



So You Want to Go Public?

How to Get Ahead of the Curve

- ✓ **Prepare financial statements:** identify any issues related to accounting policies, preparation of financials and public company financial reporting well in advance of preparation of the Registration Statement
 - Auditors to confirm PCAOB independence
 - Registration Statement will require PCAOB audited year-end and reviewed interims, depending on timing of pricing
 - Underwriters are likely to ask for quarterly financial data
 - Consider if acquisitions financials are required if any significant acquisitions have been made
 - Consider developing “mock” earnings guidance in preparation for life as a public company
 - Build out public company compliance and accounting / finance functions
- ✓ **Consider post-closing board and committee composition:** assess whether any changes need to be made to the composition of the board of directors and board committees to satisfy state, exchange and SEC requirements
 - Audit committee and compensation committee have additional requirements for membership
 - California, Nasdaq, proxy advisory firms, certain institutional investors and certain investment banks also have diversity requirements
- ✓ **Prepare diligence materials:**
 - Begin gathering material corporate and organizational documents (including organizing the cap table) for the issuer and any significant subsidiaries
 - Identify material contracts that may contain sensitive information that may need confidential treatment
 - Identify third-party consents, including preemptive rights or registration rights

- ✓ **Consider “cheap stock” issues:** the SEC remains focused on whether sufficient charges have been taken in the past for stock options and other equity grants
 - Obtain equity award valuations contemporaneously with any grant
- ✓ **Determine anti-takeover provisions to build into charter doc**
- ✓ **Identify executive officers and consider compensation matters:**
 - Executive officer implications: determine affiliate status, Section 16 obligations and disclosure of bios in SEC filings, and, for some executive officers, compensation disclosure
 - Consider whether new employment agreements or amendments to current agreements are necessary
 - Consider engaging a compensation consultant to assist in analyzing compensation practices
- ✓ **Consider stock exchanges: it is helpful to understand the benefits of listing on a particular exchange, as well as the listing standards that must be met to qualify to list**
 - Reserve a proposed ticker once the exchange is determined
- ✓ **Begin drafting key disclosure sections of the Registration Statement:**
 - Business
 - Risk factors
 - Management's discussion and analysis of financial condition and results of operations
 - Related party transactions
 - Share ownership of directors, officers and 5%+ holders
- ✓ **Consider corporate governance documents:**
 - Audit, Compensation and Nominating and Corporate Governance committee charters (subject to update based on selected stock exchange)
 - Related person transaction policy, disclosure/Reg FD policy, insider trading policy, whistleblower policy, code of conduct, corporate governance guidelines (required by NYSE) and FCPA, Anti-corruption and Anti-money laundering policy
 - Indemnification agreements for directors and officers
 - Non-employee board member compensation policy, equity incentive plan and employee stock purchase plan

✓ Other items to be considered in advance of the IPO process:

- Determine if stock split is required
- “Gun jumping” publicity considerations
- Determine if issuer qualifies as an emerging growth company, smaller reporting company or foreign private issuer
- Determine if up-C structure will be used
- Identify D&O insurance brokers and obtain quotes
- Identify PR/communication firms
- Select transfer agent
- Determine if there will be a directed share program (“DSP”) or “friends and family” program
- Determine lock-up arrangements

If you have any questions regarding going public, please contact [Jeeho Lee](#), [Tai Vivatvaraphol](#), [Logan Tiari](#), or [another Momentum team member](#).

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