

AMERICAN LAWYER MEDIA'S

The
Survival
to **Guide**
IPOs

PROSPECTUS PERSPECTIVES To IPO or Not

PUBLIC PERSONAS The View from the Fishbowl

AUDIENCE DEVELOPMENT Investors and Analysts

HITTING THE ROAD The Really Big Show

LIFE AFTER IPO Not Business as Usual

contents

editor's note

Among the many challenges facing corporate leaders, few are more demanding, more daunting, more full of risk—and potential reward—than the IPO. The level of attention to minuscule detail, the level of participation in every aspect of the process, and the level of showmanship required as “closely held” becomes closely watched can come as a less than welcome surprise—unless the executives, embarking on this journey, are forewarned, forearmed, and forthcoming.

And that's the reason American Lawyer Media, working with Bowne & Co., Inc.—the ultimate IPO veteran—embarked upon *The Survival Guide to IPOs*: to share not only the glory of the successful IPO, but the war stories; to gird, to guide, to get executives ready for an experience that will undoubtedly change their companies—and their lives.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is published with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

The Decision 2

Cash. Growth. Investment. Options. Share the wealth—and share the ownership. IPOs are red hot—and you're ready to get in on the action. Or are you? Before you call the underwriters, make sure you've got a clear notion of what you're getting yourself into. Nothing will ever be the same again.



The Plan 6

Once you've decided the public field is the one on which you want to play, it's time to suit up—and choose sides. The best internal team. The best underwriters, lawyers, accountants, printers. Then, hunker down and focus your energies on crafting the best prospectus. And don't forget: You've still got a business to run.

Life After IPO 14

You got your wish. But be careful what you've wished for.

Jupiter's Journey

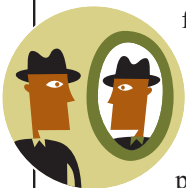
Follow Jupiter Communications as it moves from decision to IPO. Starting on page 4.

The Roadshow 12

You know your message. All systems are go. Now's the hard work: convincing investors to buy and analysts to nod approvingly. It's show time! And you're the star. Don't schedule a vacation.

Practical Tips

In blue type throughout this Guide: adaptations from Bowne's *The Initial Public Offering: A Practical Guide for Executives*, written by Wilson Sonsini Goodrich & Rosati.



The Survival Guide to IPOs

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It has become a story of our times.

Buy.com, an Aliso Viejo, CA-based retailer that sells its wares over the Internet, raised \$182 million through an initial public offering in mid-February—not bad for a company that lost \$146 million in 1999 and can't predict when it will become profitable. The stock was priced at \$13 a share but closed out its first day of trading on the Nasdaq Stock Market at a little over \$25 a share. Some analysts have questioned whether the company has a viable business model, but investors don't seem to care. Buy.com's "pop"—the gain in its stock price during the first day of trading—of nearly 100 percent is characteristic of many IPOs today.

It's hard to imagine such a thing happening even a few short years ago, but the IPO market is unlike anything Wall Street analysts, bankers, or investors have ever seen before. New offerings raised more than \$69 billion last year, according to Thomson Financial Securities Data, 39 percent greater than in 1996, the previous record. Technology companies—including the red-hot Internet services sector—accounted for the vast majority of those offerings.

The IPO market is driven in large measure by the strong performance of the technology-heavy Nasdaq, which surpassed 5,100 in the first quarter of 2000. There is a strong demand among investors of all stripes for tech stocks, and this has brought many technology companies into the market for the first time. Market observers expect IPO activity to remain strong this year so long as the Nasdaq holds up. "When the Nasdaq does well, IPOs are booming," says Jeffrey R. Hirschhorn, a senior market analyst at IPO.com, a Website that tracks new-issue activity.

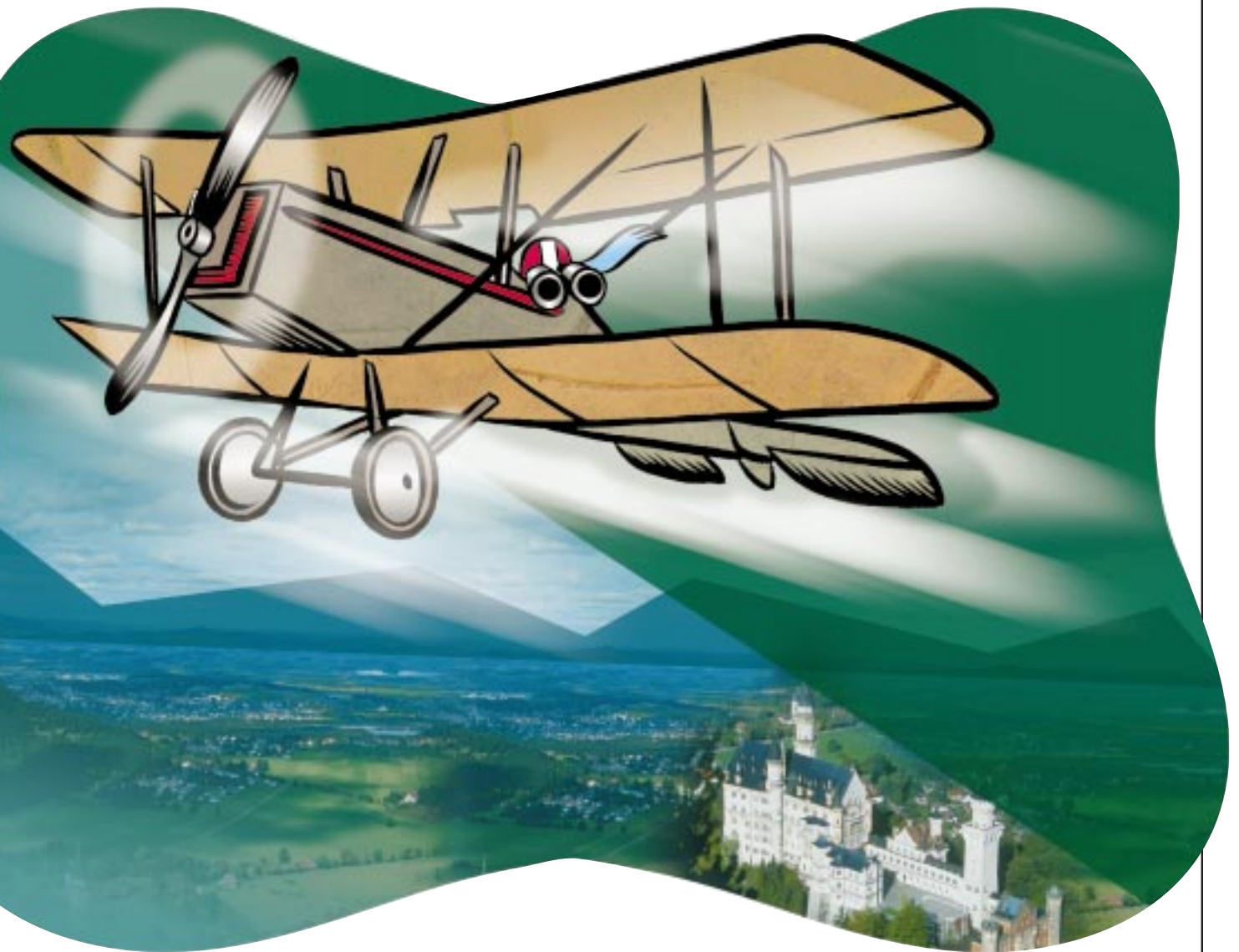
Some well-established names came to the market for the first time last year, including The Goldman Sachs Group, United Parcel Service, and Charter Communications. But according to IPO.com, 57 percent of all IPOs in 1999 were brought by companies that had been in business for less than five years. Also, 81 percent of all companies with new issues last year had sales of less than \$100 million, a lower sales base than in previous years. In other words, the apples being picked from the tree are smaller and greener than before.

This perception is underscored by another telling statistic: 73 percent of all companies that came to market for the first time in 1999 had no earnings. Indeed, profitability no longer seems to matter very much to investors. Not knowing which companies will be the winners, many large institutional investors have put money into as many new companies as possible. If it has a promising business model and looks like it might be a survivor, a company can attract a high valuation even though it has yet to report any earnings. "Are companies coming out sooner than we've ever seen? Absolutely," says Merrill Lynch & Co. analyst Edward McCabe, who covers the business-to-business technology sector. "Arguably, this is venture capital investing in the public market. There will be many more losers than winners. Winners will create tremendous value. Losers could be close to worthless."

Okay, so here you are, running a small private company with a great idea and an insatiable appetite for capital. Wouldn't an extra \$100 million make your business move along at a faster pace? Oh yes, you say, like a turbocharger on a minibike. And so, you wonder, why not me?

ion

Wouldn't that extra \$100 million help your business move along at a faster pace? With so many IPOs flying high, why not you?



Why not, indeed. Clearly the traditional criteria for taking a company public have changed. It used to be that you needed to show eight consecutive profitable quarters as validation that your business model works, but that's no longer the case. Last year, invest-

ment bank Robertson Stephens took Santa Monica, CA-based Stamps.com public despite two risk factors that would have killed the deal just a few years ago. The company is developing an online postage service, but at the time of the IPO, the U.S. Postal

Service hadn't approved its product idea, and another company claimed to own the technology. Investors still lined up for the shares, which were priced at \$11 but eventually shot up to \$98.50 before setting in around \$30 in mid-February. All this despite the fact

the decision

that “the business model hadn’t yet been established,” says Christopher Bulger, the head of technology investment banking at Robertson Stephens.

There are several compelling arguments in favor of going public. New companies need capital to fund their growth, and at some point the venture capitalists who nurtured them through their early years will give way to the vastly larger financing capacity of the public market. The money can be used to fund new product development or build brand awareness through extensive marketing. The availability of stock options is a critical factor in recruiting and retaining

employees, while the availability of stock as a currency can enable a company to grow through acquisitions.

Companies that go public share most if not all of these motivations. U.S. Interactive, an Internet marketing, consulting, and technology firm based in King of Prussia, PA, wanted to prepare itself to nearly triple in size this year. U.S. Interactive had revenues of \$38 million in 1999 but expects to hit \$100 million in 2000. President and chief executive Steve Zarrilli raised \$46 million in August of last year, and some of that money has been used to build out departments like human resources, the legal

department, and a wide array of other corporate functions. Zarrilli wanted working capital “so we could continue to expand the infrastructure of the company,” he explains.

Look Before You Leap

Jupiter Communications, a New York-based research firm that specializes in Internet commerce, wanted to be able to reward longtime employees who had been working at below-market compensation levels for a few years with an equity stake in the company. Jupiter chief financial officer Jean Robinson also says the firm’s IPO was a highly valuable branding event, “and a big part of our asset is our brand name.”

And often, companies will go public because they see an opportunity in the marketplace that can only be exploited through access to a deep pool of capital. David T. Blair, CEO at Rockville, MD-based HealthExtras Inc., which sells a variety of insurance programs directly over the Internet, cites the importance of the “first mover advantage”—being the first company to occupy space in an emerging industry. Blair thought he saw that opportunity last year and ultimately raised \$60 million through an IPO in December. “There was just this tremendous advantage that we didn’t want to let slip by,” says Blair.

If the reasons for going public are compelling, it’s not a decision that should be made lightly—more so today than ever. There is, first of all, the grueling nature of an IPO, and “grueling” is a word that veterans often use to describe it. The process places extraordinary demands on senior management, particularly the CEO and CFO, and it’s important to make sure your team has enough bandwidth to run the company and put together

JUPITER’S JOURNEY

In the Beginning

Winter 1998-99

Founded in 1986, New York City-based Jupiter Communications sought to help its clients understand and seize the potential of Internet commerce—a specialty that dovetailed nicely with the explosion of the Net in the mid-’90s, as Jupiter became one of the most prominent providers of research on the Internet economy. Having analyzed an industry that has brought renewed excitement to IPOs, Jupiter was well-prepared to contemplate its future as a public company and had looked toward 1999 as the year it would happen. That contemplation got more serious during early 1999, and by March, when CFO Jean Robinson came on board, the company had begun to aggressively pursue its goal. “There’s a huge amount of work that goes on,” says Robinson. It involved maintaining both an external and internal focus. Jupiter’s team talked about the company during informal discussions with a bunch of banks and also worked to get its shareholders on board, while at the same time spearheading the normal pre-IPO effort to get its house in order.

an offering simultaneously. In the case of Jupiter Communications, the company hired Robinson, who had been an investment banker for J.P. Morgan & Co. doing public offerings including IPOs, seven months prior to its deal. “From the moment I came in, all I did was the IPO,” she says.

There are also the added demands of running a public company. There are Securities and Exchange Commission (SEC) disclosure requirements that must be met through various quarterly and annual filings. And it’s critically important that new public companies maintain strong ties with Wall Street securities analysts and their new investor base, all of whom will be watching their every move with the close attention of a country sheriff at a hippie revival.

Most important, if the barriers to the IPO market have never been lower, the risks of failure have never been higher. It’s difficult to watch the level of new issue activity and not want to take advantage of a historic opportunity to raise capital, build your company, and become wealthy in the bargain. “*Everyone* wants to go public,” says securities

“Missing your numbers is seen as a marker for a bigger problem.”

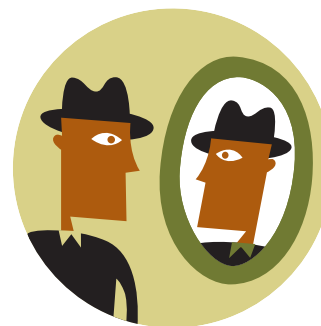
attorney Andrew Tucker at McLean, VA-based Shaw Pittman. “Everybody looks at a 4,600 Nasdaq and says my personal wealth could go through the roof.”

But analysts and investors have little patience with a new company that doesn’t meet or exceed its revenue and earnings projections during its first year of operation. Investors will quickly dump the stock, and the

company may find itself in a weaker position than before it went public. Institutional shareholders who were less than discriminating when making their initial decisions will flat out abandon a company that can’t deliver consistent performance. “Missing your numbers is not just viewed as an operational issue, but as a strategic

issue,” says Stephan J. Mallenbaum, head of the technology issues practice at Jones, Day, Reavis & Pogue in New York. “Missing your numbers is seen as a marker for a much bigger problem.” What worries investors, Mallenbaum explains, is that your business model might be invalid.

A new company that has disappointed Wall Street suddenly finds itself in a tenuous position. Its stock



Are You Really Sure About This?

If you’re a CEO who’s contemplating an IPO, walk over to a mirror and take a long, hard look. The person you see there—does he or she have the right stuff? Taking a company public is a grueling affair, especially since the process occurs while you’re also trying to manage its day-to-day affairs—a big enough job in itself. Perhaps the senior management team needs to be strengthened first through additional hires. Also, has your company’s business model been thoroughly validated? Failing to meet Wall Street’s expectations can be a fatal mistake for a new public company. The smartest decision you ever make may be to delay the IPO for a few quarters.

may be trading below the IPO price, rendering all those employee stock options worthless and poisoning morale. It also might become an acquisition target for a competitor.

“When you go public, you’ve bet your business,” says Merrill Lynch’s McCabe. “And if you missed your forecast, you lose.”

And yet, while failure would be painful for the company’s senior managers, some good might still come of it. “The companies that stumble will get merged or consolidated,” says Mallenbaum. “But they will be better off for having gone public.”

For some companies, the smartest decision is to wait until their business model has been more thoroughly validated and their forecasting skills honed. Of course, the IPO market might turn against them and an opportunity to raise capital would be lost. But there are worse things. “People go public too soon,” says Tucker. “They rarely go public too late.”

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One of the most difficult aspects

of doing an IPO is the unavoidable fact that all the necessary labor—writing a prospectus, meeting with your various advisors and making a zillion decisions both piddling and portentous—must be done while you’re also running a business. And if yours is like most small companies still in start-up mode, that in itself is an 80-hour-a-week proposition. Let’s face it: IPOs are tough.

Here are some of the more important things that must be done over the three- to four-month period during which you will put together your plan:

- Assemble a working team that includes the CEO, CFO, corporate attorney, and possibly the chief marketing officer. This may involve recruiting new players.
- Pick your outside advisors, including lawyers, underwriters, accountants, and a financial printer.
- Write a registration statement that must be approved by the SEC. This includes your prospectus, the offering document that lays out your company’s story and explains why it’s a good investment opportunity.
- Go through a rigorous due diligence process, under the direction of your investment banker’s own legal counsel, to verify all of the factual information in the prospectus.

- File your registration statement and then wait, possibly after several revisions, for approval from the SEC.

There is no easy way to juggle the demands of running a company while you’re also working on an IPO. It may simply be the price of gaining access to the public equities market. U.S.

Interactive president and CEO Steve Zarrilli, who took his company public in August 1999, takes the stoic public approach that in a fast-paced, running-at-Internet-speed environment, “putting together an IPO is not out of character.” Zarrilli says it helped that he had a strong management team to leverage against. While he concentrated on due diligence, his CFO and attorneys focused on writing the prospectus.



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Writing a prospectus while still running a business demands not only focus, but the right team—with the right stuff.

Drafting a registration statement is a labor-intensive engagement that involves an ongoing series of work sessions. The statement is divided into two parts. Part I, which contains information in the prospectus, provides much of what investors will need to make their decision, including a description of the company's business, comprehensive financial statements, a discussion of relevant risk factors, and an explanation of how the IPO proceeds will be used. Part II, which does not have to be distributed to investors but is publicly available, provides additional financial and operating information.

Due diligence is a thorough examination of the company's prospectus that may make you feel like you're locked in a room with the Grand Inquisitor but protects both the company and its underwriter against liability from shareholder suits after the IPO.

And they do happen. Value America Inc., an online retailer based in Charlottesville, VA, went public last April at \$23 a share, raising \$126.5 million. The stock hit \$74.25 the same month, but has since

plunged to around \$5 a share, beginning when the market grew skittish about the profitability outlook of many dot-com retailers. Value America has been sued by shareholders who believe they were misled about its outlook. Comprehensive due diligence is crucial because a company's only defense in a shareholder suit is that information in the prospectus was accurate and no material informa-

tion was omitted.

Due diligence is largely confined to information in the prospectus, but Andrew Tucker, a securities attorney at Shaw Pittman in McLean, VA, says a broader internal review effort should begin as soon as a company knows it wants to go public. "Part of the IPO process is flashing a light in every corner and finding every skeleton and then burying them properly," he says.

JUPITER'S JOURNEY

The Team

June 1999

The various aspects of Jupiter's pre-IPO preparation were all happening simultaneously by the time the key players gathered for the first formal organizational meeting in June. By that point, Jupiter's planets were in alignment, with Donaldson, Lufkin & Jenrette as lead underwriter and Deutsche Banc Alex. Brown and T. Weisel Partners as co-managers; Brobeck, Phleger & Harrison as legal counsel; KPMG as auditor; and Bowne as printer. The launching pad, says CFO Jean Robinson, was not a long and laborious session: "You meet for an hour. You say, 'Here's the timeline; let's coordinate schedules; we need to do this and we need to do this; what other issues do we need to deal with?' We moved right into the due diligence, where different department heads made presentations."

the plan

JUPITER'S JOURNEY

Prospectus

July 1999

For the crucial and time-consuming step of developing the prospectus, “we did it the way it is typically done,” says CFO Jean Robinson, “which is that the lawyers do the heavy lifting and the company and the bankers try to bring the story to life.” The lawyers tried to streamline the prospectus process as much as possible, often setting up the necessary phrases and allowing Jupiter’s folks to fill in the blanks with specifics. Several drafting sessions were held during July, though an initial draft had been prepped earlier. Robinson emphasizes the importance of the prospectus summary: “We spent a lot of time on the first two pages,” she says, noting the need to catch investors’ eyes at the start. The summary highlighted Jupiter’s variety of services and diversified client base.

When it Comes to Publicity, Don’t Jump the Gun

The SEC takes a very dim view of any effort to hype an upcoming IPO through publicity that would, in effect, precondition the market to think favorably about the company. But that doesn’t mean you have to go incommunicado during the registration process. The key is whether a company’s public statements are consistent with its past practices. For example, if your company normally issues a press release when it makes significant personnel moves, this would be permissible during the months leading up to an IPO—so long as it was made in a manner consistent with previous announcements. In other words, don’t start substituting half-page ads in *The Wall Street Journal* for simple press releases. When in doubt, check with your legal or investor relations counsel. If the SEC thinks you’re engaging in “gun jumping,” it may force you to postpone your IPO—which could cost your company a bundle, depending on market conditions.



Tucker provides an example of the sort of problem that might seem relatively minor when a company is still private, but takes on great significance in the context of an IPO. When a Shaw Pittman client was preparing for an IPO recently, a reference was found in company documents to a warrant to purchase common stock. But there was no record of the warrants being issued, evidence of the lax record keeping that’s not uncommon in small companies. The problem had to be resolved before the IPO could go forward, Tucker explains.

“The worst nightmare is surprise,” says Tucker. “It damages your credibility, both with your investment banker and your shareholders. We regularly see issues that management dismissed as inconsequential resurface to harm the company or the process.”

The most important decisions you make may be the selection of your advisory team. Choose them as carefully as you would partners in your own business. The lead underwriter advises the client on structuring, timing, and pricing of its IPO and manages the roadshow where the offer is presented to investors. You also may choose one or more co-managers to assist the lead underwriter.

In selecting a lead underwriter, Jupiter Communications CFO Jean Robinson stresses “chemistry with the banker because you’re going to be working with them a lot.” She also cites the importance of the underwriter’s reputation because “your name and that bank’s name are going to be put together.”

For Christopher Bulger, the head of technology investment banking at Robertson Stephens, “the No. 1 issue is strength of research. Who is going to be the research sponsor?” The laying on of hands by a respected

How to choose...

...an Underwriter

Analyst Coverage: The underwriting firm should have a respected research analyst who covers your industry since ongoing research is crucial in building an investor following.

Chemistry: You'll be working together closely for months at a time, so it's crucial that you develop a solid professional relationship with your underwriter based on mutual respect and trust.

Distribution: Can the investment bank place your stock in the hands of desired investors, especially in a difficult IPO market?

Commitment: Who will be the lead banker working on your account—the senior banker who met with you initially or someone less experienced? This bait-and-switch tactic can be a problem at the large firms, especially if you're a smaller company.

...a Financial Printer

Quality of Service: Your printer should do more than print your SEC documentation. They should come on the scene well before the prospectus is completed. While the IPO process might be new to you, a seasoned printer will have been through the drill numerous times and can guide you.

Facilities: Since many drafting sessions take place at the printer's offices, they should have excellent facilities in every financial center worldwide, capable of accommodating teams working around the clock.

Breadth of Service: Your printer should provide typesetting, printing, and EDGAR filing services for SEC compliance documentation, including your initial registration documents and 10-Ks, 10-Qs, and proxy materials. They should also be able to repurpose these documents for electronic distribution, translate and localize your information into any language, and manage these versions so your message remains consistent.

...an Auditing Firm

Industry Knowledge: Accounting issues can vary widely from industry to industry. It's important that your auditor is well-versed on the important accounting issues facing your company.

Familiarity with IPOs: Does the firm have a large IPO practice? Beware of retaining an auditor that doesn't have a lot of experience with the highly charged process of taking a company public.

Reputation: Most companies retain one of the Big Five public accounting firms because it gives investors a higher level of comfort with their IPO.

...a Law Firm

Experience: The firm should have an active IPO practice and should have experience working with companies in your industry. Your securities lawyers write the registration statement and handle problems with the SEC, so it's vital that they know what they're doing.

Broad Perspective: It's important that your lawyers have a good enough feel for your industry that they can advise you on important business issues as well. Just writing the prospectus isn't enough.

Chemistry: This is just as important with your law firm as with your underwriters—perhaps even more so because you will be joined at the hip for three to five months, and possibly longer since you may need help after the IPO adjusting to life as a public company, including SEC disclosure requirements.

Fees: Generally speaking, you get what you pay for. Picking the lowest bidder could turn out to be penny-wise and pound-foolish when you consider the potential liability you face from shareholder suits if your deal blows up.

the plan

research analyst can provide a powerful boost to an IPO.

One factor that shouldn't be an important consideration when selecting an underwriter is cost. Most firms charge a standard fee of 7 percent of the proceeds raised, which is divided among the members of the underwriting syndicate.

Moving the Process Along

The company's law firm is "primarily responsible for drafting the prospectus and keeping the process moving along," explains Shaw Pittman's Tucker. IPOs are very detail intensive, and you don't want to fall behind. "If you don't get 'A' done in a timely fashion, it can lead to problems down the road," he says. "It's an 'A' leads to 'B' thing." A good securities lawyer will keep the gears from jamming as the pieces come together.

Tucker advises companies to assess law firms based on the number of IPOs they've worked on and who the clients were. It's also important to know whether the same partner who marketed the firm to you will handle the deal. "Or will it be handed off to a third-year associate who will struggle with it?" Tucker asks.

When it comes to selecting an auditor, Tucker suggests that companies seriously consider retaining one of the Big Five accounting firms. It's important that the auditor have a thorough understanding of the accounting issues in your industry, along with IPO experience. But perception can be as important as reality in this situation. Tucker says many investors simply have greater confidence in a larger firm. "If you don't have one of the five, you take a big hit," he says.

Another key service provider during an IPO is the financial printer,

Andrew Tucker

SHAW PITTMAN



"Once your company is public, analysts watch your performance closely and expect you to make quarterly revenue and earnings targets. If your company misses these expectations, your stock price will decline, often permanently. This demands that you have validated all the elements of your business model. If you have difficulty meeting your quarterly projections as a private company, then you should delay your IPO."

Christopher Bulger

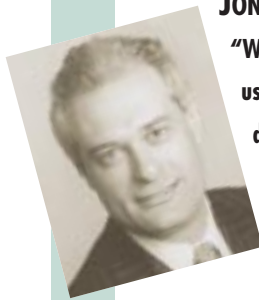
ROBERTSON STEPHENS



"You must exceed your earnings forecasts. If you say you're going to grow by 30 percent and only grow by 29 percent, the analysts are going to cut your valuation and raise questions about your credibility. The penalty for not hitting your numbers has never been higher."

Stephan Mallenbaum

JONES, DAY, REAVIS & POGUE



"What it means to be a public company has changed. It used to mean that your business model had been validated through operational experience, that your ability to execute was proven. It doesn't mean that anymore. Some companies that are going public today are really venture capital plays."

Give Diligence Its Due

Taking a company public is a detail-intensive process that never seems to end. Just when you think you've answered the last due diligence question, your pesky, persistent underwriter comes up with another one. Due diligence is a process whereby your underwriter determines that all the information in the registration statement is correct—although at times it may seem like an interrogation. No factual stone is left unturned, and the process can overwhelm you if you let it get out of control. Here are two suggestions: Designate one person at your company as the primary contact for due diligence materials and have everything flow through him or her, otherwise it will turn into a free-for-all. Also, if a due diligence request seems unreasonable, negotiate with the underwriter to narrow it. Due diligence is intended to protect you and your underwriter from shareholder suits. So remember, the devil is in the diligence.

which will assume responsibility for processing changes to the registration statement as it gets closer to a final draft. The printer will “EDGARize” and submit the final document to the SEC. Later they will print the prospectus and deliver paper copies to the underwriting syndicate plus prepare electronic versions for posting on the IR section of the company’s Web

site. “At a minimum, a financial printer must constantly invest in the right technology, systems, and people, which enables it to put together a global distributive print network in North America as well as in financial centers in Europe, Asia, and Latin America,” says Robert M. Johnson, chairman and CEO of Bowne & Co., Inc., which filed and printed 10 of the

top 20 IPOs, by offer amount, in 1999. Adds Tucker, “I’ve been at some of the smaller printers and had real nightmare problems when things got complicated at the end.”

Companies that intend to go public must handle their publicity carefully once they have entered the pre-filing period, which begins when a company starts to formally plan its IPO. The SEC watches closely to ensure that companies don’t try to hype their story in advance of an offering, although companies are permitted to engage in legitimate marketing activities and make routine announcements. Care also must be taken during the period from the date the registration statement is filed through the quiet period which generally extends 25 days from the effective date of the registration statement. During this time, when the underwriting group will be marketing the offering to investors, it’s important to limit your disclosures to information in the prospectus. “During the quiet period, you have to keep to the letter of the prospectus,” cautions Andrew S. Edson, chairman of Andrew Edson & Associates, a PR firm that advises companies during IPOs.

There’s one other consideration. Underwriters routinely insist on lock-up positions to prevent company insiders from selling their stock for a period after the IPO. You may really want that vacation home, but investors wouldn’t like a company official to unload a big chunk of stock soon after an offering. Lock-up provisions prevent you from accessing your newfound wealth too soon. “There’s virtually no more liquidity six months after the transaction than before,” says U.S. Interactive’s Zarrilli, who owns about 5 percent of the company—a stake worth approximately \$10 million.

JUPITER’S JOURNEY

Registration

July 30, 1999

Successfully reaching its target date, Jupiter filed its registration statement with the SEC at the end of July. Its stock would be listed on the Nasdaq Stock Market, home to many tech-oriented companies.

Registration was followed by the SEC comment period, and, in this case, those comments went a bit beyond standard accounting issues.

“At the time we were doing it, the SEC had just implemented the ‘plain English initiative,’” says CFO Jean Robinson; accordingly, the language of the detailed document was scrutinized on more than one level.

the roads



Let's see, if it's Tuesday this must be Detroit...and Denver...and Minneapolis.

Once the preliminary prospectus—the red herring—has been printed, it's time for the roadshow, a show in which the company's senior management team and underwriters are the actors and investors are the audience. The roadshow enables management to speak directly to the people who may end up being their shareholders. "This is your opportunity to position the story with the investors," says Jean Robinson, CFO at New York-based Jupiter Communications, an Internet research company that went public in October 1999. Some investors want to see if management—usually the CEO

and CFO—can distill their story to its most essential points. Management's presentation is also an opportunity for investors to "look them in the eye" and see if they can deliver, Robinson adds.

The trip, which is organized and run by the lead underwriter, will generally last two or three weeks and hit two dozen U.S. cities—sometimes two or more in the same day—and foreign countries if an international tranche is planned. There will be large group meetings and one-on-one sessions.

Christopher Bulger, head of technology investment banking at Robertson Stephens, says there are

about 200 institutions nationwide that routinely invest in new offers. "You're looking for the eight to 14 who will want to keep [your stock] long-term," says Bulger. "In the short-term, everyone will buy your deal. The key is finding people who will hold on to it."

Veterans of roadshows say it's impossible to overprepare. "You especially have to prepare for the one question you don't want to have asked," says Robinson.

It's also important to stay mentally fresh despite the taxing travel schedule. Jupiter's IPO team visited 15 U.S. cities over a two-and-a-half-week period, plus a London trip. Robinson says it's important to remember that while you may have done an IPO presentation a dozen times, it will be the first time for your audience. "I always wondered how an actor got on stage every night and stayed fresh," she says.

Rockville, MD-based Health-Extras, which markets various insurance programs over the Internet, went public last December. CEO David T. Blair, met with more than 100 investors in 18 cities over two weeks. "The second week is like pulling teeth," says Blair. "You're tired of telling the same old story." Blair pauses a moment, thinking of the bruising travel demands of a roadshow, then adds: "A corporate jet is key."

At the conclusion of the roadshow, the lead underwriter will price the deal, determining what the offering price will be. Underwriters will use a multiple of earnings or revenue to set a valuation if there are similar compa-

how

This could be the performance of your life. Be ready to give it again and again and again.

Hold That Vacation

Okay, it has been a tough four months full of marathon meetings capped by a grueling roadshow that felt like a cheap European vacation—you know, one of those 12-cities-in-11-days packaged tours. Your IPO has finally closed, and you're dying to split for a few days with the family in Cozumel—or Bali, if things went really well. Don't, at least not yet. Many closing documents require original signatures, so it's best if the CEO and CFO stick around until the closing has been completed. Otherwise, your secretary may be forced to hunt you down on the beach.



nies available for comparison. But the pricing process is also based on the underwriter's assessment of investor appetite. Throughout the roadshow, the investment banker will be taking indication orders—nonbinding expressions of interest—from investors in a process called “building a book.” “If the banker does the job right, they're giving you feedback all along,” says Robinson. If indication order volume is strong, the underwriter will start inching the offering price upward. In Jupiter's case, the lead underwriter, Donaldson, Lufkin & Jenrette, originally considered an offering price in the \$15 to \$17 range. As interest in the company's story grew, the price moved to \$18 and then to \$20. DLJ finally priced the deal at \$21 a share, raising \$65.7 million.

A striking characteristic of the current IPO market is the substantial pop that occurs in the early days of trading. According to IPO.com, an Internet site that tracks IPO activity, the average first-day gain for new offers in 1999 was 181 percent. Traditionally, underwriters have wanted to price new offers conservatively enough that something was left on the table for investors to sustain their interest in the aftermarket. If a new issue was priced too high and languished in the aftermarket, it could result in investor apathy or hostility.

Of course, when a company sees its shares jump 100 percent the first day, management may think its underwriters left *too* much money on the table. “But that's just sort of the reality of today's market,” Robinson says.

JUPITER'S JOURNEY

Headliners

September 1999

Two-plus weeks. Fifteen-plus cities. In typical roadshow fashion, Jupiter's team played rock stars and set out on a grueling, whirlwind tour. Having spent a lot of time in August developing the roadshow presentation, the group was ready to hit the high points during a variety of 20-minute presentations, one-on-one meetings, and other exchanges. At the end, Jupiter and its underwriters priced the deal, negotiating an IPO price of \$21 per share.

life after

Public ownership will impose changes that are both subtle and profound.

On the one hand, you'll have tens of millions of dollars in financing to create the infrastructure for a larger company, develop new technology, or build your brand through marketing. But this comes with certain strings attached. You'll give up some of the freedom you enjoyed as a private company and find that your new boss—Wall Street—can be demanding.

Consider, for example:

- Your company will be under tremen-

dous public scrutiny, and there will be severe limits on certain activities managers once enjoyed, including granting themselves dividends to meet their financial needs or extending certain perquisites to themselves.

- You must hold an annual meeting for stockholders and distribute certain information in advance.
- The compensation of top officers will be publicly disclosed.

- Your company could find itself sued by its own shareholders.
- You will be exposed to the risk of a hostile takeover.
- Your senior management team will be tempted to live or die by the price of the company's stock.

One of the most important requirements of public ownership is the need to disclose, on a regular and timely basis, information to your shareholders through a variety of filings that must be made with the SEC. These largely financial filings invariably become the responsibility of the CFO. A 10-Q, detailing the company's financial condition, must be filed within 45 days of the end of each of the first three quarters. A more extensive 10-K must be filed within 90 days of the end of the company's fiscal year. And significant events, such as a change in corporate control, a major acquisition, or a change in accountants, must be filed in an 8-K report. These reports must be filed on time; missing a deadline raises a red flag with analysts and investors.

Preparing these reports "is not difficult intellectually in the management-challenge sense," says Jupiter Communications CFO Jean Robinson, whose company went public last October. "But it's another task we didn't have to do before."

While meeting these filing deadlines can be an administrative challenge for a small organization, there are probably few aspects of public



IPO

You've achieved your goals. You're flying high. And business is not "as usual" anymore.

Street Talk

One of the skills every new public company must learn is managing its relations with Wall Street securities analysts. Analyst coverage is vital because it helps create a following for your stock. You'll need to set up an investor relations program and designate someone to handle analysts. In a small company that can't afford to hire a full-time IR director, that job will probably fall to the CFO. Make sure that only certain people are authorized to talk with analysts. It's also a good idea for them to all be trained by the company's securities lawyers, so they know what to say—and what not to.



ownership that newly converted companies are less prepared to handle than managing their ongoing relationships with securities analysts. And having a good relationship with the Street is essential in creating an investor following for your stock. But the time demands analysts place on senior management can be very disruptive. That's why most companies end up hiring an investor relations manager to work directly with analysts. This individual can't be a substitute for the CEO and CFO, who will still need to talk with analysts regularly, but he or she can relieve pressure on senior management by fielding calls and responding to straightforward information requests.

The normal tendency, especially when a company is trying to encourage Street analysts to cover its stock after an IPO, is to be helpful. But there are limits to how much help you can—or should—provide. Says Jupiter's Robinson, who handled IR tasks for awhile after her company went public last fall, "I find it a little hard to know how far I can go in guiding analysts with the [company's] numbers." Adds securities lawyer Andy Tucker at Shaw Pittman in McLean, VA, "I field calls from companies every day asking, 'Can I tell the analysts this, or can I tell the analyst that?'"

It often takes awhile before the senior executives at new public companies understand how to manage their contact with the Street. For example,

JUPITER'S JOURNEY

Aftermarket

October 1999

The JPTR symbol became a reality as it jumped into play on the Nasdaq on October 9—with one direct result being a dramatic increase in champagne consumption back at Jupiter's HQ. "It was pretty exciting," says CFO Jean Robinson, who had previously been part of the process from the banker side. One of Robinson's challenges leading up to the IPO had been to keep employees focused on their jobs, and, overall, to help manage the expectations of everyone involved. Those expectations were met as the first day of trading witnessed a nice pop in Jupiter's performance, with a first-day closing price of \$35.50. Since then, the stock has hit a high of \$47.38.

life after IPO

it's important not to provide selected analysts or investors with significant information that has not been made publicly available. This "selective disclosure" can lead to a shareholder suit from investors who feel they were disadvantaged or to enforcement action by the SEC.

Companies also need to be especially careful not to provide overly optimistic earnings predictions to analysts or investors that

Shareholder suits can result from "selective disclosure."

might subject the company to a shareholder suit if they are not met. In this regard, securities law does provide some protection in the form of a "safe harbor" for forward-looking statements on such things as earnings or revenue growth, so long as they are accompanied by cautionary statements—"Miranda Warnings"—that identify the risk factors.

Spokespeople should be designated to talk with analysts and investors—and trained by the company's securities lawyers. Tucker explains it's not unusual for analysts to call people throughout the company looking for information.

Perhaps the best advice is for new public companies to work closely with their securities counsel for the first year after their IPO to put in place appropriate disclosure policies everyone understands. Information is the grist of the Wall Street research mill, but when served up injudiciously it can be too much of a good thing.

Show Me the Money

So, should you do it? Access to capital for small, fast-growing companies has never been greater. Institutional investors are clamoring for technology stocks to cram into their portfolios, especially in the red-hot business-to-business market where innovative companies are growing like mutant weeds. Portfolio managers who missed an earlier investing opportunity when they didn't believe Internet retailers like Amazon.com were for real are determined not to get left behind this time.

Taking a company public can lead to the fulfillment of an entrepreneur's dream. Indeed, the completion of an IPO can be an intense emotional experience. "It's certainly a thrill to see your company go across the ticker and to deposit a big check in the bank," says David Blair, president of Rockville, MD-based HealthExtras Inc., which went public in December 1999.

Clearly the barriers to the public equities market for small, privately owned companies have never been lower. But is this a positive thing in every instance? "For good companies, it's an excellent thing," says Farrokh Billimoria, a Menlo Park, CA-based general partner at venture capital investor Sprout Group, an affiliate of Donaldson, Lufkin & Jenrette. But the decision to go public should be made very carefully. Could the easy availability of equity capital end up being a trap for your company? "I think the answer to that question is that the money is just too good right now," says Stephan Mallenbaum, an attorney who heads up the technology issues practice group at Jones, Day, Reavis & Pogue in New York. "It's so good that companies are willing to run the risk of stumbling." DLJ's Billimoria isn't so sure. "I don't think that people understand the risks of going public," he says.

The performance expectations of Wall Street can only be described as brutal. Miss your earnings forecasts, especially in the first year after your IPO, and you could see a catastrophic decline in the price of your stock of 50 percent or better. Once a young management team has thoroughly discredited itself with Wall Street, there may be no recovery.