

# SAMPLE IPO CHECKLIST

The following is an illustrative example of key workstreams to be completed between the initiation of an IPO process and the closing of the transaction. Depending on the specific circumstances of your IPO, certain items noted below may not be applicable and other items may be required. Your Ropes & Gray team will prepare a tailored checklist for your specific circumstances.

<i>Abbreviations</i>	
<i>CO</i>	Issuer
<i>CC</i>	Company Counsel
<i>LC</i>	Local Counsel
<i>SSC</i>	Selling Stockholder Counsel (if applicable)
<i>UW</i>	Underwriters
<i>UWC</i>	Underwriters' Counsel
<i>IA</i>	Independent Auditors
<i>TA</i>	Transfer Agent
<i>SS</i>	Selling Stockholder(s) (if applicable)

Document/Action to be Taken	Resp. Party
<b>A. Preliminary Matters</b>	
1. General	
1.1 Hold organizational meeting	ALL
1.2 Create working group list	UW
1.3 Select data room provider and set up data room for diligence	CO
1.4 Select financial printer	CO
1.5 Review with auditors scope of work to be required, likely timing of offering, comfort letter matters and required financials, including any acquisition financials	CO, CC
1.6 Review communications plans, website content and upcoming public announcements, presentations, conferences, published articles, etc. to assure no "market conditioning"	CO, CC
1.7 Obtain EDGAR filing codes for IPO issuer	CO, CC
1.8 Select stock exchange and reserve ticker symbol	CO

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1.9 Select transfer agent	CO
1.10 Determine required legal opinions, including any local counsel or specialist opinions	CO, CC, UW, UWC
1.11 Prepare and circulate D&O Questionnaires	CO, CC
1.12 Prepare and circulate FINRA questionnaires	CO, CC, UWC
1.13 Consider capitalization in light of (a) advice of underwriters and (b) stock exchange minimums, and determine whether a charter amendment to effect stock split to adjust IPO price is desirable	CO, CC, UW
1.14 Prepare website for compliance with Section 16 and stock exchange rules	CO, CC
<b>2. General Diligence</b>	
2.1 Prepare back-up book for statistical and market data that will be included in S-1	
2.2 Review Board minutes and: (1) identify deficiencies / discrepancies in corporate record keeping; and (2) develop and institute plan to remedy (e.g., board ratifications)	CC, UWC
2.3 Review charter to (1) confirm due incorporation and due amendment each time and (2) determine mechanics for securities convertible upon the IPO	CC, UWC
2.4 Run good standing check on Company and all subsidiaries in home and foreign jurisdictions	CC
2.5 Review officer/director election records (incumbency trail) and: (1) identify deficiencies / discrepancies in corporate record keeping; and (2) develop and institute plan to remedy (e.g., board ratifications)	CC
2.6 Review franchise and filing taxes (Title 8, Ch 5 Section 503 of Del. Code)	CC
2.7 Review current capitalization records, including: (1) identify exact number of common and preferred shares outstanding; (2) identify exact number of options, warrants and other equity awards outstanding; (3) ensure issuances match all ledgers; and (4) develop and institute plan to remedy (e.g., board ratifications)	CC
2.8 Conduct “stock trace” for outstanding shares, including review of: (1) due authorization; (2) valid issuance, and (3) payment	CC
2.9 Review materials from prior offerings to assure valid private offerings and no integration issues (e.g., information necessary to support 4(a)(2) exemption, 701 prospectus)	CC
2.10 Review (1) outstanding options and stock grants and (2) equity plans and: (a) identify any deficiencies regarding documentation; and (b) develop and institute plan to remedy	CC
2.11 Confirm and review material agreements and determine whether any redactions are necessary	CO, CC
<b>3. Securities Law Issues</b>	

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3.1 Review registration process issues, including: <ul style="list-style-type: none"> <li>• Pre-registration:               <ul style="list-style-type: none"> <li>• EGC analysis (at time of confidential submissions and first public filing)</li> <li>• Gun jumping and quiet period</li> <li>• No offers (press release and tombstones, including 135 safe harbor)</li> <li>• “Test-the-waters” communications with QIBs and IAIs permitted</li> </ul> </li> <li>• Post-filing, pre-effectiveness:               <ul style="list-style-type: none"> <li>• Oral offers permitted</li> <li>• “Test-the-waters” communications with QIBs and IAIs permitted</li> </ul> </li> <li>• Post- effectiveness               <ul style="list-style-type: none"> <li>• “Free writing”: supplementing sales material, preceded or accompanied by final prospectus</li> </ul> </li> <li>• Prospectus delivery requirements</li> </ul>	CO, CC, UW, UWC
3.2 Prepare and circulate memo regarding communication restrictions prior to effectiveness	CO, CC
3.3 Determine if there will be a foreign offering component and issues related to it ( <i>Note</i> : appropriate legends will need to be added to the “Underwriting” section of the S-1)	CO, CC, UW, UWC
3.4 Identify any ‘40 Act issues (i.e., determining whether investments as a % of assets trigger ‘40 Act obligations)	CO, CC
3.5 Consider whether there will be a Directed Share Program	CO, CC
4. Corporate Governance	
4.1 Determine the need for anti-takeover protections in the charter, including: <ul style="list-style-type: none"> <li>• Opt-in or opt-out provisions of state law (e.g., DGCL §203)</li> <li>• Staggered board (DGCL §141/d)</li> <li>• Restrict right of stockholders to call meeting (DGCL §211(d))</li> <li>• Only stockholder meetings; no written consents (DGCL §228)</li> <li>• Fix number of directors (DGCL §141(b))</li> <li>• Blank check preferred</li> <li>• Supermajority to amend charter and bylaws (DGCL §§ 102(b)(4), 216)</li> </ul>	CO, CC
4.2 Amended and Restated Certificate of Incorporation—to make appropriate for public company, including anti-takeover provisions above and eliminating director personal liability	CO, CC
4.2.1 Pre-clear charter with Secretary of State prior to filing	CC
4.3 Amended and Restated Bylaws—to make appropriate for public company, including advance notice for nominations and proposals	CO, CC
4.4 Review corporate governance requirements and compliance timelines in light of (1) SEC rules; (2) stock exchange rules; (3) state law; and (4) current best practice	CO, CC

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4.5 Identify composition of: <ul style="list-style-type: none"> <li>● Board, including total number and number to be independent (consider in light of “controlled company” status)</li> <li>● Identity of chairman of board; non-management?</li> <li>● Audit committee, total number (one independent at effectiveness; majority after 90 days; all after 1yr) and at least one financial expert</li> <li>● Compensation committee, total number (one independent at closing; majority after 90 days; all after 1yr) Nominating/governance committee, total number (one independent at closing; majority after 90 days; all after 1yr)</li> <li>● Section 16 subcommittee</li> </ul> (Note: D&O questionnaires will aid in independence/expert evaluations.)	CO, CC
4.6 Prepare committee charters and governance policies	CO, CC
4.6.1 Audit Committee Charter	CO, CC
4.6.2 Compensation Committee Charter	CO, CC
4.6.3 Nominating/Governance Committee Charter	CO, CC
4.6.4 Corporate Governance Guidelines	CO, CC
4.6.5 Code of Ethics	CO, CC
4.6.6 Related Persons Transaction Policy	CO, CC
4.6.7 Insider Trading Policy	CO, CC
4.6.8 Regulation FD Policy	CO, CC
4.6.9 Whistleblower Policy	CO, CC
4.6.10 Clawback Policy	CO, CC
4.6.11 Indemnification Agreements for Directors and Officers	CO, CC
4.7 Consider D&O insurance matters	CO, CC
5. Investor and Third-Party Matters	
5.1 Review registration rights and coordination agreements to determine (1) IPO participation rights and (2) whether changes will be necessary for post-IPO liquidity	CO, CC, SS, SSC
5.2 Review stockholder agreements for investor governance rights and confirm private-company specific rights will terminate upon the IPO	CO, CC, SS, SSC
5.3 Review other third-party agreements to determine if (1) notice, (2) waiver or (3) consents needed for: (a) any of the corporate clean-up being engaged in; (b) IPO; (c) registration statement; (d) equity issuance; (e) disclosure of third party or of arrangement	CO, CC
5.4 Identify and address any related party transactions	CO, CC
6. Employee Matters and Benefit Plans	
6.1 Consider (1) equity incentive plan, (2) director plan, (3) bonus plan and (4) ESPP with proper input from tax and benefits team	CO, CC

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6.2 Review existing plans to confirm compliance with Code and ERISA ( <i>Note</i> : Discuss changes to existing plans with auditors for potential accounting consequences)	CO, CC
6.3 Review employment agreements and consider whether modifications, including 409A amendments and/or change of control protections, are necessary	CO, CC
6.4 Consider the need for employee confidentiality, invention assignment and non-compete agreements	CO, CC
<b>B. Securities Act Registration—Registration Statement on Form S-1</b>	
1. Initial Draft	
1.1 Prepare draft registration statement on Form S-1	ALL
1.2 Seek input from IP, regulatory, tax, benefits and other counsel, as applicable	CO, CC
1.3 Prepare exhibit filings	CO, CC
1.3.1 Determine material contracts	CO, CC
1.3.2 Prepare redactions of terms in material contracts, if applicable	CO, CC
1.4 Coordinate cover art and any photos or graphics inside prospectus	CO
2. SEC Review	
2.1 Review recent SEC comment letters and current “hot button” issues	CO, CC
2.2 Review comments and prepare response letter and revised disclosure ( <i>Note</i> : Initial SEC comments typically received within 30 days)	ALL
2.3 Submit confidential price range ( <i>Note</i> : Allow sufficient time to resolve any “cheap stock” issues)	CO, CC
3. First Public Filing of Form S-1	
3.1 Obtain auditor consent(s) for first public filing of S-1 and each amendment	CO
3.2 Wire SEC fee	CO
3.3 Prepare and distribute signature page with Power of Attorney (including 462/b language)	CO, CC
4. Acceleration of Form S-1	
4.1 Company’s acceleration request letter	CO, CC
4.2 Underwriters’ support for acceleration	UWC, CC
<b>C. Exchange Act Registration</b>	
1. Form 8-A and Related Matters	
1.1 Prepare and file Form 8-A for effectiveness prior to trading ( <i>Note</i> : Timing may depend on whether there are any pre-IPO transactions contemplated)	CO, CC

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Document/Action to be Taken	Resp. Party
1.2 Determine Section 16 insiders (directors, officers, 10% owners) and: <ul style="list-style-type: none"> <li>• Inform them, including explanatory memo</li> <li>• Apply for Forms ID</li> <li>• Prepare Form 3 and POA for signature</li> <li>• Edgarize and file Forms 3 on 8-A effective date</li> <li>• Prepare, Edgarize and file Forms 4 for sales/acquiring and converting preferred stock</li> </ul> <i>(Note: Institutional investors generally handle their own Section 16 filings)</i>	CO, CC, SS, SSC
1.3 Determine 5% holders and inform them of Section 13d/g obligations <i>(Note: Institutional investors generally handle their own Schedule 13D/G filings.)</i>	CO, CC, SS, SSC
<b>D. Underwriting Matters</b>	
<b>1. Underwriting Agreement and Related Documents</b>	
1.1 Underwriting Agreement	CO, CC, UW, UWC, SS, SSC
1.2 Lock-Up Agreements	
1.2.1 Negotiate for company, directors, officers and stockholders	CO, CC, UW, UWC, SS, SSC
1.2.2 Review existing lock-up obligations (eg, in award agreements and stockholder agreements)	CO, CC
1.3 Comfort letter	IA, UWC
1.3.1 Prepare circle-up of figures tied to the Company's accounting records and negotiate with auditors	UWC
1.3.2 Consider need for CFO certificate for figures that auditors will not comfort (eg, preliminary or "flash" data)	CO, CC, UWC
<b>2. FINRA Matters</b>	
2.1 FINRA Public Offering System Filings	
2.1.1 Collect FINRA questionnaires from directors, officers, 5% holders and persons who acquired Company securities within 180 days	CO, CC, UWC
2.1.2 Make a filing within 1 Business Day of each S-1 filing (including amendments and, if an EGC, each confidential submission)	UWC
2.1.3 Wire FINRA fee with initial filing (or, if an EGC, first confidential submission) <i>(Note: Fee is currently \$500 plus 0.015% of the maximum aggregate offering price, subject to a cap of \$225,000)</i>	CO
2.1.4 Review and respond to comment letters	UWC
2.2 Obtain FINRA No Objections Notice prior to anticipated Securities Act effectiveness and ensure FINRA examiner communicates this to SEC examiner	UWC
<b>3. Blue Sky Matters</b>	
3.1 Preliminary Blue Sky Memorandum	UWC
3.2 Final Blue Sky Memorandum	UWC

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4. Miscellaneous	
4.1 Prepare any “test-the-waters” materials	CO, CC, UW, UWC
4.2 Prepare road show presentation	CO, CC, UW, UWC
4.3 Schedule analyst meetings	CO, UW
4.4 Determine need for and prepare any Canadian wrappers	UW, UWC
4.5 Order good standing and foreign qualification certificates to be delivered to UWC at pricing	CC
<b>E. <i>[Selling Stockholder Matters]</i></b>	
1. Documents for Selling Stockholder Participation	
1.1 [Amendment to Registration Rights Agreement / Amendment to Stockholders Agreement]	CO, CC, SS, SSC
1.2 Consider short-swing profits issues for Section 16 reporting persons (including pre-registration transactions for officers and directors, including directors by “deputization”)	CO, CC, SS, SSC
1.3 [Demand Notice]	CO, CC
1.4 [Piggyback/Tag-along Notice]	CO, CC
1.5 [Waiver of Registration Rights]	CO, CC
1.6 Custody Agreement	CC, UWC, SS, SSC
1.7 Power of Attorney	CC, UWC, SS, SSC
1.8 Selling Stockholder Questionnaire	CO, CC, SS, SSC
1.9 Stock Certificate/Option Agreement	SS
1.10 Stock Power/Notice of Exercise	SS, SSC
1.11 Tax Forms (W-8 or W-9)	SS
1.12 Certified copies of instrument granting signatory authority (if an entity)	SS
1.13 Spousal consent (if applicable)	SS
1.14 Manner of Payment/Wire Instructions	SS
<b>F. <i>Corporate Authorizations</i></b>	
1. Board Approvals	

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Document/Action to be Taken	Resp. Party
1.1 Board Resolutions, including: <ul style="list-style-type: none"> <li>• Authorize issuance and sale of the securities</li> <li>• Approving form of UA and its execution</li> <li>• Establish pricing committee</li> <li>• Approve registration statement, prospectus, amendments, etc.</li> <li>• Authorize listing on NASDAQ/NYSE</li> <li>• Authorize blue sky filings</li> <li>• Authorize transfer agent and registrar</li> <li>• Adopting, for shareholder approval, new benefit plans</li> <li>• Approve all corporate clean-up matters, including ratifications</li> <li>• Approve form of stock certificate</li> <li>• Approve any stock split</li> </ul>	CO, CC
2. Stockholder Approvals	
2.1 Stockholder Resolutions to approve charter and bylaw amendments, new benefit plans and all clean-up matters (e.g., reverse stock split, preferred stock conversion, ratifications)	CO, CC, SS, SSC
2.2 228(e) notice to minority shareholders notifying them of stockholders' consents approved	CO, CC, SS, SSC
3. Pricing Committee Approvals	
3.1 Obtain Pricing Committee approval at pricing for: <ul style="list-style-type: none"> <li>• Underwriting Agreement</li> <li>• Number of shares offered and sold</li> <li>• Price to public</li> <li>• Underwriter discount</li> </ul>	CO, CC
<b>G. Stock Exchange Matters</b>	
1. Listing Application and Related Documents	
1.1 Review initial listing requirements and procedures	CO, CC
1.2 Prepare and submit Listing Application, including required supporting documents, after filing S-1	CO, CC
1.3 Supplement application with (1) Form 8-A, (2) marked copy of each amendment, and (3) copy of letter requesting concurrent effectiveness of 8-A and S-1, if applicable	CO, CC
1.4 Notify exchange at least 4 business days prior to effectiveness	CO, CC
1.5 Forward copies of final prospectus	CO, CC
1.6 Obtain letter approving listing and ticker	CO, CC
<b>H. Transfer Agent and CUSIP Matters</b>	
1. Transfer Agent and CUSIP Matters	
1.1 Prepare and submit letter of appointment	CO, CC
1.2 Discuss IPO process with transfer agent, including shifting books and records and conversion of any preferred stock or other convertible securities	CO, CC

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Document/Action to be Taken	Resp. Party
1.3 Discuss need for bank note company and, if applicable, draft form of stock certificate in accordance with state law requirements	CO, CC
1.4 Submit CUSIP request, attaching requested supporting documents	UW, UWC
1.5 Submit DTC Blanket Letter of Representations	CO, CC, UW, UWC
1.6 Submit 871(m) Attestation to DTC	CO, CC, UW, UWC
<b>I. Pricing Activities</b>	
1. Mechanics	
1.1 Determine Underwriters' printing timetable, including exact day, hour and address to deliver (A) preliminary and (B) final prospectus; and determine when books must be (1) sent to printer to be typeset and (2) clear to print to meet the delivery schedules ( <i>Note:</i> Need several days' lead time to clear graphics and cover)	UW
1.2 Prepare and submit written request for acceleration at least 2 business days prior to anticipated effectiveness ( <i>Note:</i> Staff will await oral instructions following the written request)	CO, CC
1.3 Submit underwriters' support letter	UW, UWC
1.4 Pricing committee (full committee or full Board required) prices the deal	CO
1.5 Identify possible recirculation issues (e.g., pricing outside of "the range")	CO, CC, UW, UWC
1.6 Exchange signature pages on UA	CO, CC, UW, UWC, SS, SSC
1.7 Prepare 462(b) registration statement for any up-sizing and file prior to 10:00 p.m. ET on pricing date	CO, CC
1.8 Press release announcing pricing of offering	CO, CC, UW, UWC
1.9 Complete and clear to print final prospectus	CO, CC, UW, UWC
1.10 File 424(b) prospectus	CO, CC
<b>J. Closing Activities</b>	
1. Mechanics	
1.1 Conduct bring-down diligence call	CO, CC, UW, UWC
1.2 Confirm receipt of all deliverables	CC, UWC
1.3 UWC clears UW to wire proceeds	UWC
1.4 UW wire proceeds and CO/SS confirms receipt (or Fed. Ref. Wire No.)	UW
1.5 Schedule closing call with transfer agent for CO/SS to authorize release of shares	CO, CC, UW, UWC, SS, SSC
1.6 Release Cross Receipt	UWC, CC
2. Underwriting Agreement Deliverables ( <i>Note:</i> See also Legal Opinions)	

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Document/Action to be Taken	Resp. Party
2.1 Officer's Certificate to UW	UWC, CC
2.2 Secretary's Certificate to UW	UWC, CC
2.3 Selling Stockholders' Certificate to UW	UWC, SSC
2.4 Bring-down good standing certificates	CC
3. Transfer Agent Documents	
3.1 Certificate of the Transfer Agent and Registrar	TA
3.2 Instruction Letter to Transfer Agent	CO, CC, SS, SSC
3.3 Registration and Delivery Letter from UW	UW
4. Legal Opinions (Delivered by respective counsel)	
4.1 Issuer's Counsel Exhibit 5.1 Opinion	CC
4.2 Issuer's Counsel Opinion to UW	CC
4.2.1 Support Certificate from Company	CO, CC
4.3 Issuer's Counsel Negative Assurance Letter	CC
4.3.1 Confirm no stop-orders on the closing date	CC
4.4 Issuer's Counsel Opinion to Transfer Agent	CC
4.5 [Selling Stockholder Counsel Opinion]	SSC
4.5.1 Review relevant constituent documents, if an entity	SSC
4.5.2 Support Certificate from Selling Stockholders	SS, SSC
4.6 [Local Counsel Opinions]	CO
4.7 [IP Counsel] [Regulatory Counsel] [Other Specialist] Opinion	CO
4.8 Underwriters' Counsel Opinion	UWC
4.9 Underwriters' Counsel Negative Assurance Letter	UWC
5. Miscellaneous	
5.1 Closing Memorandum	UWC
5.2 Cross-Receipt	UWC, CC
5.3 Registration Statement on Form S-8	CC
5.4 Issuer's Counsel Exhibit 5.1 opinion for Form S-8	CC