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On the Radar

Initial Public Offerings

After a record-breaking year for initial public offerings (IPOs) and special-purpose acquisition companies (SPACs) in 2021, the market has remained slow for several years amid various challenges, including volatile markets; geopolitical conflicts; interest rate increases; inflation; and supply chain issues. However, interest rates and inflation have been moderating, and private companies are continuing to evaluate the methods used to go public. Such methods include (1) "traditional" IPOs, in which private companies sell their equity in a public underwritten offering, and (2) nontraditional IPOs, which have become more popular over the past several years. Nontraditional IPOs include those in which private operating companies choose to merge with SPACs to raise capital or use other financing alternatives, such as direct listings. Companies can also go public by registering debt securities, distributing shares in a spin-off transaction, or registering securities issued by real estate investment trusts (REITs).

Before a company commences a public offering of securities, it must file a registration statement with the SEC under the applicable securities laws. Both the form used to file the registration statement and the filing and review process will depend on the nature of the offering. Companies undertaking a traditional IPO can voluntarily submit a draft registration statement to the SEC staff for confidential, nonpublic review. The ability to submit confidentially is a significant benefit because it allows companies to keep potentially sensitive information from customers or competitors until later in the IPO process. Confidential initial submissions are subsequently filed publicly no later than 15 days before (1) a roadshow or (2) the requested effective date of the registration statement if no roadshow is planned.

Once submitted to or filed with the SEC, a registration statement is reviewed by the staff of the SEC's Division of Corporation Finance, which will generally complete its initial review and furnish its first set of comments within 27 calendar days. The company then responds to each of the staff's comments and reflects edits to the draft registration statement in an amended filing, which the staff will also review. A company can expect several rounds of comment letters containing follow-up questions on responses to original comments as well as additional comments on new information included in the amended registration statement. After the initial review, subsequent comments are typically furnished within two weeks. For more information about typical SEC staff comments, see Deloitte's Roadmap *SEC Comment Letter Considerations, Including Industry Insights*.

Identifying the Required Financial Statements

A company must determine what financial statements are required in the registration statement. While this determination may appear straightforward, additional complexities may arise because a company may first need to determine the legal entity that will become the SEC registrant. For example:

- A company may succeed to substantially all of the business of another entity (or the "predecessor") for which financial statements are required.
- A company may be a carved-out entity that previously existed only as a subset of a larger parent entity or may be a combination of individual entities joined to form a larger public company.
- A company, a subsidiary, or a subset of subsidiaries may issue securities, guarantee securities, or otherwise have dividend restrictions that trigger requirements for the inclusion of separate financial statements or financial statement schedules in the IPO registration statement.

Further, a registrant may need to consider whether separate financial statements or pro forma financial information is required for "significant" business acquisitions, dispositions, or equity method investments.

The financial statement periods to be included in the IPO registration statement depend on the company's characteristics and the timing of the document's submission. Smaller reporting companies (SRCs) and emerging growth companies (EGCs) generally have the option of presenting only two years of audited annual financial statements in a traditional IPO, while all other entities must present three years. Further, under SEC regulations, the financial statements in an IPO must meet certain age requirements as of each registration-statement filing date as well as when the registration is declared effective; otherwise, the financial statements will be considered "stale." In general, the financial statements in an IPO filing must not be more than 134 days old (i.e., the gap between the date of filing or effectiveness and the date of the latest balance sheet cannot be more than 134 days). However, third-quarter financial statements are considered timely through the 45th day after the most recent fiscal year-end, after which the audited financial statements for the most recent fiscal year are required. Thus, a company that fails to file a registration statement before one of these critical cut-off dates will be required to include additional financial statement periods in the registration statement; in such cases, there may be a significant delay in the company's preferred IPO timeline.

A Public Entity's Application of U.S. GAAP and SEC Regulations

Certain provisions of U.S. GAAP for public entities differ from those for nonpublic entities. Notably, public business entities (PBEs) are generally required to adopt new accounting standards before private companies. Although companies that meet the EGC criteria can elect to use private-company adoption dates for new accounting standards, other entities (i.e., non-EGCs) undertaking an IPO typically must use public-company adoption dates for all accounting standards.

In addition, a company undertaking an IPO must present financial statements that are consistent with public-entity accounting principles and must comply with the disclosure requirements for public entities for all periods presented. The following are examples (not all-inclusive) of topics for which the accounting principles or disclosures may apply to public entities but do not apply to nonpublic entities:

- Earnings per share.
- Segment reporting, including disclosures about significant segment expenses in accordance with recent amendments.
- Temporary equity classification of redeemable securities.
- Certain income-tax-related disclosures.
- Certain disclosures related to pensions and other postretirement benefits.

Once a company is considered a PBE (even if it qualifies as an EGC and elects to use private-company adoption dates), it is no longer permitted to apply private-company accounting alternatives, such as the amortization of goodwill, or practical expedients permitted for non-PBEs, such as use of a risk-free rate for leases. Therefore, any previously elected private-company alternatives or non-PBE practical expedients would need to be retrospectively eliminated from the company's historical financial statements before such statements can be included in its registration statement.

Further, public entities are subject to various SEC rules and regulations that may affect the financial statements and related disclosures (e.g., the additional disclosure requirements of Regulation S-X). Some of these requirements are broadly applicable, and some apply only to entities in certain industries. Therefore, a nonpublic entity's previously issued financial statements will typically need to be revised for all periods presented to reflect the additional SEC disclosure requirements. However, an entity that meets the SRC criteria may be eligible to apply scaled disclosure requirements. SRCs generally do not have to apply the disclosure provisions of Regulation S-X in their entirety except when specified.

Audit Considerations for Public Companies

Audits of private companies are subject to AICPA auditing standards. However, auditors of issuers undertaking an IPO must apply PCAOB auditing standards and will need to perform additional procedures and issue a new auditor's report that refers to these standards. Note that in a filing submitted for **confidential** review to the SEC, the auditor's report will typically refer to **both** AICPA and PCAOB auditing standards.

Because the SEC's and PCAOB's independence rules are generally more restrictive than the AICPA's, both the auditor and management, with oversight from the audit committee, need to determine whether (1) there is possible noncompliance with the SEC's and PCAOB's independence rules or (2) there are conflicts of interest before the entity undertakes an IPO.

Post-IPO Periodic Financial Reporting and Internal Control Requirements

After a registration statement is declared effective, a company is required to file quarterly reports on Form 10-Q and annual reports on Form 10-K. As a public company, a registrant must also file a current report on Form 8-K that discloses various material events that occur between its periodic reports. Registrants will also need to comply with many recent SEC rules, including those on executive compensation, clawback requirements, pay-versus-performance disclosures, cybersecurity disclosures, and climate disclosures.

A public company will need to address two types of controls and procedures in its post-IPO filings with the SEC:

- *Internal control over financial reporting (ICFR)* — ICFR refers to procedures a company performs to reasonably ensure compliance with its policies related to preparing financial statements in accordance with U.S. GAAP and Regulation S-X. Management must annually file a report on the effectiveness of its ICFR. Moreover, non-EGC accelerated and large accelerated filers must generally include an auditor's attestation report on the effectiveness of ICFR in their annual reports. However, all new public companies can apply a phase-in exception under which management's report and the auditor's attestation are not required before the second annual report (i.e., until a registrant has been required to file or has filed a Form 10-K for the prior fiscal year). Certain additional exceptions may also apply.

- *Disclosure controls and procedures (DCPs)* — These are a broader set of controls that largely encompass ICFR and are designed to provide assurance that information that the registrant must disclose in reports that it files or submits under the Securities Exchange Act of 1934 (the "Exchange Act" or "1934 Act") is recorded, processed, summarized, and reported within the periods specified.

Companies also must continue to comply, on a quarterly basis, with reporting requirements related to material changes to ICFR and DCPs. In addition, in quarterly and annual reports, the registrant's principal executive and principal financial officer (typically the CEO and CFO) must file certifications prescribed by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act" or "Sarbanes-Oxley").

SPAC Transactions

After increasing significantly in recent years, SPAC transactions have slowed down as well. If contemplating use of a SPAC transaction to go public, management should be aware of the differences between a traditional IPO and a SPAC transaction from a financial reporting and auditing perspective, as well as the impact of the SEC's recent final rule amending the disclosure requirements for SPAC transactions, which took effect on July 1, 2024. The table below outlines the areas of potential differences between the two types of transactions.

Key Differences Between Traditional IPOs and SPAC Transactions
The ability to confidentially submit the registration statement/proxy statement
The requirement to include pro forma information
The potential requirement to include prospective financial information
The timing of the initial periodic reporting obligation after the IPO or SPAC transaction
The reporting requirements related to ICFR

Deloitte's Roadmap *Initial Public Offerings* addresses financial reporting, accounting, and auditing considerations to help companies navigate challenges related to preparing an IPO or de-SPAC registration statement and ultimately going public.

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