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Presenters



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Keith is a Partner with Deloitte & Touche LLP and has 13 years of experience providing advisory and audit services to oil & gas clients. He leads Deloitte's Accounting and Reporting Advisory group in Houston and has extensive experience in Initial Public Offerings, SOX readiness, public equity and debt offerings, as well as acquisitions and divestitures.

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Going Public – Approaches & Structure

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Approaches to becoming a public registrant

There are several ways in which a private company can become a public registrant. Included below are the most common approaches to being a public company.

Type	Description
Traditional IPO with public offering	S-1 Filing, Jobs ACT/EGC Status
Special Purpose Acquisition Company (SPAC)	Potential forward/reverse recapitalization with various reporting requirements
Reverse Merger	Possible reverse recapitalization and various reporting requirements
Direct Listing Process (DLP)	Company becomes publicly traded without an underwriter for its Initial Public Offering (IPO). No new shares are created.

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The road to becoming a public registrant

Going public can be a long, resource constricting, and complex process that may present a challenging road ahead.

- Debt and equity markets can be volatile—companies must be prepared to take advantage of opportunities
- Receiving a favorable equity price or interest rate (i.e., credit spread) may require speed to market
- Advance planning and early adoption of public company requirements are important for success
- Included below is a high level summary of the sequence of events:

Engage Underwriters/Attorneys

- Valuations discussions
- Due diligence
- Legal opinions

Registration Statement

- All Hands Meeting
- SEC form drafting
- Filing w/ SEC
- SEC comments
- Amended SEC forms

Marketing the Offering

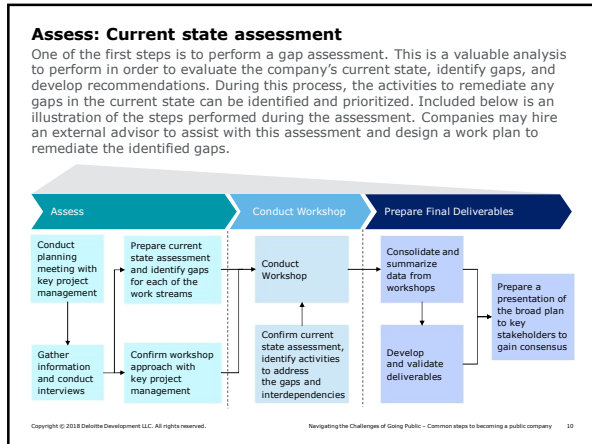
- Preliminary prospectus/red herring
- Solicitation
- Roadshow
- Price offering
- Registration statement declared effective

Closing, Sale, Exchange Listing

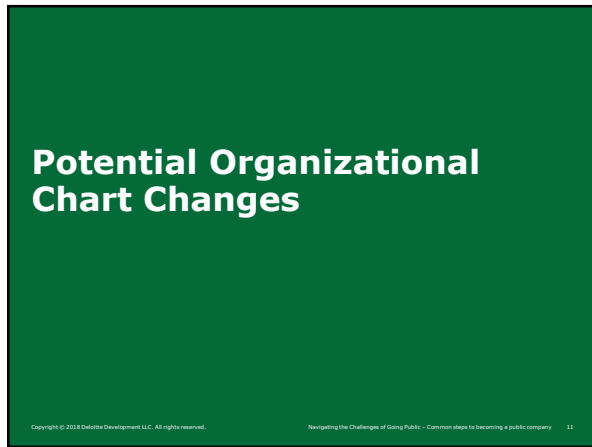
- Proceeds received
- Securities "delivered"
- Underwriters commission
- Exchange listing

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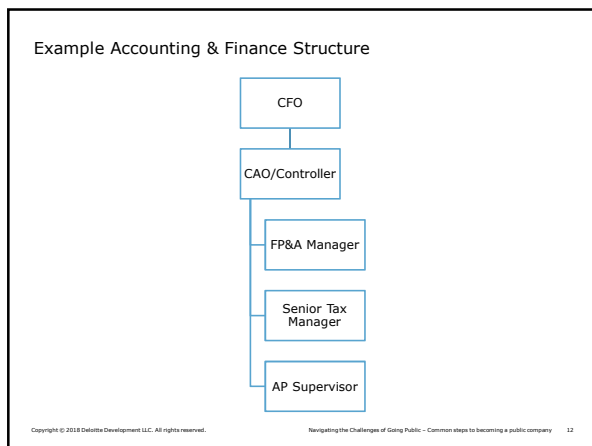
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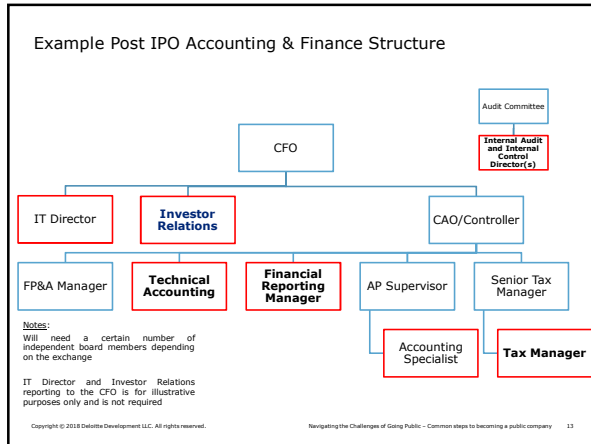
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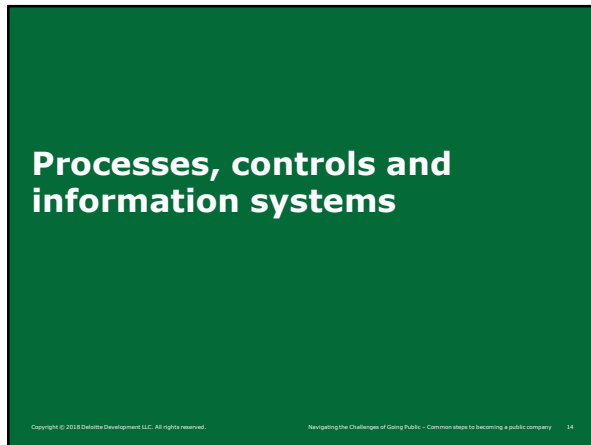
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SOX reporting
 Summary of SOX

SOX is a United States federal law enacted on July 30, 2002, which mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud. Among other things, SOX:

- Established the Public Company Accounting Oversight Board (PCAOB)
- Strengthened penalties for corporate fraud
- Sets **requirements for management** to annually state responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting (Section 404a)
- Sets **requirements for the independent auditor** to opine on the effectiveness of the Company's ICFR as of the reporting date (Section 404b)

Auditor attestation of ICFR

- An equity registrant will be subject to incremental costs, additional resources and effort in order to obtain auditor attestation over ICFR

While an EGC registrant has time before they are subject to a control attestation report their external auditor will be required to assess design and implementation of controls under a PCAOB framework and communicate any material weaknesses and/or significant deficiencies to the Audit Committee and management.

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Governance/Compliance - Boards	
Activity	Considerations
Core board activities	Core board activities are elements that cannot be delegated to others and are typically completed by the board. These may include: <ul style="list-style-type: none"> • Executive compensation, performance and succession • Setting risk appetite, assessing and monitoring strategic plans, measuring management performance against plan • Approving and enforcing a code of conduct at executive level • Director selection, selection of auditors and other advisors, etc.
Internal audit activities	These are corporate governance elements that are executed by internal audit and overseen by management and the board. These may include: <ul style="list-style-type: none"> • Managing key risks and establishing appropriate controls • Defining authorities and decision rights • Monitoring key compliance risks, establishing processes and protections to elevate risks (hotlines/help lines and whistleblower protection)
Corporate governance assessment methodology	To prepare, the company should consider each governance element (core board and internal audit) in the context of three primary characteristics: <ul style="list-style-type: none"> • Competencies and composition of the people responsible • Practices, processes, and policies along with the intersection of various board committees and management functions • Communications requirements between management, the board, and outsiders

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Governance/Compliance - NASDAQ Governance Requirements		
Area	NASDAQ requirement	NASDAQ Phase-in timings for IPOs
Board Composition	A majority of the Board of Directors must be comprised of Independent Directors.	Twelve months from the date of registration to comply.
Frequency of Meetings	An executive session limited solely to Independent Directors must be held at least twice a year.	From the date of registration.
Board Committees	Companies must have an audit committee ("AC"). There is no requirement to have a nominating committee or compensation committee ("CC"), but the functions normally undertaken by these committees must be performed by Independent Directors.	From the date of registration.
Audit Committee Responsibilities	A formal written AC charter must be adopted which the audit committee must certify annually that they have reviewed and reassessed the adequacy thereof.	From the date of registration.
Audit Committee Composition	Audit committee must be: <ul style="list-style-type: none"> - Composed of at least three financially literate, independent members; and - At least one member of the audit committee with requisite finance or accounting background. 	One member of the Audit Committee needs to be independent (as defined by the 1933 Exchange Act Rules) from the date of registration to 90 days after registration. A minority of the members may be independent for up to one year after registration. One year after registration all Audit Committee members must be independent.
Compensation Requirements	Compensation for the chief executive and other executive officers must be determined (or recommended to the board for determination) by Independent Directors.	The independence requirements for CEO compensation are as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing.
Nomination/Corporate Governance Committee	A nomination/corporate governance committee is not required. Director nominees must be selected (or recommended for the Board's selection) by Independent Directors. A formal written charter is also required.	The independence requirements for Director nominees is as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing.
Corporate Governance	None.	Not applicable.
Code of Conduct and Ethics	Companies must adopt a code of conduct for directors, officers and employees. Any waivers of the code for directors or executive officers must be made only by the board and must be disclosed.	From the date of registration.
Internal Audit Function	None.	Not applicable.
Website Disclosure	A company's code of conduct be made "publicly available" although it does not specify the means by which the code should be made available.	

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Governance/Compliance - NYSE Governance Requirements		
Area	NYSE requirement	NYSE phase-in timings for IPOs
Board Composition	A majority of the Board of Directors must be comprised of Independent Directors .	A majority must be independent within one year of the listing date.
Frequency of Meetings	Boards must convene regular sessions where the non-management directors meet without management. In addition, an executive session limited solely to Independent Directors must be held at least once per year .	From the date of registration.
Board Committees	Companies must have an audit committee ("AC"), a nomination / corporate governance ("CG") committee and a compensation committee ("CC"), each comprised solely of Independent Directors.	See below for independence requirements.
Audit Committee Responsibilities	The following is required: - The adoption of a formal written AC charter; - An annual performance evaluation of the AC; - Review a report from the external auditor at least once a year; and - The consideration of particular financial topics.	From the date of registration.
Audit Committee Composition	Audit committee must be composed of: - At least three financially literate Independent Directors ; and - At least one member of the audit committee with requisite finance or accounting background.	
Compensation Requirements	The following is required: - The adoption of a written CC charter; - An annual performance evaluation of the CC; and - Specific considerations under the NYSE guidelines for CEO compensation.	At least one Independent Director as of the IPO closing date. A majority of Independent Directors within 90 days of the listing date. Fully independent within one year of its listing date.
Nomination / CG Committee	The following is required: - A formal written charter must be adopted; and - An annual performance evaluation of the nomination/corporate governance committee.	At least one Independent Director as of the IPO closing date. A majority of Independent Directors within 90 days of the listing date. Fully independent within one year of its listing date.
CG	Companies must adopt detailed corporate governance guidelines.	Required by the earlier of the date the IPO closes or five business days from the listing date.
Code of Conduct and Ethics	Companies must adopt a code of conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers to shareholders.	Required by the earlier of the date the IPO closes or five business days from the listing date.
Internal Audit Function	Companies must have an internal audit function for an ongoing assessment of risk management processes and the system of internal control.	Not applicable.

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Governance/Compliance - Ongoing SEC Reporting Requirements		
Annual / Quarterly SEC Reporting – Form 10-K / 10-Q Filing Deadlines		
<p>The first 10-K annual filing after Form S-1 is effective is not subject to accelerated filing deadlines</p> <ul style="list-style-type: none"> Company would file its first 10-K annual filing as a Non-accelerated Filer <p>Depending on the amount of public float, the Company may be required to file as an accelerated filer in their second 10-K annual filing</p>		
Timeline		
The filing deadlines for SEC Forms 10-K and 10-Q vary depending on the filing category of a company. The table below summarizes the due dates for both of these reports.		
Category of Filer ¹	Deadlines for Filing periodic SEC Forms 10-K/10-Q ²	
	Form 10-K Deadline	Form 10-Q Deadline
Large Accelerated Filer (\$700MM or more)	60 days	40 days
Accelerated Filer (\$75MM or more and less than \$700MM)	75 days	40 days
Non-accelerated Filer (less than \$75MM)	90 days	45 days

Legend:
¹ Category of filer is dependent upon the worldwide market value of outstanding voting and non-voting common equity held by non-affiliates. Source information obtained from <http://www.sec.gov/oesar/form10k.htm>.
² Represents the number of days after the fiscal year end (for 10-K) and fiscal quarter (for 10-Q).

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Public company financial disclosures	
<p>SEC regulations for public registrants can be complicated. Below is a list of some of the complex and subjective financial disclosures and best practices.</p>	
<p>Companies must follow Regulations S-X and S-K (SEC comments VERY common in the areas)</p> <ul style="list-style-type: none"> Common Control Analysis for Combined Financial Statements Critical accounting estimates and judgments (See Complex and Subjective Financial Reporting Areas slide) Segment Information (see Segment Reporting slide) EPS (equity registrants only) (see Non-GAAP Measures slide) Financial statements of business acquired/to be acquired Financial statements of equity method/joint ventures Quantitative and qualitative discussion of market risk 	
<p>Leading practices and common tools for financial disclosures</p> <ul style="list-style-type: none"> Adequate data governance and information controls Automated processes to the extent possible, with limited manual interventions Adequate systemic controls and proper cut-off policies Standardized chart of accounts Proper reconciliation policies and procedures Review by disclosure committee SEC disclosure checklist Early involvement of external auditors Formally documented SEC external reporting calendar Standardized monthly close calendar 	

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Post-effective Requirements

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Post-effective reporting requirements

There are significant reporting requirements subsequent to securities being deemed effective. Below is a summary of those requirements.

Post-effective period

	Equity securities		
	Quarterly reporting	Annual reporting	One year post-effective date and thereafter
Financial statements	<ul style="list-style-type: none"> 10-Qs issued 45 days after quarter end Not an accelerated filer in the first year If company qualifies as a large accelerated filer or accelerated filer after the first year, then future 10-Qs due 40 days after quarter end 	<ul style="list-style-type: none"> 10-Ks issued 90 days after year end Not an accelerated filer in the first year If company qualifies as a large accelerated filer or accelerated filer after the first year, then future 10-Ks due 60 days or 75 days after year end, respectively 	<ul style="list-style-type: none"> No specific reporting requirements for one year post-effective date other than the ongoing quarterly and annual reporting requirements
Other financial information	<ul style="list-style-type: none"> Begin process to update the 10-Q and 10-K filings with financial information and financial analysis (i.e., MD&A), based on ongoing reporting obligations discussed above Begin process of press releases prior to SEC filings and for other events which would necessitate a press release, based on ongoing reporting obligations discussed above Respond to SEC comment letters that may arise on future filings Continue to comply with XBRL requirements 		

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Post-effective reporting requirements (cont.)

There are significant reporting requirements subsequent to securities being deemed effective. Below is a summary of those requirements.

Post-effective period

Other Disclosures	Description of Contents	Timing
Current Report—Form 8-K	<ul style="list-style-type: none"> Report material corporate events, such as— <ul style="list-style-type: none"> Acquisition or disposition of a business Material contract agreements (e.g., executive compensation, employment, purchase agreements, etc.) Results of operations and financial condition (e.g., press releases) Events which impact corporate governance (e.g., departure/election/appointment of directors or officers, change in bylaws, etc.) 	<ul style="list-style-type: none"> 4 days (for most events) Potentially earlier to comply with SEC Regulation Fair Disclosure that mandates that public registrants must disclose material information to all investors at the same time
Proxy¹	<ul style="list-style-type: none"> Information about executive officers, directors, corporate governance, executive compensation and CD&A disclosures may be included within a proxy statement provided to shareholders (and excluded from Form 10-K at the time of their filing) Information for shareholders related to solicitation of voting 	<ul style="list-style-type: none"> 120 days after fiscal year end, if contains information excluded from 10-K File with SEC when first sent to shareholders

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Non-GAAP measures

The portfolio company will need to consider the reporting requirements when non-GAAP measures are present in its public documents and press releases.

- The SEC staff requests that registrants provide additional disclosures or modify disclosures when presenting non-GAAP financial measures (e.g., EBITDA). Non-GAAP measures are typically used within earnings releases, periodic public filings and marketing deliverables in order to illustrate the metrics used by the board and management to evaluate and manage the company. When a non-GAAP measure is presented, a portfolio company will need to present the most directly comparable U.S. GAAP financial measure and reconcile the two measures

Equity Registrants

- While a portfolio company may focus on EBITDA as a key financial metric, public equity registrant's reporting focuses on earnings and requires the computation of EPS within the financial statements in accordance with U.S. GAAP. Consistent with the presentation of net income, EPS will be impacted by:
 - stock compensation expense
 - existing capital structure (e.g., interest expense from leverage, equity with participation features, etc.)
 - other non-cash expenses (e.g., amortization of intangibles)

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Tax

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Tax considerations

Issues	Considerations
Capital structure and Internal Revenue Code Section 382	<ul style="list-style-type: none"> Determine whether the company's capital structure can facilitate the public registration Assess the direct and indirect tax consequences of any restructuring or other pre-effectiveness transactions, as well as the planned use of the proceeds Tax attribute limitation on deemed ownerships changes
Frequency of income tax information	<ul style="list-style-type: none"> Income tax information will need to be updated on a quarterly basis to support SEC reporting Incorporation of income tax information preparation will need to be considered in revised closing timeline
Data (tax) integrity	<ul style="list-style-type: none"> Availability and accuracy of financial information used for tax purposes on a quarterly basis, including: <ul style="list-style-type: none"> Quarterly estimates Uncertain tax positions Deferred tax assets Internal controls need to include income tax information
Operational readiness	<ul style="list-style-type: none"> Adequate governance practices within the finance department which impact the tax department need to be considered—establish open and frequent communication protocols Assess whether existing financial systems are able to provide required information to tax within accelerated timeline
Effective tax rate and repatriation	<ul style="list-style-type: none"> Comparison and assessment of possible reorganization planning for the company and its affiliates for effective tax rate determination and tax-efficient repatriation policies Practical tax aspects of implementing any selected global alignment strategy

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Common Pitfalls

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Common Pitfalls

- Unrealistic timing expectations between IPO project start date and effective date of IPO
 - o Seeking help from advisors too late in the process (Lawyers, Advisory, or staffing firm)
 - o Inability to provide F/S and updated S-1 prior to SEC stale date
 - o Incorrect SEC/Public company disclosures, MD&A, or other reporting errors that slow down the process
 - o Inability to respond quickly to SEC
 - o Changes in tax structure or IPO structure late in the process
 - o Lack of controls and communication of material weaknesses to the public
- Sustainment
 - o Unable to meet governance requirements
 - o Unable to meet reporting requirements once public
 - o Lack of controls and communication of material weaknesses to the public
 - o Unaware of additional costs of being public (lawyers, auditors, board members, fees, etc.)

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