

§ 9:6.4 Sample Questions/Requests for Managing Underwriter Candidates**Recent IPO Experience**

- Please provide a list of all completed or withdrawn IPOs in which your firm has participated over the past two years, indicating your role in each, and specifying the date and size of each that was completed.
- Please provide a list of all IPOs on file in which your firm is participating, indicating your role in each and its present status.
- In the past two years, has your firm been chosen as a managing underwriter in any IPOs and then withdrawn or been replaced before pricing?

Deal Team

- Who will be the members of the investment banking team for our IPO? What is the tenure of each team member with your firm? Are the senior members committed to attending the organizational meeting, drafting sessions, and other key meetings?
- Please provide the names and contact information for the CEOs and CFOs from three other companies whose IPOs were led by the proposed investment banking team for our IPO.
- Who will lead the equity capital markets, syndication, and institutional sales functions for our offering? What is the tenure of each such person with your firm?
- Who is the most senior sponsor of our IPO within your firm?

Company Positioning

- What is your recommended positioning of our company?
- Do you see any potential issues that our company's business or industry pose for the marketing of the offering?
- Please supply a list of the key messages you believe should be conveyed in the opening paragraph for the business section of the prospectus.

Timing and Preparedness

- What is the timing and process of your firm's commitment committee process, including research analyst involvement?
- Please provide a recommended IPO timetable from the organizational meeting through pricing.

- What is your current view of IPO market conditions as they relate to companies in our industry? Do you foresee significant market changes, positive or negative, over the next six to twelve months?
- What do you consider the biggest risks or uncertainties in the successful completion of our IPO, other than market conditions?
- From your perspective, what gaps in our board or management must we address in order to complete an IPO successfully?

Size and Valuation

- Based on present market conditions, what deal size do you consider appropriate? What is the minimum deal size that you would consider feasible or that you are willing to underwrite?
- Please provide a description of your valuation methodology for our company, the names of the comparable companies used in your analysis, and the principal operating metrics of those companies.
- What is your view of the optimal progression of the market price, from setting the proposed range to pricing the offering and through our first earnings release?

Offering and Disclosure

- Do you believe the marketability of our IPO would be adversely affected if, as permitted by the JOBS Act, we choose to provide reduced financial statement, MD&A, and selected financial data disclosures; elect not to be subject to new or revised accounting standards; or provide reduced executive compensation disclosures?
- Does submission of a draft of our Form S-1 to the SEC for confidential review in accordance with the JOBS Act pose any concerns from your perspective?
- What is your view on the advisability of including financial forecasts in our road show, or possibly even in the Form S-1?
- What is your firm's policy, or recommended practice, with respect to the audit of interim financial statements included in the Form S-1?
- Does your firm have any disclosure policies or practices that are not required by SEC rules and are not generally followed in the securities industry?

- Are you receptive to the inclusion of selling stockholders in our IPO? If so, what is the maximum percentage of the overall offering you recommend for a secondary component? If members of management or the board are included, what is the maximum percentage of their holdings that you suggest they be allowed to sell?
- From whom will you request lockup agreements?
- What are your thoughts on the inclusion of a directed share program in our IPO? If a DSP is included, what maximum size do you recommend? Does your firm have the ability and willingness to administer a DSP?
- What maximum “overhang” do you believe we can have in our stock incentive plan without adversely affecting the marketing of the IPO? Do you think an “evergreen” provision providing for automatic annual increases of up to 5% of the outstanding shares will have an adverse effect?

Syndicate Structure

- How many lead managers and co-managers do you recommend for our IPO, and why?
- Are you willing to serve as a joint lead manager if selected, and what are your minimum economics to serve in this capacity?
- Which investment banks do you believe your firm works particularly well with as joint lead managers?
- Which investment banks do you consider most complementary to your firm’s capabilities as a joint lead manager?
- If you are selected as a lead manager, how do you propose to allocate the underwriting discount among all managing underwriters?
- What process do you follow for identifying firms to serve as non-managing underwriters? What role does the company play in that process?

Sales and Marketing

- Please describe your domestic and international institutional and retail sales capabilities, including market share and market presence information if available.
- What are your preliminary thoughts regarding the allocation of shares among types of investors?
- Who will be the target investors for our IPO?

- Do you recommend that we engage in “test-the-waters” communications with eligible institutional investors to determine whether such investors have an interest in our contemplated IPO, as permitted by the JOBS Act? If so, what is the suggested timing, process, and audience for these communications?
- What are your views on the value of a non-deal road show for a company like us? Do you recommend we conduct a preliminary road show before launching our formal road show?
- Please indicate the likely duration and locations for our road show. Do you recommend going to Europe? Do you anticipate including an electronic road show?

Pricing and Stock Performance

- Please describe your firm’s pricing process, indicating the levels of transparency available to us relating to management of the order book, pricing, and sales activity.
- What process do you recommend for setting the offering price? Are you willing to consider pricing models other than a bookbuilding process, such as a Dutch auction?
- If the offering price is set through a bookbuilding process, what is the target percentage for the first-day increase from the offering price?
- What process do you follow for allocating shares? What role does the company play in that process?
- Please describe your policies and processes to minimize flipping. In each of the completed IPOs in which your firm served as a lead manager in the past two years, what percentage of the shares were sold by the initial buyers on the first day?
- For each of the completed IPOs in which your firm served as a lead manager in the past two years, please provide:
 - the initial price range;
 - the revised price range, if any;
 - the final offering price;
 - the size, composition (primary versus secondary), and utilization of the underwriters’ over-allotment option;
 - the closing market price on the first day and 30, 90, 180, 210 (approximately one month after lockup expiration), 270, and 360 days after closing; and
 - any special lockup arrangements.

Public Company Preparations

- Please describe the assistance you typically provide an IPO company in preparing for public company life, including investor relations matters.
- As a new private company, we will not be required to comply with section 404 of the Sarbanes-Oxley Act at the time of the IPO. What are your expectations for our level of section 404 preparedness?
- What anti-takeover measures do you believe best serve companies like us?

Aftermarket Support

- What are your firm's views on stabilization activities and strategies, including willingness to commit capital?
- Who will be primarily responsible for trading our stock on behalf of your firm, and will that person be accessible to us after the IPO?
- Please describe your firm's aftermarket services, including non-deal road shows.
- What conferences and other industry or investor events does your firm sponsor that are suitable for our participation?
- For each of the completed IPOs in which your firm served as a lead manager in the past two years, please provide the following information:
 - Has the company undertaken a follow-on offering? If so, what was your firm's role? What was the split between primary and secondary shares in each?
 - Has the company engaged in any M&A transactions? If so, did your firm participate in an advisory capacity?

Research Coverage

- What are your practices with respect to pre-deal research, as permitted by the JOBS Act?
- Has your firm initiated research coverage on each of the companies for which you served as a lead manager in the past two years?
- Has your firm dropped research coverage for any of these companies? If so, why?

Other Questions

- Why do you believe you are a good match for us, and us for you?
- What qualitative factors do you believe distinguish your firm from others?
- What law firm do you anticipate engaging as underwriters' counsel? Are you receptive to input from us on the selection?
- Is your firm working with any of our competitors on IPOs or other engagements? If so, how do you plan to address potential conflicts of interest?

§ 9:7 Underwriters' Counsel

The lead managers will select an outside law firm to serve as underwriters' counsel, but will often consider the company's views. Many law firms are qualified to act as underwriters' counsel. From the company's perspective, what are the most important factors in the decision?

First and foremost—not surprisingly—is experience with IPOs and the company's industry. But the lead managers are very unlikely to select an inexperienced firm as counsel, so what kind of meaningful input can the company realistically provide? There are several possibilities. If company counsel has had especially good working experiences with another law firm on several IPOs, that firm could be suggested for consideration as underwriters' counsel. Conversely, if company counsel has reason to believe that a particular firm would be a poor match for the company's IPO, that fact could also be shared diplomatically with the lead managers. Sometimes the company picks its counsel from between two law firms that are equally experienced, capable, prepared, and enthused; in this case, the company may wish to suggest that the runner-up be considered as underwriters' counsel. If the lead managers are uninterested in the company's input, however, the company should not be unduly concerned, since the choice of underwriters' counsel from among many possible firms is not as important to the success of the IPO as the selection of company counsel.

§ 9:8 Consultants and Advisors

IPO companies regularly retain additional consultants and advisors, such as a compensation consultant, investor relations firm, road show consultant, and accounting consultant.

§ 9:8.1 Compensation Consultant

Many companies going public engage a compensation consulting firm to help them with a variety of compensation-related issues and decisions that accompany an IPO. When selecting a compensation