, a distribution is considered an offering of securities that is distinguished from ordinary trading transactions by its magnitude and the presence of special selling efforts.

INDEMNIFICATION

Liability of Directors and Officers

The principal claims involving directors and officers in a public offering relate to the following: (i) Section 11 of the Securities Act (liability for a "defective" registration statement), (ii) Section 12(a)(2) of the Securities Act (liability for untruths or omissions in a "prospectus"), (iii) Section 10(b) of the Exchange Act and SEC Rule 10b-5 (materially misleading statements or omissions), and (iv) state law fraud and duty of disclosure claims. Section 11 and Section 12(a)(2) claims have no scienter requirement and are more difficult to defend than 10b-5 claims.

SEC Position: Indemnification Against Public Policy

While the Company's certificate of incorporation and bylaws generally provide indemnification rights for the Company's directors and officers, the SEC has generally

asserted that indemnification arrangements that cover liabilities incurred by a company's directors and officers under the Securities Act are against public policy and unenforceable. Directors will be found to have violated Section 11 of the Securities Act where they have not exercised "due diligence" with regard to a misleading registration statement covering the Company's sale of its shares, and in these situations the Company must, pursuant to an undertaking required of all companies registering their shares under the Securities Act, submit to an appropriate court the question of whether indemnification of its directors is against public policy. Depending upon the circumstances, the SEC might appear in any such court proceeding and argue against allowance of indemnification.

There is also a legal doctrine (called the Globus doctrine after the leading case in the area) generally prohibiting, on the grounds of public policy, indemnification against breach of a special duty imposed under the federal securities laws, including the Securities Act and the Exchange Act. Under this doctrine, directors could be prohibited from receiving indemnification from the Company by reason of any violation of these laws.

D&O Insurance

Insurance coverage for directors and officers of a public company in connection with claims arising out of a public offering may be limited by the terms of the D&O policy itself, as well as by public policy considerations. For example, there is case law indicating that D&O coverage may not extend to cover disgorgement or restitution payments that are made in connection with recoveries in securities fraud litigation, although it is not clear whether this holding extends to directors and officers or just to the corporate issuer itself. Directors and officers should try to address these issues in the insurance underwriting process when fixing the definitions of "loss" and "personal conduct" in the terms of the policy. However, little can be done to address the risk that a court will determine such coverage to be against public policy

Annex A: What is the difference between "filed" versus "furnished" information?

Section 18 of the Exchange Act imposes liability for material misstatements or omissions contained in reports and other information "filed" with the SEC. Section 18 of the Exchange Act makes reporting issuers liable for "false or misleading statements" if investors rely on such statements when purchasing or selling securities at a price which was affected by such statements.

Reports and other information that are "furnished" to the SEC are not subject to Section 18 liability unless a company specifically states that the information is to be considered "filed." In addition, "furnished" information is not automatically incorporated by reference into a company's filings with the SEC unless the company specifically incorporates that information into its filings.

Information that is "furnished" to the SEC is not subject to the requirements of Item 10 of Regulation S-K, while "filed" information is subject to those requirements. Note, however, that Item 10(e)(i) of Regulation S-K expressly does apply to earnings releases that are furnished under Item 2.02 of Form 8-K.

Reporting issuers who are required to "furnish" information to the SEC as an exhibit to an annual filing may still be subject to liability for violations of Sections 13(a) or 15(d) of the Exchange Act if they fail to furnish a required exhibit. Note that other liability provisions under the Exchange Act (e.g., Section 10(b) and Rule 10b-5) may apply that are not dependent on the filing of documents with the SEC but may otherwise be triggered by disclosure made by the company to the public.

Annex B: Forward-Looking Statement Legends

Below is a template for a forward-statement statement disclaimer in **written materials**:

> <u>*Cautionary Note Regarding Forward-Looking Statements*</u>
>
> This [press release][presentation] includes forward-looking statements. These forward-looking statements generally can be identified by the use of words such as "anticipate," "expect," "plan," "could," "may," "will," "believe," "estimate," "forecast," "goal," "project," and other words of similar meaning. These forward-looking statements address various matters including ***{insert description of specific forward-looking statements contained in the document}***. Each forward-looking statement contained in this [press release][presentation] is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied by such statement. Applicable risks and uncertainties include, among others, ***{insert risks specifically related to the forward-looking statements included in the document}***; and the risks identified under the heading "Risk Factors" in our [Annual][Quarterly] Report on Form 10-[K][Q] for the [year][three months] ended {Date}, and filed with the Securities and Exchange Commission, as well as the other information we file with the SEC. ***{Note: reference specific portion of most recent Exchange Act report.}*** We caution investors not to place considerable reliance on the forward-looking statements contained in this [press release][presentation]. You are encouraged to read our filings with the SEC, available at www.sec.gov, for a discussion of these and other risks and uncertainties. The forward-looking statements in this [press release][presentation] speak only as of the date of this document, and we undertake no obligation to update or revise any of these statements. Our business is subject to substantial risks and uncertainties, including those referenced above. Investors, potential investors, and others should give careful consideration to these risks and uncertainties.

Below is a script for an oral disclaimer ***{Note: be mindful that anything conveyed orally could be converted to a writing if later transcribed or recorded and posted to a company web site}:***

> This presentation includes forward-looking statements about ***{insert description of specific forward-looking statements contained in the presentation}***. Each forward-looking statement contained in this presentation is subject to risks and uncertainties that could cause actual results to differ materially from those projected in such statement. Additional information regarding these factors appears [in the slide entitled "Cautionary Note Regarding Forward-Looking Statements" and] under the heading "Risk Factors" in our [first quarter 10-Q] that is filed with the Securities and Exchange Commission and available at www.sec.gov and on our web site at ***{web site address}***. The forward-looking statements in this presentation speak only as of the original date of this presentation, and we undertake no obligation to update or revise any of these statements.

Annex C: NYSE Independence Test

A director of a NYSE-listed company is only independent if the Board determines that the director has no material relationship with the Company. For this purpose, the Board must also take into account any relationship the director has with any parent or subsidiary in a consolidated group with the Company, and any relationship between the Company or such parent or subsidiary and any organization in which the director is a partner, shareholder or officer. The Board should broadly consider all potential conflicts of interest and other circumstances that might bear on the materiality of the director's relationship. The Board should be concerned with independence from management, so ownership of even a significant amount of stock should not by itself be a bar to finding independence. In addition to the required determination by the Board, a director will not be considered independent if he or she:

- Is an employee of the Company, or has been within the last 3 years;
- Has an immediate family member who is an executive officer of the Company or has been within the last 3 years;
- Has received or has an immediate family member who has received more than $120,000 in direct compensation from the Company in any 12-month period in the last 3 years, not taking into account director or committee fees and pension or other deferred compensation for prior service (provided such compensation is not contingent in any way on continued service);
- Is a current partner or employee of the Company's internal or external auditor, or was a partner or employee of such firm within the last 3 years and personally worked on the Company's audit during that time;
- Has an immediate family member who (1) is a current partner of the Company's internal or external auditor, (2) is a current employee of such firm and personally works on the Company's audit, or (3) was a partner or employee of such firm within the last 3 years and personally worked on the Company's audit during that time;
- Is, or has an immediate family member who is, employed as an executive officer of another company where any of the Company's present executive officers at the same time serves on that company's compensation committee;
- Was, or has an immediate family member who was, in the last 3 years, employed as an executive officer or another company where any of the Company's present executive officers at the same time served on the company's compensation committee; or
- Is a current employee, or has an immediate family member who is a current executive officer, of a company that has made payments to, or received payments from, the Company in an amount which, in any of the last 3 fiscal years, exceeds the greater of $1 million or 2% of such other company's consolidated gross revenues.

For purposes of this test, "immediate family member" includes a director's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person residing in the director's home (except for domestic employees).

Directors who serve on the audit committee have heightened standards of independence. In addition to the above requirements, audit committee members must:

- **Meet the criteria for independence in SEC Rule 10A-3(b)(1); and**
- Not have participated in preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past 3 years.

Annex D: Nasdaq Independence Test

Under Nasdaq rules, "independent director" means a person other than an executive officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. To qualify as independent, a director of a Nasdaq-listed company must not:

- Be an executive officer or employee of the Company (or have been an employee within the last 3 years);
- Have accepted, or have a family member who has accepted, compensation of more than $120,000 from the Company during any period of 12 consecutive months within the past 3 years, unless such compensation was (1) for board or board committee service, (2) paid to a family member who is an employee but not an executive officer of the Company, or (3) paid as part of a tax-qualified retirement plan or non-discretionary compensation;
- Have a family member who is, or who was in the last 3 years, an executive officer of the Company;
- Be, or have a family member who is, a partner in or a controlling shareholder or executive officer of any organization to which the Company made, or from which the Company received, payments for property or services (other than investments in the Company's securities or payments under non-discretionary charitable contribution matching programs) that exceeded the greater of $200,000 or 5% of the recipient's consolidated gross revenues in the current year or any of last 3 years;
- Be, or have a family member who is, employed as an executive officer of another entity where at any time during the past 3 years any executive officer of the Company serves on the compensation committee of such other entity; or
- Be, or have a family member who is, a current partner of the Company's outside auditor or who was a partner or employee of such firm who worked on the Company's audit at any time during the past 3 years.

For purposes of this test, "family member" means a director's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, as well as any other person residing in the director's home (other than domestic employees).

Directors who serve on the audit committee have heightened standards of independence. In addition to the above requirements, audit committee members must:

- Meet the criteria for independence in SEC Rule 10A-3(b)(1); and
- Not have participated in preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past 3 years.

Sample D&O Questionnaire

The following is an illustrative example of a questionnaire that current and prospective directors, executive officers and key employees will be asked to complete in order for the Company to obtain the information needed to prepare required disclosures in the Registration Statement and ensure compliance with applicable SEC and stock exchange rules and regulations.

Note: The information required to be obtained from directors and officers in connection with an IPO depends upon facts and circumstances. Your Ropes & Gray team will prepare a bespoke questionnaire tailored to your circumstances. The below illustrative questionnaire should not be distributed in connection with an IPO without first consulting with counsel.

[NAME OF COMPANY]

MEMORANDUM

TO: ***[names of directors & officers]***

FROM: ***[sender — e.g., general counsel]***

SUBJECT: Questionnaire for Directors and Officers

DATE: __________ ___, 20__

[NAME OF COMPANY] (the "Company") is preparing for an initial public offering of its common stock. The purpose of this questionnaire is to obtain information the Company needs about its directors, executive officers and key employees for the Company's Registration Statement on Form S-1 (the "Registration Statement") and to comply with the listing requirements of [the New York Stock Exchange (NYSE)] [the Nasdaq]. Your signature at the end of this questionnaire will constitute your consent to use the information contained in your answers in the Company's Securities and Exchange Commission ("SEC") filings.

Please read this questionnaire carefully and answer all questions completely and accurately. You should understand that the information that you are providing will be used in the preparation of one or more documents to be filed by the Company with the SEC. As a result, please notify the Company promptly of any changes to your answers as a result of any developments occurring during the year.

Certain terms in **bold type marked with an asterisk** are defined in **Exhibit A**. Please refer to these definitions as you answer questions containing such terms.

If there is not enough room for your answer, please use separate sheets and attach them to this questionnaire, indicating the specific items they are intended to supplement.

This questionnaire should be completed, signed, dated and returned to [insert contact person and address] on or before [insert date]. The questionnaire may be returned by fax to [insert fax number] or e-mailed to [insert e-mail address], but please also mail the original signed copy to the address shown above.

If you have any questions regarding any item in this questionnaire, please contact **[insert contact person, telephone number, and e-mail address]** for assistance.

If you leave any answer blank, we will assume that your answer to that question is negative. Accordingly, please try to answer every question, even if the answer is “No,” “None” or “Not Applicable.”

PEASE NOTE THAT ANY POTENTIAL OFFERING OF SECURITIES OF THE COMPANY IS CONFIDENTIAL AND SHOULD BE TREATED ACCORDINGLY.

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Declaration and Signature

Exhibit A – Definitions

Financial Expert Addendum

Related Parties Addendum

1. PERSONAL INFORMATION

(a) Please provide the following information about yourself:

Name:	
DOB:	
Address:	
Phone:	
Email:	

(b) Are you currently (please check all applicable boxes):

☐ **Executive officer***

☐ Board member

☐ Compensation Committee member

☐ Audit Committee member

☐ Nominee for any of the foregoing. If so, please specify which.

(c) Your voluntary responses to the following questions help us to understand and report to our stockholders and other stakeholders on the diversity that our directors bring to the Company.

Please indicate all that apply to you:

☐ Asian[1]

☐ Black or African American[2]

☐ Hispanic or Latinx[3]

☐ Native American or Alaska Native[4]

☐ Native Hawaiian or Pacific Islander[5]

☐ White[6]

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[1] **Asian** – A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

[2] **Black or African American** (not of Hispanic or Latinx origin) – A person having origins in any of the Black racial groups of Africa.

[3] **Hispanic or Latinx** – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term Latinx applies broadly to all gendered and gender-neutral forms that may be used by individuals of Latin American heritage, including individuals who self-identify as Latino/a/e.

[4] **Alaskan Native or Native American** – A person having origins in any of the original peoples of North and South America (including Central America), and who maintain cultural identification through tribal affiliation or community recognition.

[5] **Native Hawaiian or Pacific Islander** – A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

[6] **White** (not of Hispanic or Latinx origin) – A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

☐ Two or more Races or Ethnicities[7]

☐ I do not wish to respond

Do you identify as a member of the LGBTQ+[8] community?

☐ Yes

☐ No

☐ I do not wish to respond

Do you identify as one of the following?

☐ Female

☐ Male

☐ Non-Binary[9]

☐ I do not wish to respond

Do you consent to the Company publicly disclosing the above information in a board diversity matrix or other aggregated manner (such that you are not individually identified) in documents filed with the SEC and/or published on the Company's website?

☐ Yes

☐ No

2. RELATIONSHIPS; BUSINESS EXPERIENCE; DIRECTORSHIPS; OTHER EXPERTISE

(a) **Family Relationships.** Are you related by blood, adoption or marriage (not more remote than first cousin) to, or do you share a household with (other than a tenant or employee), any other director, **executive officer***, or person nominated or chosen to become a director or **executive officer*** of the Company?

☐ No, or

☐ If yes, please identify the director, **executive officer*** or nominee, and describe the nature of the relationship.

Director/Executive Officer/Nominee	Description of Relationship

(b) **Principal Occupations.** Describe your principal occupations or employment during the past five years, including the name and principal business of the organizations in which each such

[7] **Two or More Races or Ethnicities** – A person who identifies with more than one of the above categories.

[8] **LGBTQ+** – A person who identifies as any of the following: lesbian, gay, bisexual, transgender or as a member of the queer community.

[9] **Non-Binary** – Refers to genders that are not solely man or woman. Someone who is non-binary may have more than one gender, no gender, or their gender may not be in relation to the gender binary.

occupation or employment is or was carried on (including, if applicable, subsidiaries and other **affiliates*** of the Company).

Date Started (MM/YY)	Date Ended (MM/YY)	Name of Employer (and subsidiaries or affiliates)	Principal Business of Employer	Position(s)/Titles Held

(c) **Education.** Please list in the table below any college or university degree you hold.

Name of College or University	Major/Areas of Concentration	Degree Received	Month/Year Degree Received

(d) **[*For directors and director nominees*] Directorships Currently or Previously Held.** Please indicate below any companies of which you serve as a director and any other directorships previously held during the past five years (including any committee service), indicating (i) with an asterisk each company that has publicly registered securities and each investment company registered under the Investment Company Act of 1940 and (ii) the duration of the directorship if you no longer currently serve as a director of the company identified. If you are a director of two or more registered investment companies that are part of a "fund complex," you only need to identify the fund complex and provide the number of investment company directorships you hold in the fund complex.

Full Name of Entity	Type of Entity	Dates of Service	Service on Entity Board Committee

(e) **[*For directors and director nominees*] Other Skills and Expertise**. Please briefly describe any other experience, qualifications, attributes, skills or expertise you have that you believe would be relevant to your service as a director of the Company or otherwise of value to the Company. For any skill or expertise, please briefly state the experience or education through which it was acquired. Please note that this information can extend beyond the past five years and can include a broad spectrum of relevant expertise, including accounting, finance, risk assessment, information security, cybersecurity, artificial intelligence, climate change, environmental, corporate governance and compensation.

(f) **Other Arrangements.** Is there any arrangement or understanding between you and any other **person*** pursuant to which you have been or are to be selected as a director (including, but not limited to, any arrangement relating to compensation or other payments in connection with your candidacy or service) or **executive officer*** of the Company, other than arrangements with other directors or officers of the Company acting solely in their capacities as such? If so, please describe.

☐ No such arrangement, or

☐ If yes, please describe.

Name of Other Person	Description of Relationship and the Terms of Any Arrangement

3. LEGAL PROCEEDINGS

(a) Adverse Proceedings. If you or any associate* of yours

(i) is an adverse party to the Company, or

(ii) has an interest adverse to the Company,

in any pending legal proceeding, including similar information as to any such proceedings known to be contemplated by governmental authorities, please describe such proceeding, including the name of the court or agency in which the proceeding is pending, the date it was instituted, the principal parties thereof, the factual basis alleged to underlie the proceeding, and the relief sought.

☐ No such proceedings, or

☐ If yes, please describe.

Name of Court or Agency	Date Instituted	Parties	Description of Factual Basis and Relief Sought

(b) ***[California corporations only.]*** If any of the following events occurred during the past ten (10) years, please describe.

(i) You were found to have committed fraud in a civil or criminal proceeding which conviction has not been overturned or expunged.

☐ No such event, or

☐ If yes, please explain the circumstances associated with any of such events, indicating relevant dates.

Date	Description of Event

(c) If any of the following events occurred during the past ten years, please describe.

Note: For purposes of computing the time periods referred to in this Question 3(c), the date of a reportable event is the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date is the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. Please also note disclosure is required for comparable legal events in foreign countries.

(i) A petition under the federal bankruptcy laws or any state insolvency law was filed by or against you, or a receiver, fiscal agent or similar officer was appointed by a court for your business or property, or any partnership in which you were a general partner at or within two years before the time of such filing, or any corporation or business association of which you were an **executive officer*** at or within two years before the time of such filing;

Date	Description of Event

(ii) You were convicted in a criminal proceeding or are a named subject of a pending criminal proceeding, excluding traffic violations and other minor offenses, but including any felony or misdemeanor (A) in connection with the purchase or sale of any security; (B) involving the making of any false filing with the Securities and Exchange Commission (“SEC”); or (C) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

Date	Description of Event

(iii) You were the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court permanently or temporarily enjoining you from, or otherwise limiting, any of the following activities:

(A) acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other **person*** regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or acting as an investment advisor, underwriter, broker or dealer in securities, or as an **affiliated person***, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(B) engaging in any type of business practice; or

(C) engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of federal or state securities laws or federal commodities laws;

Date	Description of Event

(iv) You were the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, revoking, suspending or otherwise limiting (A) your right to engage in any activity described in item (iii) above, (B) your right to be associated with **persons*** engaged in any such activity or regulated by such authority, or (C) your registration as a broker, dealer, municipal securities dealer or investment adviser;

Date	Description of Event

(v) You were found by a court in a civil action or by the SEC to have violated any federal or state securities law, and the judgment in such civil action or finding by the SEC has not been subsequently reversed, suspended or vacated;

Date	Description of Event

(vi) You were found by a court in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated;

Date	Description of Event

(vii) You were the subject of, or a party to, any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of:

(A) Any federal or state securities or commodities law or regulation;

(B) Any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(C) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or

Date	Description of Event

(viii) You were the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act (15 U.S.C. 78c(a)(26))), any registered entity (as defined in Section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40))), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member;

Date	Description of Event

(ix) You filed (as a registrant or issuer), or were named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC that was the subject of a refusal order, stop order, or order suspending the Regulation A exemption;

Date	Description of Event

(x) You were subject to a United States Postal Service false representation order, temporary restraining order or preliminary injunction.

Date	Description of Event

Note: You may provide an explanation of any mitigating circumstances associated with any of the events.

☐ Rider Page is attached.

(d) Do you know of any promoter or control person of the Company who has been involved in any proceeding or subject to any order of any of the types described above in this Question 3? A promoter includes a **person*** who alone or with others participated in founding or organizing the Company or who received 10% or more of the Company's stock in connection with the founding or organizing of the Company for services or property. A control **person*** is one who directly or indirectly controls the Company.

☐ No, or

☐ If yes, please explain the circumstances associated with any of such events, indicating relevant dates.

Date	Description of Events

4. BENEFICIAL OWNERSHIP OF COMPANY SECURITIES

(a) **Stock Ownership.** Please provide the information requested below regarding equity securities of the Company or any of its parents or subsidiaries (**including** director's qualifying shares) that you **beneficially own*** as of **[insert last day of the Company's most recently completed fiscal year]**.

Please refer to the definition of "beneficial ownership" below and in Exhibit A for more detailed information.

	Title of Class/Number of Shares
Total number of shares **beneficially owned*** by you	
Of such shares:	
(i) # of shares as to which you have sole voting power	
(ii) # of shares as to which you have shared voting power	
(iii) # of shares as to which you have sole investment power	
(iv) # of shares as to which you have shared investment power	

(v) # of shares which you have a "right to acquire" within 60 days after **[insert same date as in previous brackets]** (such as exercising stock options, warrants, or conversion or similar rights)

Total number of shares **beneficially owned*** by your **affiliates*** or **immediate family*** members

(i) Name of individual/entity: ________________________

(ii) Name of individual/entity: ________________________

(iii) Name of individual/entity: ________________________

Note: You **"beneficially own"** shares if you have the power (either alone or with some other **person***) to vote such shares (voting power) or the power to sell such shares (investment power). You should also state the number of shares for which you have the right to acquire beneficial ownership within 60 days of **[insert same date as in previous brackets above]**. This includes stock awards, which you have elected not to defer and which you will receive within 60 days of **[insert same date as in previous brackets above]**. For example, if you have stock options which have vested, or will vest, on or prior to **[insert date 60 days after date in previous brackets above]**, and you will **beneficially own*** the underlying stock upon exercise, then you should state the number of shares you would receive if you exercised those options.

Shares of equity securities that might be listed here include:

(i) Shares that are owned by your spouse, minor children or relatives of yours or of your spouse who live in your home.

(b) **Shared Voting or Investment Power.** If you share voting or investment power over any shares listed in Question 4(a), please identify the **persons*** with whom you share such power and the relationship that gives rise to the sharing of such power.

Number and Identification of Shares	Registered Owner of Shares and Relationship to You	Date Begun

(c) **Rights to Acquire.** Please indicate any rights you have to acquire beneficial ownership of shares of the Company's equity securities (see Question 4(a)(v) in chart above), such as exercising stock options, warrants, or conversion or similar rights.

Number and Identification of Shares	Registered Owner of Shares and Relationship to You	Date Received

(d) **Beneficial Ownership Disclaimer.** If you disclaim beneficial ownership of any shares listed in Question 4(a), please identify the shares you disclaim, the reason for such disclaimer and the **person*** or **persons*** who should be identified as the **beneficial owners*** of such shares and your relationship to them.

Number and Identification of Shares	Registered Owner of Shares and Relationship to You	Reason for Disclaimer

(e) **Indirect Ownership.** Please indicate whether your ownership of any stocks listed in Question 4(a) is indirect, including those owned by any voting trust or similar agreement or pursuant to any contract providing for the sale or other disposition of such shares.

Number and Identification of Shares	Registered Owner of Shares and Relationship to You	Nature of Agreement

(f) **Pledged Shares**. Please provide the information below relating to any shares of stock that you **beneficially own*** that (1) are pledged (or intended to be pledged in the future) with a lender or other third party as security for any obligations (including any shares subject to any form of pledge, margin loan, margin account, hypothecation, lien or other arrangements with a lender, broker or other third party in which these shares serve as collateral for any of your obligations or for obligations of any other **person***) or (2) are subject to a "negative pledge" (i.e., a promise not to convey the shares to a third party or to otherwise encumber them) and the nature of the related transaction(s).

Number of Shares	Registered Owner of Shares and Relationship to You	Nature of Pledge or Encumbrance

5. 5% BENEFICIAL OWNERS

Other than **persons*** that have publicly filed a Schedule 13D or Schedule 13G, do you know of any **person*** or **group*** that **beneficially owns*** more than 5% of any class of the Company's voting securities?

☐ No such groups or persons, or

☐ If yes, please provide the names and, if known, addresses of each of these **persons*** or **groups***.

Name of 5% Beneficial Owner	Address

6. CHANGE IN CONTROL

(a) **Contractual Arrangements.** Are you party to, or do you otherwise have knowledge of, any contractual arrangements, including any pledge of securities of the Company or its parents, the operation of the terms of which may at a subsequent date result in a change in control of the Company?

☐ No such arrangement, or

☐ If yes, please describe.

Parties	Description of Arrangement

(b) **Change in Control Event.** Do you know of any transaction (including transactions in which all or any part of the consideration used is a loan made in the ordinary course of business by a bank) since the beginning of the last fiscal year that resulted in a change in control of the Company? If so, please state the name of the **person*** acquiring the control, the amount and source of the consideration used, the basis of the control, the date and a description of the transaction, the amount of securities now **beneficially owned*** by the **person*** who acquired control and the identity of the **person*** from whom control was acquired.

☐ No such transaction, or

☐ If yes, please describe.

Parties	Description of Arrangement

7. TRANSACTIONS OR RELATIONSHIPS WITH RELATED PERSONS, AUDITORS, COMPENSATION CONSULTANTS, IRAN, SPECIALLY DESIGNATED NATIONALS

(a) Transactions with Related Persons.

(i) Since **[insert the first day of the Company's most recently completed fiscal year]**, have you or, to your knowledge, has any member of your **immediate family*** had any direct or indirect material interest in:

- any transaction or series of similar transactions, or any currently proposed transaction or series of similar transactions;
- with the Company or its subsidiaries;
- in which the entire transaction (not necessarily your interest in the transaction) involved an amount greater than $120,000?

Please make sure you understand the term **immediate family***; its definition is broad enough to include step-relatives, siblings and in-laws (see Exhibit A for definition). Please also consider the guidance below in assessing whether you or an **immediate family*** member has a material interest in a transaction.

☐ No such transaction, or

☐ If yes, please answer the following questions.

(ii) If an **immediate family*** member has the material interest, please indicate the name of your family member and his or her relationship to you and to the Company.

Name of Family Member	Relationship to You	Relationship to Company

(iii) Please describe your or such **immediate family*** member's interest in the transaction with the Company, including your or such family member's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is party to, or has an interest in, the transaction.

Name of Family Member	Description of Relationship

(iv) Please indicate the approximate dollar value of the amount involved in the transaction.

Lease. If the transaction involved a lease or provided for periodic payments or installments, please list (1) the aggregate amount of all periodic payments or installments due on or after the beginning of the Company's last fiscal year, and (2) any required or optional payments due during or at the conclusion of the lease or transaction. Please list such transaction only if the sum of (1) and (2) is greater than $120,000.

Amount: ________________________

(v) Please indicate the approximate dollar value of the amount of your or such family member's interest in the transaction, computed without regard to the amount of profit or loss.

Amount: ________________________

(vi) (1) Are you or is any **immediate family*** member indebted, directly or indirectly, to the Company or a subsidiary or (2) has the Company or a subsidiary extended you credit (including through a guarantee) or arranged a personal loan on your or any **immediate family*** member's behalf? *You do not need to include transactions that involve an amount due from you or any* ***immediate family**** *member (A) for purchases of goods and services subject to usual trade terms, (B) for ordinary business travel and expense payments, or (C) for other transactions in the ordinary course of business.*

☐ No such transaction, or

☐ If yes, please describe.

Date	Circumstances of Loan	Largest Aggregate Amt. of Principal Outstanding	Amt. Outstanding as of Latest Practicable Date	Amt. of Principal and Interest Paid	Rate or Amt. of Interest Payable on Indebtedness

(b) **Assessing Material Interest**. Please consider the following non-exclusive list of questions in assessing whether you or an **immediate family*** member had or has a material interest in any transaction with the Company or its subsidiaries.

(i) Did you or do you or, to your knowledge, does any member of your **immediate family* beneficially own*** more than a 10% equity interest in any corporation or organization which was or is a participant in such transaction?

☐ No, or

☐ If yes, please describe.

Stockholder	% Equity Interest

(ii) Were you or are you or, to your knowledge, was or is any member of your **immediate family*** an **executive officer*** of any corporation or organization which was or is a participant in such transaction?

☐ No, or

☐ If yes, please describe.

Party	Description of Position

(iii) Did you or, to your knowledge, does any member of your **immediate family*** derive a special benefit from such transaction, such as a transaction fee or compensation tied to the transaction?

☐ No, or

☐ If yes, please describe.

Party	Description of Benefit

Note: Please promptly notify the Company of any changes to your answers as a result of potentially new related person transactions entered into during the course of the year.

(c) Relationship with Independent Accountants.

(i) Since **[insert first day of the Company's most recently completed fiscal year]**, did you, or do you currently have, a direct or material indirect business relationship with the Company's independent accountants or any partner, principal, shareholder, or professional employee of the accounting firm of the independent accountants, or have an ownership interest of 5% or more in, or serve as an officer or director of, any company (public or private) that has any business relationships with the Company's independent public accounting firm (excluding relationships between the Company's independent accounting firm and its clients for the performance of professional services to that client)?

☐ No, or

☐ If yes, please describe.

Nature of Relationship	Total Amount of Relationship	Amount of Interest in the Relationship

(ii) Do you have any close personal relationships (including, but not limited to, close friendships) with the audit engagement partner or any employee of the Company's independent public accounting firm who worked on the Company's audit at any time during the past three years?

☐ No, or

☐ if yes, please explain.

Name of Person	Description of Relationship

(d) Relationships with Compensation Consultants.

(i) To your knowledge, did any compensation consultant or firm**[*, other than [name of compensation consultant and firm]*]**, play any role in determining or recommending the amount or form of **executive officer*** and director compensation during the Company's most recently completed fiscal year?

☐ No, or

☐ If yes, please identify all such consultants or firms and provide the details indicated below.

Name of Consultant or Firm	Who Engaged the Consultant or Firm (e.g., the Company, the Board or a Committee of the Board)?

(ii) Has **[*name of firm*]** or any firm identified in Question 7(d)(i) provided any other services to you, or to your knowledge, the Company or any of its **affiliates***?

☐ No, or

☐ If yes, please explain.

Name of Firm	Recipient of Services	Description of Services

(iii) **[*For members of the compensation committee*]** Do you have any business or personal relationships with **[*name of compensation consultant (not firm)*]** or the compensation consultant (not the firm) identified in Question 7(d)(i)?

☐ No, or

☐ If yes, please explain.

Name of Firm	Description of Relationship

(iv) **[*For executive officers*]** Do you have any business or personal relationships with **[*name of compensation consultant*]** or **[*name of firm*]** or the compensation consultant or firm identified in Question 7(d)(i)?

☐ No, or

☐ If yes, please explain.

Name of Firm	Description of Relationship

(e) **Transactions with Iran or Specially Designated Nationals.** During the Company's last fiscal year, have you or, to your knowledge, has the Company or any of its **affiliates*** engaged, directly or indirectly, in any transaction involving (i) Iran, including, but not limited to, transactions with

the **Government of Iran*** or involving Iran's energy or weapons industries; or (ii) any **person*** listed on the Specially Designated Nationals List of the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC)?

☐ No, or

☐ If yes, please explain.

Party	Description of Transaction	Date of Transaction

8. COMPENSATION

(a) Compensation of Officers.

(i) Please provide the following information relating to compensation provided to you by the Company, including bonuses, non-cash compensation, perquisites, option/stock appreciation rights (SAR) grants, restricted stock awards and payouts under long-term incentive plans, pension plans, and/or any contract, agreement, plan, or arrangements, whether written or unwritten, that provides for payment(s) to you at, following, or in connection with any termination of your service, or a change in control of the Company or a change in your responsibilities.

Base Salary	
Bonuses	
Non-cash Compensation	
Perquisites	***(Please see Question 8(a)(ii) below in connection with answering.)***
Option/Stock Appreciation Rights (SAR) grants	
Restricted stock awards	

Payouts under long-term incentive plans or pension plans	
Any contract, agreement, plan, or arrangement (written or unwritten) that provides for payment(s) to you at, following, or in connection with any termination of your service or change-in control of the Company or a change in your responsibilities	

(ii) Since **[insert first day of the Company's most recently completed fiscal year]**, did you or any member of your **immediate family*** receive, or are you or any member of your **immediate family*** to receive, directly or indirectly, any perquisite or other benefit which was not (or may not be) integrally and directly related to the performance of your job or the satisfaction of your obligations to the Company, from (A) the Company or any of its parents or subsidiaries or (B) third parties as a result of or in connection with your employment by or relationship or association with the Company or its **affiliates***? Examples of such perquisites or other benefits include the payment of any personal expenses, personal use of the Company's property such as automobiles, yachts or aircraft, commuter transportation services, personal travel otherwise financed by the Company, security provided at a personal residence or during personal travel, housing or other living expenses, contributions to charitable organizations at your request, club memberships not exclusively for business entertainment purposes, personal financial or tax advice, investment management services, discounts on the Company's products or services not generally available to Company employees, access to executive facilities, consulting fees, or use of the Company's staff for personal purposes. Please report responsive items whether or not they were included in your taxable income.

☐ No, or

☐ If yes, please describe below.

Amount of Perquisite or Benefit	Description of Perquisite or Benefit

(b) **Compensation of Directors.** Were you provided with compensation for your services as a director of the Company for the last fiscal year? Compensation includes any amounts for committee participation or special assignments, meeting fees, equity grants and perquisites, whether such payments were pursuant to standard arrangements applicable to all directors and/or committee members or whether you have any different compensation arrangements. Compensation also includes any arrangement entered into in consideration of your service on the board, including annual retainer fees and consulting contracts.

☐ No such payments, or

☐ If yes, please describe below.

Amount of Payment	Reason for Payment

For Officers and Directors

(c) **Third Party Payments.** During the Company's last fiscal year, did someone other than the Company pay you or set aside or accrue for your benefit any cash or noncash compensation or other payment in connection with services rendered to the Company (including, but not limited to, health insurance premiums and indemnification) or is any such compensation or other payment proposed to be made, set aside or accrued in the future pursuant to any existing plan or arrangement with someone other than the Company. If so, please state the name of each corporation or **person*** paying, setting aside or accruing such compensation or other payment, the capacities in which the services were rendered and the amount of such compensation or other payment on an accrual basis.

☐ No such payments, or

☐ If yes, please describe below.

Name of Corporation or Person	Capacities in which Services were Rendered	Amount of Compensation

9. COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

For Executive Officers only

(a) Please indicate whether ANY of the following relationships existed during the last completed fiscal year of the Company:

(i) You served on the compensation committee (or similar committee) of another entity, one of whose **executive officers*** served on the compensation committee (or similar committee) of the Company;

(ii) You served as a director of another entity, one of whose **executive officers*** served on the compensation committee (or similar committee) of the Company; or

(iii) You served on the compensation committee (or similar committee) of another entity, one of whose **executive officers*** served as a director of the Company.

☐ No such relationships, or

☐ If yes, please describe below.

(i)	(ii)	(iii)

For Directors only

(b) If you served as a member of the compensation committee of the Company's Board of Directors during the last completed fiscal year, were you:

(i) an officer or employee of the Company during the fiscal year?

☐Yes ☐No

(ii) formerly an officer of the Company?

☐Yes ☐No

For Directors and Executive Officers Only

(c) ***[For companies without a compensation committee (or similar committee) during the last fiscal year]*** During the last completed fiscal year, did you participate in any consideration of the Company's Board of Directors concerning **executive officer*** and director compensation pursuant to your role as a director, an **executive officer*** with authority delegated by the board or as a compensation consultant?

☐Yes ☐No

10. MISCELLANEOUS

Do you or any of your **associates*** have any interest, direct or indirect, by security holdings or otherwise, in any matters to be acted upon at the meeting (other than your election and any interest arising from the ownership of the Common Stock of the Company where you receive no extra or special benefit)?

☐ No such interest, or

☐ If yes, please describe.

Matter	Description of Interest

This questionnaire continues on the next page for Directors and Director nominees; Executive Officers and Directors who are also Executive Officers can now stop, and sign, date and submit this questionnaire.

To be completed by all Directors and Nominees for Director.

11. NASDAQ OR NYSE COMPLIANCE

A. NASDAQ DIRECTORS' INDEPENDENCE STANDARDS

The Nasdaq Marketplace Rules require that listed companies have a majority of independent directors. An "independent director" under the Nasdaq listing standards means a person other than an **executive officer*** or employee of the Company or any other individual having a relationship which, in the opinion of the Board of Directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In order for a director to be considered "independent," the Board of Directors has to affirmatively determine that no material relationship exists between the Company (or a member of senior management) and the director, either directly or indirectly through a family member or an organization of which the director is a partner, shareholder or officer.

For purposes of this Question 12, please note the following:

(1) A "material relationship" may include a commercial, industrial, banking, consulting, legal, accounting, charitable or familial relationship, as well as any other relationship that might reasonably be expected to affect the director's independence from management.

(2) You should assume, unless instructed otherwise, that the term "Company" includes any parent or subsidiaries of **[Name of Company]** that **[Name of Company]** controls and consolidates with its financial statements for SEC Reporting purposes, but excludes any entity reflected solely as an investment in the Company's financial statements.

(b) Director as employee, or family member as executive officer*, of the Company. At any time during the past three years,

(i) Have you been an employee of the Company?

☐Yes ☐No

(ii) If you were an interim employee, did the interim employment last longer than one year?

☐Yes ☐No

(iii) Has any of your family members* (*note that this definition differs, in some respects, from that of immediate family**) been, or is he or she currently, an executive officer* of the Company?

☐Yes ☐No

(c) **Director or family member receiving substantial payments.** During any period of twelve (12) consecutive months within the past three years, have you or has any **family member***

accepted compensation of more than $120,000 from the Company, other than (i) compensation for board or committee service; (ii) compensation paid to any of your **family members*** who is an employee (other than an **executive officer***) of the Company; or (iii) benefits under a tax-qualified retirement plan or non-discretionary compensation?

☐Yes ☐No

(d) Company payment or receipt of defined amounts to or from an entity associated with Director or family member. Are you or is any of your family members* a partner in, or a controlling shareholder or an executive officer* of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, other than (i) payments arising solely from investments in the Company's securities and (ii) payments under non-discretionary charitable contribution matching programs?

☐Yes ☐No

(e) Director or family member is officer of another entity where the Company's officer serves on compensation committee. Are you or is any of your family members* employed as an executive officer* of another company the compensation committee of which included at any time during the past three years any of the Company's executive officers*?

☐Yes ☐No

(f) **Director or family member receiving substantial payments.** Are you or is any of your **family members*** a current partner of the firm that is the Company's outside auditor?

☐Yes ☐No

(g) **Director or family member worked on Company's audit as partner/employee of outside auditor.** Were you or was any of your **family members*** a partner or an employee of the Company's outside auditor at any time during the past three years who worked on the Company audit at any time during such period?

☐Yes ☐No

(h) **Relationships with members of senior management.** Do you have any personal business relationships or close personal relationships (including close friendships) with any member(s) of senior management?

☐ No such relationship, or

☐ If yes, please describe below.

Parties	Description of Relationship

(i) **Other material relationships.** If you know of any other "material relationship" of the nature discussed above which might have a material bearing on your independence from management and the board's assessment thereof, please provide details for all such relationships.

☐ No such relationship, or

☐ If yes, please describe below.

Parties	Description of Relationship

B. NYSE DIRECTORS' INDEPENDENCE STANDARDS

NYSE Rule 303A.01 requires that listed companies have a majority of independent directors. In order for a director to be considered "independent," the Board of Directors has to affirmatively determine that no material relationship exists between the Company (or a member of senior management) and the director, either directly or indirectly through a family member or an organization of which the director is a partner, shareholder or officer. For purposes of this Question 12, please note the following:

(1) A "material relationship" may include a commercial, industrial, banking, consulting, legal, accounting, charitable or familial relationship, as well as any other relationship that might reasonably be expected to affect the director's independence from management.

(2) You should assume, unless instructed otherwise, that the term "Company" includes any parent or subsidiary in a consolidated group with **[Name of Company]**.

Director Independence Standards

(j) Director as an employee or immediate family member as an executive officer of the Company. At any time during the past three years:

(i) Have you been an employee of the Company (other than a chairman or an **executive officer*** serving on an interim basis)?

☐Yes ☐No

(ii) Has any member of your **immediate family*** been, or is he or she currently, an **executive officer*** of the Company?

☐Yes ☐No

(iii) **Director or immediate family member receiving substantial payments.** During any consecutive twelve-month period in the last three years, have you or has any member of your **immediate family*** received more than $120,000 in direct compensation from the Company (other than director and committee

fees and pension or other forms of deferred compensation for prior services which is not contingent on continued service)?

☐Yes ☐No

Note: In answering this Question, you may exclude (i) any compensation you received for former service as an interim chairman or chief executive officer or other **executive officer*** of the Company and (ii) any compensation received by any member of your **immediate family*** for service as an employee (other than as an **executive officer***) of the Company.

(k) Director or immediate family member associated with internal or external auditor.

(i) Are you a current partner or employee of the firm that is the Company's internal or external auditor?

☐Yes ☐No

(ii) Is any member of your **immediate family*** a current partner of the firm that is the Company's internal or external auditor?

☐Yes ☐No

(iii) Is any member of your **immediate family*** an employee of the Company's internal or external auditor who works on the Company's audit? (Note that the tax planning practice of such firm is not considered part of its tax compliance practice).

☐Yes ☐No

(iv) Were you or was any member of your **immediate family*** a partner or employee of the Company's internal or external auditor during the past three years but are no longer so employed?

☐Yes ☐No

(v) If the answer to paragraph (iv) is yes, did you or such **immediate family*** member or members personally work on the Company's audit during any of the past three years?

☐Yes ☐No

(l) Director or immediate family member serving as executive officer of another company at which current executive officer of the Company served or serves on that company's compensation committee. Within the last three years, have you or any member of your immediate family* been employed, or are you or any of them currently employed, as an executive officer* of another company where any of the Company's present executive officers* serve or served at the same time on the compensation committee of that company?

☐Yes ☐No

(m) Director or immediate family member as an employee of another company doing business with the Company. Are you a current employee, or is any member of your immediate family*,

a current executive officer*, of another company that, in any of the last three fiscal years, has made payments to, or received payments from, the Company for property or services in excess of the greater of $1 million or 2% of the other company's consolidated gross revenues for its last completed fiscal year?

☐Yes ☐No

(n) Director who is an officer of a tax exempt organization that receives large contributions from the Company.

(i) Do you serve as an **executive officer*** of a tax exempt organization to which the Company's charitable contributions in any of its last three fiscal years have exceeded the greater of $1 million and 2% of such organization's consolidated gross revenues?

☐ No, or

☐ If yes, please list the tax exempt organization(s) for which you served as an **executive officer*** and <u>all</u> contributions made by the Company to such tax exempt organization(s) during its or their last three fiscal years.

Tax Exempt Organization	**Contributions Made**

(o) Relationships with members of senior management.

(i) Do you have any personal business relationships or close personal relationships (including close friendships) with any member(s) of senior management?

☐ No such relationship, or

☐ If yes, please describe below.

Parties	**Description of Relationship**

If you answered "no" to question 12(g)(i), please skip to question to question 12(h).

(ii) If you answered "yes" to question 12(g)(i), are any of the relationships you listed in question 12(g)(i) "material relationships?"

☐ No "material relationships", or

☐ If yes, please describe below.

Parties	Description of Relationship

(p) **All other direct and indirect relationships.** If you know of any other "material relationship" of the nature discussed above which might have a material bearing on your independence from management and the Board's assessment thereof, please provide details for all such relationships.

Parties	Description of Transaction or Relationship

Non-Management Directors

The NYSE Rules require that the "non-management directors" schedule regular executive sessions separate from the Company's management. The following questions relate to the meeting(s) of "non-management directors" held during the fiscal year ended **[insert date]**.

(q) Executive Sessions.

(i) During the Company's most recently ended fiscal year, were you present at one or more meetings of the Company's "non-management" directors?

☐Yes ☐No

(ii) During the Company's most recently ended fiscal year, were you present at one or more meetings of the Company's "independent" directors?

☐Yes ☐No

(iii) During the Company's most recently ended fiscal year, were you chosen to preside over any of the meetings of the Company's "non-management" directors?

☐ No, or

☐ If yes, please describe the procedure by which you were selected.

Date of Meeting	Procedure for Selection

For Members of and Nominees for the Audit Committee Only

12. AUDIT COMMITTEE MEMBERSHIP

SEC Rules require that the audit committee of listed companies consist of only independent directors.

(a) **Director compensatory fees.** Other than in your capacity as a member of the audit committee, the Board of Directors, or any other board committee, have you during the past three

years, accepted, directly or indirectly, any consulting, advisory or other compensatory fee from the Company (excluding any fixed amounts of compensation paid for past services to the Company under a retirement or deferred compensation plan which is not contingent in any way on continued service)?

☐ No, or

☐ If yes, please describe the fees and the dates you received them.

Date	Description of Fees

(b) **Family compensatory fees.** Is any member of your **immediate family*** a party to any existing or proposed contract or other written or oral arrangement which provides for the payment to you or such **immediate family*** member by the Company or any of its subsidiaries of any consulting, advisory or other compensatory fee?

☐ No, or

☐ If yes, please describe such contract or arrangement, and such consulting, advisory or other compensatory fee.

Parties	Description of Arrangement

(c) Director as an Affiliated Person.

(i) Are you an **affiliated person*** of the Company (other than in your capacity as a member of the Company's Board of Directors or any committee of such Board of Directors)?

☐ No, or

☐ If yes, please describe your affiliation.

Parties	Description of Affiliation

(ii) Are you an **affiliated person*** of any subsidiary of the Company?

☐ No, or

☐ If yes, please describe your affiliation.

Parties	Description of Affiliation

(d) [NYSE COMPANIES ONLY] Membership in Other Audit Committees.

(i) Do you serve on the audit committees of any other public companies?

☐ No, or

☐ If yes, please describe.

Date Begun	Public Company

(ii) If the number of public companies named (in addition to the Company) is more than two, has the Board of Directors determined that your simultaneous service on all such audit committees will not impair your ability to effectively serve on the Company's audit committee?

☐ No, or

☐ If yes, please describe.

Date	Description of Determination

(e) [NYSE COMPANIES ONLY] Audit Committee Financial Literacy.

To assess whether you may be considered to be "financially literate" under the NYSE listing standards, please indicate whether you satisfy the following criteria:

(i) Do you have accounting or related financial management experience?

☐ No, or

☐ If yes, please describe your experience.

Date	Description of Experience

You may also describe below any additional finance or accounting experience that you might have or attach a resume or other relevant summary in response to this question.

Date	Description of Experience

☐ Resume attached.

(f) [NASDAQ COMPANIES ONLY] Audit Committee Financial Sophistication.

To assess whether you may be considered to have "financial sophistication" under the Nasdaq listing standards, please indicate whether you satisfy the following criteria:

(i) Are you able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement?

☐Yes ☐No

(ii) Do you have past employment experience in finance or accounting, professional certification in accounting or any other comparable experience or background which results in your financial sophistication?

☐ No, or

☐ If yes, please describe.

Date	Title

(iii) Have you been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities?

☐ No, or

☐ If yes, please describe.

Date	Title

You may also describe below any additional finance or accounting experience that you might have or attach a resume or other relevant summary in response to this question.

Date	Description of Additional Experience

☐ Resume attached.

(g) **[NASDAQ COMPANIES ONLY] Preparation of Financial Statements.** Have you participated in the preparation of the financial statements of the Company or any current subsidiary of the Company any time in the last three years?

☐ No, or

☐ If yes, please describe.

Date	Description of Role in Preparation of Financial Statements

For Members of and Nominees for the Compensation Committee Only

13. COMPENSATION COMMITTEE MEMBERSHIP AND INDEPENDENCE

(a) **Non-Employee Director Status under SEC Rule 16b-3.** Exchange Act Rule 16b-3 also provides exemptive relief from the Section 16(b) short swing profit recovery rule for transactions under equity plans administered by a committee of two or more "non-employee directors."

(i) Are you currently an officer of the Company or a parent or subsidiary of the Company or otherwise currently employed by the Company or a parent or subsidiary of the Company?

☐Yes ☐No

(ii) Apart from any payments disclosed in response to Question 8(b), are you now receiving, directly or indirectly, any other remuneration from the Company other than directors' fees and similar payments for your services rendered as a director?

☐Yes ☐No

(iii) Did you or do you have, or, to your knowledge, has any member of your **immediate family*** had, any direct or indirect material interest in any transaction in which the Company was or is a participant involving an amount more than $120,000 during the Company's most recently ended tax year?

☐ No, or

☐ If yes, please describe.

Date	Amount	Description of Transaction

(b) **Compensation Committee Director Independence**. In affirmatively determining the independence of any director who will serve on the compensation committee of the Company's Board of Directors, the Board of Directors must also consider all factors specifically relevant to the determination of whether any director that will serve on the compensation committee has a relationship with the Company that is material to such director's ability to be independent from management in connection with such director's duties as a compensation committee member.

(i) Have you, in the past fiscal year, accepted or do you plan to, in the current fiscal year, accept directly or indirectly any consulting, advisory, or other compensatory fee from the Company or any of its subsidiaries? For purposes of this question, "indirect" includes acceptance of such a fee by a **family member*** or by an **affiliated person*** and, in each case, which provides

accounting, consulting, legal, investment banking or financial advisory services to the Company or any of its subsidiaries.

☐ No, or

☐ If yes, please describe.

Date	Description of Compensatory Fee

(ii) The Board of Directors of the Company must consider your sources of compensation in determining your independence and eligibility to serve as a member of the compensation committee. For this purpose, please identify the sources of any compensation related to the Company or any of its subsidiaries (other than any compensation identified in question (i) above). Please note that this does not require you to identify the amounts paid in compensation.

Date	Source	Description of Compensation

(iii) Other than in your capacity as a member of the compensation committee, the Board of Directors or any other committee of the Board of Directors, are you an **affiliated person*** of the Company or any of the Company's subsidiaries or any **affiliate*** of any of the Company's subsidiaries?

☐ No, or

☐ If yes, please describe your affiliation.

Parties	Description of Affiliation

****

Declaration and Signature

I understand that my answers will be used in the preparation of one or more documents to be filed by the Company with the Securities and Exchange Commission.

Answers to the foregoing questions are true and accurate to the best of my information and belief. If I am a nominee for director, I consent to being named as such and consent to serve as a director of the Company if elected. I agree to notify the Company of any changes in the foregoing answers, including any which should be made as a result of developments occurring after the date hereof.

Date: ______________

Signature: _______________________

Print Name: ______________________

Exhibit A

DEFINITIONS

Affiliate or Affiliated Person

The term “affiliate” or “affiliated person” of a specified person means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the person. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. However, a person will be deemed not to be in “control” of a specified person if the person (i) is not the **beneficial owner***, directly or indirectly, of more than 10% of any class of voting equity securities of the other person, and (ii) is not an **executive officer*** of the other person.

The following will be deemed to be affiliates: (i) an **executive officer*** of an affiliate, (ii) a director who is also an employee of an affiliate, (iii) a general partner of an affiliate and (iv) a managing member of an affiliate.

Associate

The term “associate,” used to indicate a relationship with any person, means:

1. Any corporation or organization (other than the Company or a majority-owned subsidiary) of which such person is directly or indirectly the **beneficial owner*** of 10% or more of any class of equity securities;

2. Any corporation or organization (other than the Company or a subsidiary) of which such person is an officer or partner;

3. Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as a trustee or in a similar fiduciary capacity; and

4. any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the Company or any of its parents or subsidiaries.

Beneficial Owner or To Beneficially Own

A “beneficial owner” of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power and/or investment power with respect to such securities. Voting power includes “the power to vote or to direct the voting” of such securities, and investment power includes “the power to dispose or to direct the disposition” of such securities.

A person is also a “beneficial owner” of securities if he has the right to acquire beneficial ownership of such securities, at any time within sixty (60) days, including, but not limited to, any right to acquire through: (a) the exercise of an option, warrant, or right, (b) the conversion of a convertible security, (c) the power to revoke a trust, discretionary account, or similar arrangement, or (d) the automatic termination of a trust, discretionary account, or similar arrangement; provided, however, that if the acquisition of an option, warrant, right, convertible security, or power

described in (a), (b) or (c) is for the purpose of maintaining or obtaining control over the issuer of the shares, the holder of the option, warrant, right, convertible security, or power shall, immediately upon such acquisition, be deemed a "beneficial owner" of the underlying shares.

The possession of the legal power to vote and/or direct the disposition of securities, absent unusual circumstances, is sufficient to confer beneficial ownership whether or not the person with the power is also the record owner. As examples, a trustee who, pursuant to the terms of the trust agreement, has or shares voting and/or investment power with respect to particular securities and a person who has or shares voting or investment power with respect to securities held of record by another person (i.e., his spouse, children, or relatives) will be deemed "beneficial owners" of such securities.

Executive Officer

The term "executive officer" of any person means its president, any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance) and any other person who performs similar policy-making functions. Executive officers of a subsidiary may be deemed to be executive officers of the Company if they perform Company-wide policy making functions.

Family Member or Immediate Family

The term "family member" means a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home.

Such relatives include (i) only those persons who are currently related to the primary reporting person (e.g., a person who is divorced from a director's daughter would no longer be a son-in-law whose transactions must be reported) and (ii) only those persons who are related by blood or step relationship to the primary reporting person or his spouse (e.g., the sister of a director's spouse is considered a sister-in-law but the sister's husband is not considered a brother-in-law).

Government of Iran

The term "Government of Iran" means the state and government of Iran and all political subdivisions, agencies and instrumentalities thereof; entities owned or controlled, directly or indirectly, by the foregoing; **persons*** acting or purporting to act, directly or indirectly, for or on behalf of any of the foregoing; and any other **person*** determined by OFAC to fall within the definition of "Government of Iran." Entities organized under the laws of Iran, individuals ordinarily resident in Iran, individuals and entities actually in Iran and non-Iranian entities owned or controlled by any of the foregoing fall within the definition of "Government of Iran."

Group

The term "group" means two or more **persons*** acting as a partnership, limited partnership or syndicate, or who or which have otherwise agreed to act together, for the purpose of acquiring, holding, voting or disposing of securities.

Person

The term "person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust or an unincorporated organization.

Plan

The term "plan" includes, but is not limited to, any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, membership units, restricted membership units, phantom membership units, membership unit appreciation rights, warrants, convertible securities, performance units and performance shares, and similar instruments. A plan may be applicable to one person.

FINANCIAL EXPERT ADDENDUM

(a) **Financial Expert.** To assess whether you may be considered a "financial expert" under the Securities Act please indicate whether you satisfy the following criteria:

(i) As a general matter, do you have, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions, an understanding of generally accepted accounting principles (GAAP) and financial statements of comparable companies?

☐ No, or

☐ If yes, please describe.

Dates	Description of Experience

(ii) Do you have experience with the general application of such principles in connection with the accounting for estimates, accruals and reserves?

☐ No, or

☐ If yes, please describe.

Dates	Description of Experience

(iii) Do you have experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the Company's financial statements, or experience actively supervising one or more **persons*** engaged in such activities?

☐ No, or

☐ If yes, please describe.

Dates	Description of Experience

(iv) Do you have experience with internal controls and financial reporting and accounting procedures and an understanding of audit committee functions?

☐ No, or

☐ If yes, please describe.

Dates	Description of Experience

(v) Did you acquire your financial expertise through one or more of the following experiences outside of and/or prior to serving on the Company's audit committee:

(A) through experience as a principal financial offer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions?

☐ No, or

☐ If yes, please describe.

Dates	Description of Experience

(B) by actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions?

☐ No, or

☐ If yes, please describe.

Dates	Description of Experience

(C) by overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements?

☐ No, or

☐ If yes, please describe.

Dates	Description of Experience

(D) through other relevant experience that you believe is equivalent to the experience listed in (i)-(iv) above?

☐ No, or

☐ If yes, please describe.

Dates	Description of Experience

RELATED PARTIES Addendum

(b) Other Related Party Information.

(i) Other than the transactions, if any, disclosed in response to Question 7(a), since the first day of the Company's most recently completed fiscal year, **[insert first day of most recently completed fiscal year]**, have you or, to your knowledge, has any member of your immediate family or any entity that you may control or exercise significant influence over to the extent that the entity might be prevented from fully pursuing its own separate interests entered into any material transaction with the Company or its subsidiaries?

For purposes of this Question 7(f) only, **"immediate family"** refers to family members who might control or influence a significant stockholder of the Company (i.e., more than 10%) or a member of management, or who might be controlled or influenced by a significant stockholder or a member of management, because of the family relationship.

☐ No such transaction, or

☐ If yes, please describe.

Parties	Description of Transaction

SAMPLE DUE DILIGENCE REQUEST LIST

The following is an illustrative example of a due diligence request list that the Company will be asked to respond to via the population of applicable documents in a virtual dataroom. The due diligence exercise is a critically important liability exercise, and, in the lead-up to an IPO process, the Company should begin gathering responsive diligence materials. You should expect that legal counsel for both the underwriters and company may ask for supplemental materials after reviewing the initial documents populated in the virtual dataroom. Depending on your business type or other circumstances, there may be other key areas of document production not covered in this list.

[Company Name]

<u>Preliminary Due Diligence Request List</u>

The following is a preliminary list of materials that we will need to review in performing our due diligence investigation in connection with the proposed initial public offering by [Company Name] (the "Company") of its common stock. As our review of these materials progresses, we may request additional materials. In each case, the requested information should be provided for the Company and all subsidiaries, affiliates, and predecessors, whether corporations, partnerships, joint ventures, or other entities, where such information is material to the business of the Company or would otherwise be relevant to an investment in the Company. In such cases, references to "the Company" include all such entities. Unless the context otherwise requires, items listed below refer only to events occurring or documents entered into, created, filed, or modified on or after, or changes in facts since, [Date (typically, a 5-year lookback)], as applicable. This request should also be regarded as a standing request for all responsive materials that come into existence or otherwise become available from the date of this request through the closing date of the offering (including the closing date for the exercise of any over-allotment option (or other option to purchase additional shares)).

It is important that we know the categories in which no responsive materials exist, so please respond to every category listed. If any materials responsive to the listed categories exist but are not readily available, please let us know and we can discuss how best to proceed.

If you have any questions regarding the below, please do not hesitate to call [Attorney Name] at [Phone Number].

Corporate Records

1. The Company's Certificate of Incorporation (or other charter document), together with all amendments to date, and any amendments that will be filed prior to the closing of the offering.

2. By-Laws of the Company (or similar organizational document), as currently in effect and as will be in effect at the time of the closing of the offering.

3. Minutes of meetings of the Board of Directors of the Company and any standing committees thereof (e.g., Audit, Nominating/Governance and Compensation Committees) (including signed resolutions or written consents in lieu thereof, or drafts of minutes if minutes are not available), as well as materials provided or presented in connection with such meetings.

4. Minutes of the meetings of the Board of Directors of all significant subsidiaries of the Company and any committees thereof (including signed resolutions or written consents in lieu thereof, or drafts of minutes if minutes are not available), as well as materials provided or presented in connection with such meetings.

5. Minutes of meetings of the shareholders of the Company (including signed resolutions or written consents in lieu thereof, or drafts of minutes if minutes are not available), as well as materials provided or presented in connection with such meetings.

6. Minutes of meetings of the shareholders of all significant subsidiaries of the Company (including signed resolutions or written consents in lieu thereof, or drafts of minutes if minutes are not available), as well as materials provided or presented in connection with such meetings.

7. Form of the Company's stock certificates.

8. Annual reports, quarterly reports and any other communications to stockholders of the Company, whether sent by the Company or by a third party.

9. Incorporation proceedings of the Company and stock books, stock ledgers and other records of stock issued by the Company.

10. Copies of any officers' and directors' questionnaires or a list of the names and addresses of the Company's officers and directors, including background and biographical material, business experience, a list by date of all positions held during the past five years and any arrangements regarding the payment of directors' fees and expenses.

11. Corporate organization chart including direct and indirect subsidiaries of the Company showing for each such subsidiary, the equity percentage owned by the Company and each other subsidiary of the Company.

12. All offering circulars, private placement memoranda or equivalent documents in connection with any offering of securities (including debt securities) by the Company or any predecessors.

13. List of each jurisdiction in which the Company or any of its significant subsidiaries (i) does business, (ii) is qualified to do business, (iii) owns or leases real property, (iv) has employees, agents or independent contractors or (v) is otherwise operating.

Corporate Governance

14. Copies of all charters of any committees of the Board of Directors of the Company, including, but not limited to, the audit, compensation, nominating and governance committees.

15. Copies of any written policies regarding consideration of director candidates nominated by shareholders.

16. Copies of any written pre-approval policies and procedures of the audit committee.

17. A copy of the Company’s code of ethics.

18. Any analyses relating to the independence of the Company’s directors.

19. Any analyses relating to whether members of the Company’s audit committee are “audit committee financial experts.”

20. Proposed policies and procedures with respect to the Company’s disclosure controls and procedures.

Capitalization

21. Any documents and agreements evidencing or relating to the Company's outstanding equity securities, borrowings (whether secured or unsecured) and other material financing arrangements, including stock purchase agreements, shareholder agreements, voting trust agreements, pre-emptive rights agreements, agreements relating to restrictions on transfer of the Company's securities, right of first refusal agreements, registration rights agreements, loan and credit agreements, promissory notes and other evidences of indebtedness, security agreements, pledge agreements, other agreements encumbering real or personal property owned by the Company, guarantees, sale and leaseback arrangements, installment purchases, redemption or purchase agreements, etc.

22. A schedule showing authorized, issued and outstanding shares of the Company’s capital stock of each class and showing the record owners of such capital stock.

23. A schedule of warrants, options, convertible securities, rights and other agreements to issue shares of the Company’s capital stock of any class and the

record and beneficial owners thereof. With respect to compensatory equity securities, please provide a schedule detailing grantee, grant date, exercise price and vesting schedule of each grant.

24. A schedule of any contingent or other obligations (such as appraisal rights or rights of first refusal) relating to any shares of capital stock or other securities of any class of the Company.

25. A schedule of any registration rights regarding any of the Company's securities.

26. A schedule of outstanding bonds, notes, debentures and other debt instruments, showing the record and beneficial owners thereof (including affiliated corporate debt, whether or not evidenced by an instrument).

Governmental Regulations and Filings

27. Reports or other documents filed with or prepared by and significant correspondence with any local, state, federal or foreign government or governmental regulatory agency regarding the business, assets, or securities of the Company.

28. All governmental permits, licenses, certificates or other authorizations necessary for the operation of the Company’s businesses.

29. Any documentation relating to the Company’s compliance or non-compliance with environmental protection laws; a description of any claims under environmental protection laws and any notices of violation with respect thereto; and any communications with federal or state environmental agencies with respect thereto.

30. Any memorandum or correspondence prepared by the Company, outside legal counsel or independent consultants relating to anticipated, proposed, or recently enacted legislation or regulations that may affect the Company.

Financings, Tax, and Accounting

31. All notes and agreements evidencing outstanding borrowings by the Company or unfunded commitments to lend to the Company, including loan and credit agreements, mortgages, deeds of trust, security agreements, promissory notes, debentures, letters of credit and other evidences of indebtedness and all guarantees.

32. Bank letters or agreements confirming lines of credit of the Company.

33. Correspondence with lenders for the last two years including all compliance reports submitted by the Company, its subsidiaries or its independent public accountants.

34. A description of the Company's debts and liabilities, including the total amount of said debts and liabilities, a description of the Company's outstanding notes and

other indebtedness, the due dates of major debts and liabilities, and their respective rates of interest.

35. All documents and agreements evidencing other material financing arrangements, such as sale and leaseback arrangements, equipment leasing lines, and installment purchases.

36. Copies of the consolidated U.S. and state income tax returns of the Company.

37. Information with respect to any pending government audit of the Company's tax returns.

38. All contracts relating to consolidated tax filings, sharing of tax attributes, tax indemnities or tax refunds.

39. All "management letters" from the Company's independent public accountants to the Company.

40. All letters from the Company's attorneys to the Company's independent public accountants.

41. Any internal audit reports or other reports prepared by or for the Company regarding material accounting matters, including with respect to critical accounting policies, reserves, asset write-downs, revenue recognition, deferred tax assets, off-balance sheet treatment of liabilities or accounting for accounts receivable, inventory or marketable securities.

42. Policies and procedures regarding the Company's internal control over financial reporting.

Material Agreements of the Company

43. All contracts relating to the acquisition or disposition of any business, product line, technology, intellectual property or brand name, and any acquisitions or dispositions currently proposed for the future.

44. All leases of real property and all leases of any substantial amount of personal property (whether as lessor or as lessee).

45. All contracts, documents or agreements relating to any transactions between the Company and any of its subsidiaries or affiliates.

46. All material agreements with customers, suppliers, distributors, subcontractors, licensees, licensors, consulting or management service providers and independent contractors.

47. All contracts with any director, officer or shareholder of the Company or any affiliate of any such persons, including, without limitation, any agreement or plan to make or repay loans and any agreement or plan for stock ownership by employees.

48. All material contracts regarding collaborations, licenses, research agreements or similar agreements with third parties.

49. All material contracts for the purchase, future purchase or use of any materials, supplies, parts, components, machinery, equipment, goods or services or regarding the distribution of products or services of the Company (whether with sales agents, distributors or others or in which the Company acts as a distributor or sales agent).

50. All material contracts relating to the sale or supply or future sale or supply of products to customers or the provision of services, including all varieties of sale transactions, such as lease, loan, demonstration or trial sale, conditional sale or option.

51. All material contracts with agents or others to use or promote the products or services of the Company or of any other company or business.

52. All material contracts relating to the provision of technical support to or by the Company.

53. All other material contracts relating to the manufacture, production, sale, purchase, distribution, development, design, storage, advertising or promotion of the products or services of the Company or with respect to products or services of other companies or businesses.

54. All guarantees.

55. All material contracts involving post-closing obligations not now fully performed and discharged, including, without limitation, indemnities, warranties, patent infringement obligations, trade-in or repurchase (or cancellation) obligations, return or allowance rights or other commitments.

56. Deeds and easements to all material real estate owned in whole or in part by the Company, copies of title reports and title policies relating thereto and copies of all surveys of any such property.

57. All material contracts regarding the use, lease, loan, bailment, conditional sale or other encumbrance of any equipment of the Company or any of its subsidiaries.

58. All significant capital expenditure contracts.

59. All agreements, contracts or commitments limiting the freedom of the Company or any key employees to engage in any line of business or to compete with any other person or requiring them to maintain the confidentiality of any matters.

60. All indemnification agreements.

61. All joint venture or partnership agreements to which the Company is a party.

62. All significant contracts involving sponsorship of, or donations to, any event, organization or individual.

63. All contracts not made in the ordinary course of business or which relate to matters outside the ordinary course of business.

64. A list of all material contracts which may be affected by change of control of, or sale of shares or assets of, the Company, indicating the effect thereof with respect to each such contract.

65. Information and correspondence on any material existing or potential defaults under any contracts.

66. Repurchase agreements relating to shares owned by employees of the Company.

67. All government contracts, including any grants, sponsored research agreements or similar agreements.

68. All loan agreements or all documentation relating to loans or advances to, or investments in, any other person or any agreements, contracts or commitments relating to the making of any such loan, advance or investment.

69. All contracts, documents or agreements with or pertaining to the Company and to which present or former directors, officers or shareholders are parties.

70. A summary of all insurance policies carried by the Company, including a brief description of the type of policy, carrier, agent and coverage limits and a summary of claims experience under the insurance policies.

71. Any contracts, instruments, judgments, orders or decrees which materially adversely affect, or might reasonably be expected to materially adversely affect, the business practices, operations, condition or prospects of the Company and its subsidiaries, taken as a whole, or any of their assets or properties in the aggregate or which would prevent consummation of the offering.

72. All material options, proposals, letters of intent or other offers to sell or to purchase goods, products or services.

73. Any agreement, or option in favor of another person, to enter into any of the foregoing.

Employee Materials

74. Employee stock purchase plans, employee stock option plans and other stock plans, e.g., bonus, phantom, etc. as amended to date.

75. Pension/retirement plans and actuarial evaluation reports for each pension or other retirement plan, including multi-employer plans, if any.

76. Profit-sharing, savings, 401(k) and ESOP plans.

77. Deferred compensation plans.

78. Cash bonus and incentive compensation plans.

79. Employee insurance benefit plans and agreements (e.g., dental insurance, medical insurance).

80. Form of all employment agreements and consulting agreements.

81. All material collective bargaining agreements to which the Company is a party

82. Schedule of salary and any compensation plans or benefits (including bonus compensation) paid to any director or executive officer of the Company who received more than $100,000 in cash compensation during the Company's last fiscal year; specify the salary and other compensation payable to officers, directors and key employees during the current fiscal year; describe employee benefits not listed above, including vacation pay and severance policies.

83. A list of the fringe benefits which may be enjoyed by executive officers of the Company, such as the use of Company-owned automobiles, club dues, expense allowances, etc.

84. A description of employee loans and copies of documents evidencing such loans.

85. With respect to standard form agreements signed by employees of the Company or any of its subsidiaries, a form of such agreement and list of any employees who have not signed such agreement.

86. Employee handbooks and policy manuals.

87. ERISA Form 5500 reports, any determination letters and the latest actuarial valuations for all benefit plans of the Company.

88. Information with respect to any violations, citations or outstanding enforcement proceedings under the Occupational Safety and Health Act of 1970 or other applicable statutes or regulations.

89. Any affirmative action plan of the Company, together with any related data or information pertaining to efforts to comply with applicable anti-discrimination laws.

90. A description of any strike, lockout, or labor disturbance.

Intellectual Property

[The following list of intellectual property requests will be tailored as appropriate for each company's business]

91. A list of all U.S. and foreign material patents, patent applications (including status), trademarks, design registrations, service marks, software programs, licenses, trade names, brands, copyrights (whether or not registered) and other intangible property owed by or licensed to the Company and its subsidiaries.

92. To the extent in your possession, summaries of each patent and patent application identified in 91 above.

93. All patent, know-how, trademark, trade name, brand name, service mark, software, franchise or other license or royalty agreements to which the Company is a party (whether as licensee or licensor).

94. List of all law firms and attorneys that have acted as patent, trademark, copyright or other intellectual property counsel for and intellectual property owned or licensed by Company and all patent agents that have represented the Company before the U.S. Patent and Trademark Office with a brief notation as to what they have worked on.

95. All joint development, research and development, collaboration or sponsored research agreements to which the Company is a party which are still active or which have expired or terminated but have terms that survive termination.

96. All material transfer agreements that the Company has entered into with regard to receiving materials from third parties.

97. All service, confidentiality, secret or non-disclosure, or consulting agreements relating to intellectual property to which the Company is a party which are still active or which have expired or been terminated, but have terms that survive termination that have been entered into.

98. All material contracts regarding the purchase or use of research, data or data services or computer or data processing equipment by the Company.

99. A list of any intellectual property rights material to the business of the Company as conducted or proposed to be conducted which the Company does not own or does not have the legal right to use.

100. A schedule of all consultants, independent contractors, or any other persons or organizations (other than employees of the Company) contributing in any way to the development of the Company's products, identifying which product, together with all written agreements with such persons or organizations.

101. A list of all patents or published patent applications of which the Company is aware which contain claims that may cover the Company's activities or which would conflict with the intellectual property of the Company, such as may form the basis of an interference.

102. Copies of, or access to, the file histories for both patents issued to, and pending patent applications by, the Company.

103. Any agreements, reports or correspondence or opinions (including with counsel) relating to material patents, trademarks, licenses, or other similar matters, including related to patentability, infringement, validity or right-to-use (freedom-to-operate). A description of any challenge or threatened challenge against the Company regarding the validity or use of any patent, trademark, trade name, service mark, software, franchise, license, or any intellectual property owned or used by the Company or its subsidiaries. A description of any notice of, or any investigation regarding, any violations or potential violations of the present or future rights of the Company or subsidiaries in any patent, trademark, trade name, service mark, software, franchise, license, or intellectual property owned or used by the Company or subsidiaries.

104. A copy or description of the Company's policy on confidential information, patenting of inventions and protection of trade secrets.

Proceedings, Investigations, and Legal Compliance

105. A schedule of all litigation, arbitration, administrative proceedings, or governmental investigations or inquiries, pending or threatened, affecting the Company or any of its subsidiaries. Documents relating to material pending or threatened litigation, arbitration, administrative proceedings, governmental investigations or inquiries filed or initiated by or against the Company or any of its subsidiaries.

106. All letters sent to or received from counsel in connection with the annual audits of the Company's financial statements or otherwise, reporting on pending or threatened claims or litigation, arbitration, administrative proceedings, or governmental investigations or inquiries involving the Company or any of its subsidiaries.

107. All consent decrees, judgments, closing agreements, settlement agreements (including any settlement agreements entered into after only the threat of a claim) or orders of any court or other governmental authority to which the Company or any of its subsidiaries or any of their present or former officers, directors or principal shareholders is a party or is bound, requiring or prohibiting any future activities.

108. A description of any legal compliance program of the Company, together with forms of all documents distributed to employees regarding legal compliance (such as conflicts of interest, insider trading, whistleblower, etc.).

Data Privacy and Cybersecurity

109. Overview of the data protection laws to which the Company is subject (e.g., the California Consumer Privacy Act; the Personal Information Protection and Electronic Documents Act; the EU and/or UK General Data Protection Regulation; the Personal Information Protection Law) and steps taken to comply, including documentation evidencing such compliance.

110. Copies of any policies and procedures addressing data privacy and security, including (i) policies or procedures relating to compliance with applicable data protection laws, (ii) any information security policies or procedures (e.g. incident response, disaster recovery); and (iii) any vendor management policies, including any required data privacy contractual provisions.

111. Copies of notices provided to and consents obtained from relevant individuals in relation to the Company's collection of any biometric identifiers (e.g., fingerprints, facial geometry or retinal scans).

112. Summary of any payment processing activities conducted by the Company.

113. Overview of the Company's governance structure for the management of privacy, data security and data protection, including how privacy and security risks are evaluated, addressed, and managed within the Company.

114. Copies of employee privacy and security training materials and copies of form attestations.

115. Copies of policies and procedures relating to the administrative, physical and technical controls the Company utilizes to protect the security of its data (e.g., MFA, encryption, firewalls, anti-virus software).

116. Copies of any data security audits, certifications, reviews, vulnerability testing, and/or network penetration testing practices relating to the Company's or any subsidiary's products, services or information technology systems, including results of recent penetration tests conducted.

117. Copies of any documentation in respect of any: (i) agreements with third parties who process personal data on behalf of the Company, or who otherwise receive personal data from or transfer it to the Company; and (ii) personal data transfers by the Company outside the European Economic Area and the United Kingdom and any steps taken to ensure adequate protection for such data.

118. Copies of consents and language in relation to marketing the Company engages in (e.g., telemarketing, text messaging, emailing, call centers) in order to comply with applicable marketing privacy laws (e.g. TCPA, CAN-SPAM, CASL, ePrivacy Directive).

119. Copies of consents and language used by the Company in relation to its use of cookies or similar tracking technologies on its websites, including any usage of such technologies to target, re-target, or otherwise build campaigns for advertising purposes.

120. Copies of documents relating to any security incidents, information technology disruptions or downtimes, misappropriations of trade secrets, data breaches, network intrusions, ransomware or phishing attacks, or similar events, whether or not reported to a government authority.

121. Details and copies of any documentation regarding any: (i) breaches of applicable data protection laws by the Company (including any consequences and actions taken); and (ii) data protection, privacy or information security related enforcement actions, notices, complaints, claims, legal actions, prosecutions and/or investigations received by the Company from any party regarding actual/alleged non-compliance with applicable data protection laws, in each case, during the last three years, or any that are current/anticipated.

Artificial Intelligence

122. A list of any Artificial Intelligence (“AI”) technology (including generative AI) used or developed by the Company in any form or for any purpose, such as machine learning, deep learning or any others that may reasonably be considered as AI technology.

123. A list of any AI licenses or authorizations provided to, or obtained by, the Company and the terms under which such licenses were provided to or obtained by the Company. For each of the licenses or authorizations, please provide a description of how and for what purposes the AI is used, whether (i) internally or (ii) to generate outputs which are provided to or used by customers or other recipients.

124. A description of the nature of the ownership (e.g., intellectual property) of the AI technologies used by the Company (including the identity of the owner of the AI technology if not the Company, and any inputs or outputs provided to the Company by a third-party provider).

125. Copies of the Company’s or AI provider’s contracts, agreements and terms and conditions regarding the ownership of the information inputted into the AI technology by the Company’s clients/users and the content generated by the AI technology in response to those inputs.

126. A description of (i) the type of data/information (including any personal data, protected health information or other sensitive data) used by the Company to train AI technology (i.e., training data), (ii) the sources of such data and (ii) how the Company obtains the training data, whether through lawful web scraping or otherwise.

127. A summary of (i) how the Company oversees the functioning of its AI technology (including details of any AI Governance Board); (ii) the nature and qualifications of the Company's technical team that is engaged in such oversight function; (iii) how the Company tests and verifies the reliability of the output from its AI technology services; (iv) whether the Company has the legal and technical ability to audit its AI technology in order to understand the AI technology's technical capabilities (reducing the risk of bias, maintaining appropriate quality) and legal rights and obligations; and (v) the Company's policies and procedures for instances in which the AI service is not functioning correctly (e.g., during system outages).

128. Copies of any policies and procedures developed pertaining to AI, including internal and external policies, statements, and notices.

129. A description of the diligence process the Company uses to assess the third-party AI tools it uses, including to determine whether the tool provider has the right to use the data or other content on which the AI models are trained.

130. A list of jurisdictions within which the Company carries out business activities involving AI.

131. A list of any laws, rules, and regulations that apply to the Company's collection, use and processing of training data, along with a description of how the Company ensures compliance with said laws, rules, and regulations.

132. Please confirm if data the Company uses in its AI technology is anonymized data or pseudonymized personal data under the EU/UK GDPR. If it is pseudonymized personal data, a description of how the Company ensures that information is not reidentified when inputted into its AI technology.

133. A description of any known or reasonably suspected instances of past or ongoing unauthorized use of or access to the Company's AI.

134. A description of any known or suspected violations of applicable laws, rules, and regulations arising from the use of the Company's AI.

135. A summary of all internal practices, procedures and systems dealing with current or past management of AI and data processed by such AI tools, including a summary of the security safeguards and controls used by the Company with respect to its AI technology, including proper access controls for AI.

136. A description of (i) how long the Company stores or retains data inputted into the AI technologies; (ii) where the Company stores inputted data and whether the Company uses secure environments to protect input data; and (iii) how the Company protects inputted data and whether the Company conducts privacy and cybersecurity risk assessments on its AI technology.

137. Copies of any insurance coverage held by the Company for claims or losses pertaining to AI.

138. A description of any steps taken by the Company to detect and remediate algorithm biases and evidence of same.

General Business and Property Information

139. A list of the principal competitors of the Company in each market segment in which the Company does business or proposes to do business.

140. Schedule of major customers and suppliers, giving annual dollar amounts sold or purchased, as the case may be, and a description of the type of business transacted with each such customer and each such supplier.

141. Recent analyses of the Company or its industries prepared by investment bankers, technical experts, management consultants, accountants or others, including marketing studies, credit reports and other types of reports, financing or otherwise.

142. A list of the material properties owned, leased (as lessee or lessor) or used by the Company.

Other

143. Any other documents relating to the Company that are or would reasonably be expected to be material to investors or which should be reviewed in making disclosures regarding the business and financial conditions of the Company.

SAMPLE IPO CHECKLIST

The following is an illustrative example of key workstreams to be completed between the initiation of an IPO process and the closing of the transaction. Depending on the specific circumstances of your IPO, certain items noted below may not be applicable and other items may be required. Your Ropes & Gray team will prepare a tailored checklist for your specific circumstances.

Abbreviations	
CO	Issuer
CC	Company Counsel
LC	Local Counsel
SSC	Selling Stockholder Counsel (if applicable)
UW	Underwriters
UWC	Underwriters' Counsel
IA	Independent Auditors
TA	Transfer Agent
SS	Selling Stockholder(s) (if applicable)

Document/Action to be Taken	**Resp. Party**
A. *Preliminary Matters*	
1. General	
1.1 Hold organizational meeting	ALL
1.2 Create working group list	UW
1.3 Select data room provider and set up data room for diligence	CO
1.4 Select financial printer	CO
1.5 Review with auditors scope of work to be required, likely timing of offering, comfort letter matters and required financials, including any acquisition financials	CO, CC

Document/Action to be Taken	Resp. Party
1.6 Review communications plans, website content and upcoming public announcements, presentations, conferences, published articles, etc. to assure no “market conditioning”	CO, CC
1.7 Obtain EDGAR filing codes for IPO issuer	CO, CC
1.8 Select stock exchange and reserve ticker symbol	CO
1.9 Select transfer agent	CO
1.10 Determine required legal opinions, including any local counsel or specialist opinions	CO, CC, UW, UWC
1.11 Prepare and circulate D&O Questionnaires	CO, CC
1.12 Prepare and circulate FINRA questionnaires	CO, CC, UWC
1.13 Consider capitalization in light of (a) advice of underwriters and (b) stock exchange minimums, and determine whether a charter amendment to effect stock split to adjust IPO price is desirable	CO, CC, UW
1.14 Prepare website for compliance with Section 16 and stock exchange rules	CO, CC
2. General Diligence	
2.1 Prepare back-up book for statistical and market data that will be included in S-1	
2.2 Review Board minutes and: (1) identify deficiencies / discrepancies in corporate record keeping; and (2) develop and institute plan to remedy (e.g., board ratifications)	CC, UWC
2.3 Review charter to (1) confirm due incorporation and due amendment each time and (2) determine mechanics for securities convertible upon the IPO	CC, UWC
2.4 Run good standing check on Company and all subsidiaries in home and foreign jurisdictions	CC
2.5 Review officer/director election records (incumbency trail) and: (1) identify deficiencies / discrepancies in corporate record keeping; and (2) develop and institute plan to remedy (e.g., board ratifications)	CC
2.6 Review franchise and filing taxes (Title 8, Ch 5 Section 503 of Del. Code)	CC
2.7 Review current capitalization records, including: (1) identify exact number of common and preferred shares outstanding; (2) identify exact number of options, warrants and other equity awards outstanding; (3) ensure issuances match all ledgers; and (4) develop and institute plan to remedy (e.g., board ratifications)	CC
2.8 Conduct “stock trace” for outstanding shares, including review of: (1) due authorization; (2) valid issuance, and (3) payment	CC
2.9 Review materials from prior offerings to assure valid private offerings and no integration issues (e.g., information necessary to support 4(a)(2) exemption, 701 prospectus)	CC

Document/Action to be Taken	Resp. Party
2.10 Review (1) outstanding options and stock grants and (2) equity plans and: (a) identify any deficiencies regarding documentation; and (b) develop and institute plan to remedy	CC
2.11 Confirm and review material agreements and determine whether any redactions are necessary	CO, CC
3. Securities Law Issues	

3.1 Review registration process issues, including:
• Pre-registration:
  • EGC analysis (at time of confidential submissions and first public filing)
  • Gun jumping and quiet period
  • No offers (press release and tombstones, including 135 safe harbor)
  • "Test-the-waters" communications with QIBs and IAIs permitted
• Post-filing, pre-effectiveness:
  • Oral offers permitted
  • "Test-the-waters" communications with QIBs and IAIs permitted
• Post- effectiveness
  • "Free writing": supplementing sales material, preceded or accompanied by final prospectus
• Prospectus delivery requirements
	CO, CC, UW, UWC

3.2 Prepare and circulate memo regarding communication restrictions prior to effectiveness	CO, CC
3.3 Determine if there will be a foreign offering component and issues related to it (*Note:* appropriate legends will need to be added to the "Underwriting" section of the S-1)	CO, CC, UW, UWC
3.4 Identify any '40 Act issues (i.e., determining whether investments as a % of assets trigger '40 Act obligations)	CO, CC
3.5 Consider whether there will be a Directed Share Program	CO, CC
4. Corporate Governance	
4.1 Determine the need for anti-takeover protections in the charter, including: • Opt-in or opt-out provisions of state law (e.g., DGCL §203) • Staggered board (DGCL §141/d) • Restrict right of stockholders to call meeting (DGCL §211(d)) • Only stockholder meetings; no written consents (DGCL §228) • Fix number of directors (DGCL §141(b)) • Blank check preferred • Supermajority to amend charter and bylaws (DGCL §§ 102(b)(4), 216)	CO, CC
4.2 Amended and Restated Certificate of Incorporation—to make appropriate for public company, including anti-takeover provisions above and eliminating director personal liability	CO, CC
4.2.1 Pre-clear charter with Secretary of State prior to filing	CC

Document/Action to be Taken	Resp. Party
4.3 Amended and Restated Bylaws—to make appropriate for public company, including advance notice for nominations and proposals	CO, CC
4.4 Review corporate governance requirements and compliance timelines in light of (1) SEC rules; (2) stock exchange rules; (3) state law; and (4) current best practice	CO, CC
4.5 Identify composition of: • Board, including total number and number to be independent (consider in light of "controlled company" status) • Identity of chairman of board; non-management? • Audit committee, total number (one independent at effectiveness; majority after 90 days; all after 1yr) and at least one financial expert • Compensation committee, total number (one independent at closing; majority after 90 days; all after 1yr) Nominating/governance committee, total number (one independent at closing; majority after 90 days; all after 1yr) • Section 16 subcommittee (*Note*: D&O questionnaires will aid in independence/expert evaluations.)	CO, CC
4.6 Prepare committee charters and governance policies	CO, CC
4.6.1 Audit Committee Charter	CO, CC
4.6.2 Compensation Committee Charter	CO, CC
4.6.3 Nominating/Governance Committee Charter	CO, CC
4.6.4 Corporate Governance Guidelines	CO, CC
4.6.5 Code of Ethics	CO, CC
4.6.6 Related Persons Transaction Policy	CO, CC
4.6.7 Insider Trading Policy	CO, CC
4.6.8 Regulation FD Policy	CO, CC
4.6.9 Whistleblower Policy	CO, CC
4.6.10 Clawback Policy	CO, CC
4.6.11 Indemnification Agreements for Directors and Officers	CO, CC
4.7 Consider D&O insurance matters	CO, CC
5. Investor and Third-Party Matters	
5.1 Review registration rights and coordination agreements to determine (1) IPO participation rights and (2) whether changes will be necessary for post-IPO liquidity	CO, CC, SS, SSC
5.2 Review stockholder agreements for investor governance rights and confirm private-company specific rights will terminate upon the IPO	CO, CC, SS, SSC

Document/Action to be Taken	Resp. Party
5.3 Review other third-party agreements to determine if (1) notice, (2) waiver or (3) consents needed for: (a) any of the corporate clean-up being engaged in; (b) IPO; (c) registration statement; (d) equity issuance; (e) disclosure of third party or of arrangement	CO, CC
5.4 Identify and address any related party transactions	CO, CC
6. Employee Matters and Benefit Plans	
6.1 Consider (1) equity incentive plan, (2) director plan, (3) bonus plan and (4) ESPP with proper input from tax and benefits team	CO, CC
6.2 Review existing plans to confirm compliance with Code and ERISA (*Note*: Discuss changes to existing plans with auditors for potential accounting consequences)	CO, CC
6.3 Review employment agreements and consider whether modifications, including 409A amendments and/or change of control protections, are necessary	CO, CC
6.4 Consider the need for employee confidentiality, invention assignment and non-compete agreements	CO, CC
B. *Securities Act Registration—Registration Statement on Form S-1*	
1. Initial Draft	
1.1 Prepare draft registration statement on Form S-1	ALL
1.2 Seek input from IP, regulatory, tax, benefits and other counsel, as applicable	CO, CC
1.3 Prepare exhibit filings	CO, CC
1.3.1 Determine material contracts	CO, CC
1.3.2 Prepare redactions of terms in material contracts, if applicable	CO, CC
1.4 Coordinate cover art and any photos or graphics inside prospectus	CO
2. SEC Review	
2.1 Review recent SEC comment letters and current “hot button” issues	CO, CC
2.2 Review comments and prepare response letter and revised disclosure (*Note*: Initial SEC comments typically received within 30 days)	ALL
2.3 Submit confidential price range (*Note:* Allow sufficient time to resolve any “cheap stock” issues)	CO, CC
3. First Public Filing of Form S-1	
3.1 Obtain auditor consent(s) for first public filing of S-1 and each amendment	CO
3.2 Wire SEC fee	CO
3.3 Prepare and distribute signature page with Power of Attorney (including 462/b language)	CO, CC
4. Acceleration of Form S-1	
4.1 Company’s acceleration request letter	CO, CC

Document/Action to be Taken	Resp. Party
4.2 Underwriters' support for acceleration	UWC, CC
C. *Exchange Act Registration*	
1. Form 8-A and Related Matters	
1.1 Prepare and file Form 8-A for effectiveness prior to trading (*Note*: Timing may depend on whether there are any pre-IPO transactions contemplated	CO, CC
1.2 Determine Section 16 insiders (directors, officers, 10% owners) and: • Inform them, including explanatory memo • Apply for Forms ID • Prepare Form 3 and POA for signature • Edgarize and file Forms 3 on 8-A effective date • Prepare, Edgarize and file Forms 4 for sales/acquiring and converting preferred stock (*Note*: Institutional investors generally handle their own Section 16 filings)	CO, CC, SS, SSC
1.3 Determine 5% holders and inform them of Section 13d/g obligations (*Note*: Institutional investors generally handle their own Schedule 13D/G filings.)	CO, CC, SS, SSC
D. *Underwriting Matters*	
1. Underwriting Agreement and Related Documents	
1.1 Underwriting Agreement	CO, CC, UW, UWC, SS, SSC
1.2 Lock-Up Agreements	
1.2.1 Negotiate for company, directors, officers and stockholders	CO, CC, UW, UWC, SS, SSC
1.2.2 Review existing lock-up obligations (eg, in award agreements and stockholder agreements)	CO, CC
1.3 Comfort letter	IA, UWC
1.3.1 Prepare circle-up of figures tied to the Company's accounting records and negotiate with auditors	UWC
1.3.2 Consider need for CFO certificate for figures that auditors will not comfort (eg, preliminary or "flash" data)	CO, CC, UWC
2. FINRA Matters	
2.1 FINRA Public Offering System Filings	
2.1.1 Collect FINRA questionnaires from directors, officers, 5% holders and persons who acquired Company securities within 180 days	CO, CC, UWC
2.1.2 Make a filing within 1 Business Day of each S-1 filing (including amendments and, if an EGC, each confidential submission)	UWC

Document/Action to be Taken	Resp. Party
2.1.3 Wire FINRA fee with initial filing (or, if an EGC, first confidential submission) (*Note*: Fee is currently $500 plus 0.015% of the maximum aggregate offering price, subject to a cap of $225,000)	CO
2.1.4 Review and respond to comment letters	UWC
2.2 Obtain FINRA No Objections Notice prior to anticipated Securities Act effectiveness and ensure FINRA examiner communicates this to SEC examiner	UWC
3. Blue Sky Matters	
3.1 Preliminary Blue Sky Memorandum	UWC
3.2 Final Blue Sky Memorandum	UWC
4. Miscellaneous	
4.1 Prepare any "test-the-waters" materials	CO, CC, UW, UWC
4.2 Prepare road show presentation	CO, CC, UW, UWC
4.3 Schedule analyst meetings	CO, UW
4.4 Determine need for and prepare any Canadian wrappers	UW, UWC
4.5 Order good standing and foreign qualification certificates to be delivered to UWC at pricing	CC
E. *[Selling Stockholder Matters]*	
1. Documents for Selling Stockholder Participation	
1.1 [Amendment to Registration Rights Agreement / Amendment to Stockholders Agreement]	CO, CC, SS, SSC
1.2 Consider short-swing profits issues for Section 16 reporting persons (including pre-registration transactions for officers and directors, including directors by "deputization")	CO, CC, SS, SSC
1.3 [Demand Notice]	CO, CC
1.4 [Piggyback/Tag-along Notice]	CO, CC
1.5 [Waiver of Registration Rights]	CO, CC
1.6 Custody Agreement	CC, UWC, SS, SSC
1.7 Power of Attorney	CC, UWC, SS, SSC
1.8 Selling Stockholder Questionnaire	CO, CC, SS, SSC
1.9 Stock Certificate/Option Agreement	SS
1.10 Stock Power/Notice of Exercise	SS, SSC
1.11 Tax Forms (W-8 or W-9)	SS

Document/Action to be Taken	Resp. Party
1.12 Certified copies of instrument granting signatory authority (if an entity)	SS
1.13 Spousal consent (if applicable)	SS
1.14 Manner of Payment/Wire Instructions	SS
F. *Corporate Authorizations*	
1. Board Approvals	
1.1 Board Resolutions, including: • Authorize issuance and sale of the securities • Approving form of UA and its execution • Establish pricing committee • Approve registration statement, prospectus, amendments, etc. • Authorize listing on NASDAQ/NYSE • Authorize blue sky filings • Authorize transfer agent and registrar • Adopting, for shareholder approval, new benefit plans • Approve all corporate clean-up matters, including ratifications • Approve form of stock certificate • Approve any stock split	CO, CC
2. Stockholder Approvals	
2.1 Stockholder Resolutions to approve charter and bylaw amendments, new benefit plans and all clean-up matters (e.g., reverse stock split, preferred stock conversion, ratifications)	CO, CC, SS, SSC
2.2 228(e) notice to minority shareholders notifying them of stockholders' consents approved	CO, CC, SS, SSC
3. Pricing Committee Approvals	
3.1 Obtain Pricing Committee approval at pricing for: • Underwriting Agreement • Number of shares offered and sold • Price to public • Underwriter discount	CO, CC
G. *Stock Exchange Matters*	
1. Listing Application and Related Documents	
1.1 Review initial listing requirements and procedures	CO, CC
1.2 Prepare and submit Listing Application, including required supporting documents, after filing S-1	CO, CC
1.3 Supplement application with (1) Form 8-A, (2) marked copy of each amendment, and (3) copy of letter requesting concurrent effectiveness of 8-A and S-1, if applicable	CO, CC
1.4 Notify exchange at least 4 business days prior to effectiveness	CO, CC

Document/Action to be Taken	Resp. Party
1.5 Forward copies of final prospectus	CO, CC
1.6 Obtain letter approving listing and ticker	CO, CC
H. *Transfer Agent and CUSIP Matters*	
1. Transfer Agent and CUSIP Matters	
1.1 Prepare and submit letter of appointment	CO, CC
1.2 Discuss IPO process with transfer agent, including shifting books and records and conversion of any preferred stock or other convertible securities	CO, CC
1.3 Discuss need for bank note company and, if applicable, draft form of stock certificate in accordance with state law requirements	CO, CC
1.4 Submit CUSIP request, attaching requested supporting documents	UW, UWC
1.5 Submit DTC Blanket Letter of Representations	CO, CC, UW, UWC
1.6 Submit 871(m) Attestation to DTC	CO, CC, UW, UWC
I. *Pricing Activities*	
1. Mechanics	
1.1 Determine Underwriters' printing timetable, including exact day, hour and address to deliver (A) preliminary and (B) final prospectus; and determine when books must be (1) sent to printer to be typeset and (2) clear to print to meet the delivery schedules (*Note:* Need several days' lead time to clear graphics and cover)	UW
1.2 Prepare and submit written request for acceleration at least 2 business days prior to anticipated effectiveness (*Note*: Staff will await oral instructions following the written request)	CO, CC
1.3 Submit underwriters' support letter	UW, UWC
1.4 Pricing committee (full committee or full Board required) prices the deal	CO
1.5 Identify possible recirculation issues (e.g., pricing outside of "the range")	CO, CC, UW, UWC
1.6 Exchange signature pages on UA	CO, CC, UW, UWC, SS, SSC
1.7 Prepare 462(b) registration statement for any up-sizing and file prior to 10:00 p.m. ET on pricing date	CO, CC
1.8 Press release announcing pricing of offering	CO, CC, UW, UWC
1.9 Complete and clear to print final prospectus	CO, CC, UW, UWC
1.10 File 424(b) prospectus	CO, CC
J. *Closing Activities*	

Document/Action to be Taken	Resp. Party
1. Mechanics	
1.1 Conduct bring-down diligence call	CO, CC, UW, UWC
1.2 Confirm receipt of all deliverables	CC, UWC
1.3 UWC clears UW to wire proceeds	UWC
1.4 UW wire proceeds and CO/SS confirms receipt (or Fed. Ref. Wire No.)	UW
1.5 Schedule closing call with transfer agent for CO/SS to authorize release of shares	CO, CC, UW, UWC, SS, SSC
1.6 Release Cross Receipt	UWC, CC
2. Underwriting Agreement Deliverables (*Note*: See also Legal Opinions)	
2.1 Officer's Certificate to UW	UWC, CC
2.2 Secretary's Certificate to UW	UWC, CC
2.3 Selling Stockholders' Certificate to UW	UWC, SSC
2.4 Bring-down good standing certificates	CC
3. Transfer Agent Documents	
3.1 Certificate of the Transfer Agent and Registrar	TA
3.2 Instruction Letter to Transfer Agent	CO, CC, SS, SSC
3.3 Registration and Delivery Letter from UW	UW
4. Legal Opinions (Delivered by respective counsel)	
4.1 Issuer's Counsel Exhibit 5.1 Opinion	CC
4.2 Issuer's Counsel Opinion to UW	CC
4.2.1 Support Certificate from Company	CO, CC
4.3 Issuer's Counsel Negative Assurance Letter	CC
4.3.1 Confirm no stop-orders on the closing date	CC
4.4 Issuer's Counsel Opinion to Transfer Agent	CC
4.5 [Selling Stockholder Counsel Opinion]	SSC
4.5.1 Review relevant constituent documents, if an entity	SSC
4.5.2 Support Certificate from Selling Stockholders	SS, SSC
4.6 [Local Counsel Opinions]	CO
4.7 [IP Counsel] [Regulatory Counsel] [Other Specialist] Opinion	CO
4.8 Underwriters' Counsel Opinion	UWC
4.9 Underwriters' Counsel Negative Assurance Letter	UWC

Document/Action to be Taken	Resp. Party
5. Miscellaneous	
5.1 Closing Memorandum	UWC
5.2 Cross-Receipt	UWC, CC
5.3 Registration Statement on Form S-8	CC
5.4 Issuer's Counsel Exhibit 5.1 opinion for Form S-8	CC

2025 SEC FILING & STALENESS CALENDAR

Listed below are the deadlines for filing certain reports required under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with the Securities and Exchange Commission (the "SEC"). Dates reflect deadlines for companies with a fiscal year ending December 31, 2024.

Annual Report on Form 10-K		
Large Accelerated Filers	60 days after fiscal year end	Mar. 3*
Accelerated Filers	75 days after fiscal year end	Mar. 17*
Non-Accelerated Filers	90 days after fiscal year end	Mar. 31
Part III of Form 10-K Information in Proxy Statement		
Definitive Proxy Statement	120 days after fiscal year end	Apr. 30
Quarterly Reports on Form 10-Q		
Large Accelerated Filers	40 days after fiscal quarter end	May 12*, Aug. 11*, Nov. 10
Accelerated Filers	40 days after fiscal quarter end	May 12*, Aug. 11*, Nov. 10
Non-Accelerated Filers	45 days after fiscal quarter end	May 15, Aug. 14, Nov. 14

**Reflects deadline considering weekends and federal holidays. When the filing date falls on a weekend or federal holiday, the deadline is extended to the next business day. See Exchange Act Rule 0-3(a).*

Filer Types

Large Accelerated Filer: A reporting company that has a public float of at least $700 million, has been subject to the periodic reporting requirements of the Exchange Act for at least 12 months, has filed at least one annual report, and does not qualify as a smaller reporting company under the revenue test.

Accelerated Filer: A reporting company that has a public float of at least $75 million but less than $700 million, has been subject to the periodic reporting requirements of the Exchange Act for at least 12 months, and has filed at least one annual report, and does not qualify as a smaller reporting company under the revenue test.

Non-Accelerated Filer: A reporting company that has a public float of less than $75 million, has not been subject to the periodic reporting requirements of the Exchange Act for more than 12 months, or has not filed at least one annual report.

Smaller Reporting Company: A reporting company that has (i) a public float of less than $250 million or (ii) a public float of less than $700 million (including having no public float) and annual revenues of less than $100 million. An issuer cannot qualify as a smaller reporting company if it is an investment company, asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company.

Note: For each of the above filer types, public float is measured as of the last business day of the filer's most recently completed second fiscal quarter, with any change in filing status taking effect in the next fiscal year. Note that the thresholds for transitioning from a higher-level to a lower-level filer status are lower than those shown.

Delinquent Filer: A reporting company that files annual, quarterly and other reports pursuant to Section 13 or 15(d) of the Exchange Act but has not filed all reports due to be filed.

Loss Corporation: A reporting company that does not expect to, and did not, report positive income after taxes but before extraordinary items and the cumulative effect of a change in accounting principle for (a) the most recently ended fiscal year or (b) at least one of the two prior fiscal years.

Other Reporting Deadlines

Form	Deadline
Form 3	Within 10 days of becoming an officer, director, or beneficial owner of more than 10% of a class of equity securities registered under the Exchange Act; if the issuer is registering equity for the first time, then by the effective date of the applicable registration statement
Form 4	2 business days after the transaction date (including with respect to gifts)
Form 5	45 days after fiscal year end (Feb. 14)
Schedule 13D	5 business days after initial acquisition; amendments due 2 business days after any material change
Schedule 13G	Generally 45 days after calendar quarter in which initial acquisition (or, for amendments, in which material change) occurs (Feb. 14, May 15, Aug. 14 or Nov. 14, as applicable) (or, for passive investors, 5 business days after the initial acquisition)
Form 13F	45 days after calendar year and after each of the first three calendar quarters (Feb. 14, May 15, Aug. 14, Nov. 14)
Form 13-H	10 days after transactions in securities of (i) 2M shares or $20M on any day or (ii) 20M shares or $200M in any month; 45 days after calendar year end (Feb. 14); amendments due promptly after quarter end to correct information that has become inaccurate
Form 8-K	Generally 4 business days after a triggering event occurs
Form SD	*Conflicts Minerals Disclosure (under Rule 13p-1)*: May 31 *Resource Extraction Issuers (under Rule 13q-1)*: 270 days after fiscal year end (Sept. 29*)
Form 11-K	Non-ERISA Plans: 90 days after plan's fiscal year end (Mar. 31); ERISA Plans: 180 days after the plan's fiscal year end (June 30*)
Form N-PX	For persons required to file a Form 13F in 2025: Aug. 31 (covering the period from July 1, 2024 – June 30, 2025) For persons required to file a Form 13F in 2024 but not in 2025: Mar. 1 (covering the period from July 1, 2024 – Sept. 30, 2024)
Form 20-F	4 months after fiscal year end (Apr. 30) (Foreign Private Issuers)
Form 40-F	Same date as the annual report is due to be filed in Canada (Canadian MJDS Issuers)

**Reflects deadline considering weekends and federal holidays. When the filing date falls on a weekend or federal holiday, the deadline is extended to the next business day. See Exchange Act Rule 0-3(a).*

EDGAR Filing Notes

Hours of Operation: Filings may be made electronically through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system from 6:00 a.m. to 10:00 p.m. Eastern Time on weekdays (excluding federal holidays). Filings submitted after 5:30 p.m. Eastern Time receive the next business day's filing date (except filings for Section 16, Form 144 (which is no longer accepted by paper filing), Schedule 14N, filings pursuant to Rule 462(b), Schedule 13D and Schedule 13G filings, which receive the actual date of filing).

Late Filing: Under Exchange Act Rule 12b-25, companies may request a filing extension for Forms 10-K, 20-F, 11-K, and 10-Q by filing a Form 12b-25 with the SEC no later than one business day after the filing deadline. This allows a company an additional 15 calendar days to file Forms 10-K, 20-F or 11-K and an additional 5 calendar days to file a Form 10-Q.

2025 Financial Statements Staleness Dates

Financial statements are considered "stale" when they are too old to be used in a prospectus or proxy statement. If an issuer's financial statements have gone stale, the issuer must file the most recent required financial statements before using a prospectus or proxy statement. The table below reflects the staleness date, or the last date such financial statements may be used for companies with a fiscal year ending December 31, 2024.

Financial Statements	Deadline	2025 Staleness
Third quarter 2024 financial statements for initial public offerings, delinquent filers and loss corporations	45 days after fiscal year end	Feb. 14
Third quarter 2024 financial statements for Large Accelerated Filers	60 days after fiscal year end	Mar. 1
Third quarter 2024 financial statements for Accelerated Filers	75 days after fiscal year end	Mar. 16
Third quarter 2024 financial statements for all other filers	90 days after fiscal year end	Mar. 31
Year end 2024 financial statements for Large Accelerated Filers and Accelerated Filers	129 days after fiscal year end	May 9
Year end 2024 financial statements for all other filers	134 days after fiscal year end	May 14
First quarter 2025 financial statements for Large Accelerated Filers and Accelerated Filers	129 days after fiscal first quarter end	Aug. 7
First quarter 2025 financial statements for all other filers	134 days after fiscal first quarter end	Aug. 12
Second quarter 2025 financial statements for Large Accelerated Filers and Accelerated Filers	129 days after fiscal second quarter end	Nov. 6
Second quarter 2025 financial statements for all other filers	134 days after fiscal second quarter end	Nov. 11

Special Accommodation for Gap Periods: Staleness dates and Form 10-Q deadlines do not always correspond, resulting in gap periods during which registration statements may not be filed or declared effective and proxy statements may not be mailed. The SEC staff typically accommodates repeat issuers that have timely filed Exchange Act reports for the last 12 months by making the staleness date the same as the 10-Q deadline. The SEC may require confirmation that the 10-Q will be timely filed after effectiveness or mailing and that there have been no material trends, events or transactions since the date of the latest balance sheet included in the filing that would materially affect an investor's understanding of the issuer's financial condition and results of operations.

Practice Note for Foreign Private Issuers (FPIs): Typically, FPIs' audited financial statements go stale after 15 months, and interim financial statements (covering at least 6 months) go stale after 9 months, subject to the exceptions noted below:

- The 15-month and 9-month periods are extended to 18 months and 12 months, respectively, for the following offerings: (1) exercises of outstanding rights granted pro rata to all existing security holders; (2) dividends or interest reinvestment plans; and (3) conversions of outstanding convertible securities or exercises of outstanding transferable warrants.
- In an initial public offering of an FPI not public in any jurisdiction, audited financial statements go stale after 12 months unless the FPI sufficiently represents to the SEC: (1) compliance with the 12-month requirement is not required in any other jurisdiction and (2) it is impracticable or involves undue hardship.
- If financial information for an annual or interim period more current than otherwise required is made available in any jurisdiction, such information should be included. The new financial information does not need to be reconciled to US GAAP, but narrative explanations of the differences in accounting principles should be provided and material new reconciling items should be quantified; however, such reconciliation requirements do not apply to issuers filing audited financial statements prepared under IFRS.

For additional information on our IPO capabilities scan here:

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For more information, please contact your usual Ropes & Gray attorney or reach out to a member of our capital markets team below.

Zachary Blume
Partner, Boston
Zachary.Blume@ropesgray.com
+1 617 951 7663

Christopher Capuzzi
Partner, New York
Christopher.Capuzzi@ropesgray.com
+1 212 596 9575

Christopher Comeau
Partner, Boston
Christopher.Comeau@ropesgray.com
+1 617 951 7809

Thomas Danielski
Partner, Boston
Thomas.Danielski@ropesgray.com
+1 617 235 4961

Tara Fisher
Partner, Boston
Tara.Fisher@ropesgray.com
+1 617 235 4824

Thomas Fraser
Partner, Boston
Thomas.Fraser@ropesgray.com
+1 617 951 7063

Thomas Holden
Partner, San Francisco
Thomas.Holden@ropesgray.com
+1 415 315 2355

Paul Kinsella
Partner, Boston
Paul.Kinsella@ropesgray.com
+1 617 951 7921

Michael Littenberg
Partner, New York
Michael.Littenberg@ropesgray.com
+1 212 596 9160

Craig Marcus
Partner, Boston
Craig.Marcus@ropesgray.com
+1 617 951 7802

William Michener
Partner, Boston
William.Michener@ropesgray.com
+1 617 951 7247

Rachel Phillips
Partner, New York
Rachel.Phillips@ropesgray.com
+1 212 841 8857

Faiza Rahman
Partner, New York
Faiza.Rahman@ropesgray.com
+1 212 596 9517

Paul Tropp
Partner, New York
Paul.Tropp@ropesgray.com
+1 212 596 9515

Tristan VanDeventer
Partner, New York
Tristan.VanDeventer@ropesgray.com
+1 212 596 9361

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BOSTON | CHICAGO | DUBLIN | HONG KONG | LONDON
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