

WINSTON
& STRAWN
LLP

PUBLIC COMPANIES

IPO Portal Glossary

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1933 ACT

See *Securities Act of 1933*.

1934 ACT

See *Securities Exchange Act of 1934*.

ACCELERATED FILER

A reporting company that has a public float of at least \$75 million (but less than \$700 million), has been subject to the Exchange Act's reporting requirements for at least 12 months and has previously filed at least one annual report. See *large accelerated filer and non-accelerated filer*.

ALL-HANDS MEETING

A meeting that occurs during preparation for an IPO that is attended by company representatives and counsel, independent auditors, and underwriters and counsel.

ALL-OR-NONE AGREEMENT

A type of best-efforts underwritten offering. If the underwriter is not able to sell all of the shares, none of the shares will be sold and the offering will be cancelled.

ANALYST

An individual, usually at an investment bank, who analyzes an industry and the companies within the industry for the purpose of providing investment advice.

BEST-EFFORTS AGREEMENT

An agreement in which the underwriters of a public offering use their best efforts to sell the offered shares; however, they have no obligation to purchase shares not purchased by investors.

BLUE SKY LAWS

State securities regulations enacted to protect investors. In addition to the 1933 Act and the 1934 Act, various states also have securities laws that may apply to a securities offering and regulate securities fraud.

BROKER

Individuals or firms that trade securities. Brokers execute trades of securities in return for a fee or commission. They do not own the securities and, therefore, do not share in the risks of ownership.

CAPITAL MARKETS ADVISOR

An independent IPO advisor that can provide advice on the company's story, valuation, the IPO process, and the likelihood of executing a successful IPO.

CAPITALIZATION

The total amount of a company's outstanding securities, including short-term debt, long-term debt and equity securities.

CHEAP STOCK

Common stock, stock options, warrants or other potentially dilutive instruments or securities issued to employees, consultants, directors or others providing services to an issuer at a price lower than the public offering price.

CHIEF OPERATING DECISION MAKER (CODM)

The person who allocates resources to and assesses the performance of a company's operating segments. The CODM is responsible for making strategic decisions about those segments.

CLOSING

The culmination of the IPO process in which the company delivers its securities to the underwriter and receives payment therefor. In the US, the closing is usually 120-180 days after the IPO is launched.

COMMENT LETTER

A letter written by the staff of the SEC's Division of Corporation Finance that requests revisions to the registration statement, the inclusion of additional information, or information about the company.

COMPENSATION DISCUSSION AND ANALYSIS (CD&A)

A part of a company's annual proxy statement that provides information about the compensation objectives and policies with respect to a company's named executive officers.

COMPLIANCE AND DISCLOSURE INTERPRETATIONS (C&DIS)

Interpretations of the staff of the Division of Corporation Finance regarding various SEC rules and regulations.

CONFIDENTIAL SUBMISSION

A process whereby a draft registration statement is submitted confidentially to the SEC for review. The process is intended to give issuers more flexibility to plan their offering and reduce exposure to market fluctuations that can negatively impact an offering. The issuer must confirm that it will publicly file its registration statement and all confidential submissions at least 15 days prior to any road show or, in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement.

CONTROLLED COMPANY

A company of which more than 50 percent of the voting power is held by an individual, a group or another company. Such a company may rely on stock exchange exemptions to avoid certain governance listing standards.

CONVERTIBLE SECURITIES

Corporate securities (usually preferred stock or debt) that are exchangeable into a number of shares of common stock at an agreed price.

COOLING-OFF PERIOD

See Waiting period.

DEALER

An individual or firm that trades securities. Dealers trade securities for others as well as for their own account. Dealers may own the securities and be subject to the risks of ownership.

DILUTION

A reduction in an existing shareholder's ownership percentage of a company when the company issues additional shares. Dilution in an IPO results from a disparity between the public offering price in an IPO and the effective cash cost to persons who acquired shares prior to the IPO. Dilution is disclosed in the registration statement in a dilution table.

DILUTIVE SECURITIES

Securities whose issuance, exercise or conversion would decrease EPS.

DIRECTORS' AND OFFICERS' (D&O) LIABILITY INSURANCE

Liability insurance covering directors and officers for claims made against them while serving on a board of directors and/or as an officer of a company.

DIRECTORS' AND OFFICERS' (D&O) QUESTIONNAIRES

Questionnaires circulated by the company's and underwriters' counsel during the registration process. The questionnaires collect and confirm various data and other information included in the registration statement.

DIVISION OF CORPORATION FINANCE

A division of the SEC which, among other things, reviews and comments on registration statements filed with the SEC.

DUE DILIGENCE

A thorough examination of a company intending to go public conducted by the underwriters and their counsel to independently identify and verify information about the company and its business that must be disclosed in the registration statement.

EARNINGS PER SHARE (EPS)

A company's net income divided by the number of its common shares outstanding and adjusted for certain dilutive securities such as stock options, warrants and convertible debt.

EFFECTIVE DATE

The date on which the registration statement is declared effective by the SEC and the sale of securities begins.

ELECTRONIC DATA GATHERING, ANALYSIS AND RETRIEVAL (EDGAR) SYSTEM

The SEC's electronic database system for filing forms with the SEC, including registration statements and periodic reports under the 1933 and 1934 Acts.

EMERGING GROWTH COMPANY (EGC)

An issuer with:

- Less than \$1.07 billion in gross revenue;
- Less than \$1 billion in issuances of non-convertible debt in a 3-year period; and
- Less than \$700 million in worldwide public float.

EMPLOYEE STOCK OWNERSHIP PLAN (ESOP)

A plan instituted by a company that gives stock to its employees to attract and retain talent.

EXEMPT OFFERING

A securities offering that does not require registration with the SEC.

EXPERTS

Independent auditors, accountants, engineers or others whose expertise qualify them as specialists in their respective fields.

EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL)

A financial and operational business reporting language, which is a freely-licensable, open technology standard for electronically exchanging such information.

FINAL PROSPECTUS

A final document circulated to all purchasers of stock disclosing material facts about the company and its financials and the details of the offering. Typically preceded by a preliminary prospectus, also known as a "red herring", which is incomplete in that it does not include final pricing information.

FINANCIAL ACCOUNTING STANDARDS BOARD (FASB)

A private standard-setting body whose primary purpose is to establish the financial accounting and reporting standards in the United States, known as Generally Accepted Accounting Principles (GAAP).

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

An independent, self-regulatory organization (SRO) that regulates and oversees its member brokers as well as the stock exchange markets. FINRA reviews public offering filings and provides regulatory guidance on fair and reasonable underwriting arrangements.

FINANCIAL PRINTER

A printer that specializes in the printing of financial documents, including registration statements, prospectuses and proxy statements. These printers also convert documents to an EDGAR format for electronic submission to the SEC.

FINANCIAL REPORTING MANUAL (FRM)

Manual containing interpretations by the staff of the Division of Corporation Finance regarding financial reporting matters.

FIRM COMMITMENT UNDERWRITING

A type of offering in which the underwriter agrees to purchase all of the shares being offered. Any shares not sold to the public are paid for and held by the underwriters.

FIXING AMERICA'S SURFACE TRANSPORTATION ACT (FAST ACT)

Legislation, enacted on December 4, 2015, to provide new accommodations to facilitate capital formation by smaller companies, including changes to the requirements applicable to emerging growth companies (EGCs) under the JOBS Act.

FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

An act requiring that foreign financial institutions and other non-financial foreign entities report on the foreign assets held by their US account holders or be subject to withholding.

FOREIGN PRIVATE ISSUER (FPI)

Any foreign issuer desiring to raise capital in the US, unless:

- More than 50 percent of the issuer's outstanding voting securities are held directly or indirectly by residents of the US; and
- Any of the following applies:

- The majority of the issuer's executive officers or directors are US citizens or residents;
- More than 50 percent of the issuer's assets are located in the US; or
- The issuer's business is administered principally in the US.

FORM 8-K

A form required to be filed by registrants with the SEC when certain significant or "material" events occur, such as mergers and acquisitions, changes in management, and director resignations. The form generally must be filed with four business days of the event triggering disclosure.

FORM 10-K

An annual report required to be filed with the SEC pursuant to the 1934 Act, which provides a comprehensive overview of a company's business and financial condition and includes annual audited financial statements.

FORM 10-Q

A quarterly report required to be filed with the SEC pursuant to the 1934 Act.

FORM S-1

The standard form of registration statement used in the IPO of securities by a domestic US company for which no other form is authorized or prescribed.

GOING PUBLIC

The process of a privately owned company selling its ownership shares to the public. See Initial public offering.

GUN JUMPING

A common term describing a situation where offers are made before they are permitted. See Offer and Quiet Period.

INDUSTRY GUIDES

Guides followed by the SEC staff requiring specific disclosures by companies in certain industries.

INITIAL PUBLIC OFFERING (IPO)

The offering or sale of a company's securities to the public for the first time.

INSIDERS

Individuals who may have access to non-public information, such as officers, directors and large shareholders.

INSTITUTIONAL INVESTORS

Large non-individual shareholders, including hedge funds, pension funds, mutual funds, endowment funds, and insurance companies.

INSTITUTIONAL SHAREHOLDER SERVICES (ISS)

A proxy advisory firm that provides research and analysis, governance data and shareholder proxy voting advice to hedge funds, mutual funds and other investors.

INTERNATIONAL ACCOUNTING STANDARDS BOARD (IASB)

A private body that establishes the International Financial Reporting Standards (IFRS) that are used in many international jurisdictions.

INVESTMENT BANKER

A person or a firm that underwrites securities, functions as a broker/dealer, and offers finance and M&A advisory services.

JUMPSTART OUR BUSINESS STARTUPS ACT (JOBS ACT)

Legislation, enacted on April 5, 2012, designed to encourage funding of small businesses in the US by easing securities regulations and therefore making it easier for private companies to access the public capital markets.

LARGE ACCELERATED FILER

A reporting company that has a public float of at least \$700 million, has been subject to the Exchange Act's reporting requirements for at least 12 months and has previously filed at least one annual report. See accelerated filer and non-accelerated filer.

LISTING APPLICATION

A document formally requesting that an issuer's securities be listed on a national securities exchange.

LOCK-UP PERIOD

The period of time after an IPO during which (at the underwriter's request) insiders are prohibited from selling their shares.

MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)

A textual discussion and analysis of a registrant's liquidity, capital resources and results of operations that must be prepared by management and included in registration statements and most 1934 Act reports.

MANAGING UNDERWRITER

The primary decision-maker in a syndicate of underwriters, also referred to as the "lead underwriter."

MARKET WINDOW

The time during which the market is receptive to an offering.

NATIONAL ASSOCIATION OF SECURITIES DEALERS AUTOMATED QUOTATION SYSTEM (NASDAQ)

The NASDAQ is a large electronic stock exchange in the United States.

NEW YORK STOCK EXCHANGE (NYSE)

The NYSE is a large New York-based stock exchange.

NON-ACCELERATED FILER

A reporting company that has a public float of less than \$60 million allowing it to exit accelerated filer status. See accelerated filer and large accelerated filer. See also smaller reporting company.

NON-GAAP FINANCIAL MEASURE

A metric calculated and presented using a methodology not set forth in GAAP and used to supplement GAAP financial reporting to provide investors and other stakeholders with additional insight into an issuer's performance or cash flows.

OFFER

Any attempt or offer to sell, or solicitation of an offer to buy, a security for value. A very broad definition and the SEC has indicated that any publicity that may contribute to the conditioning of the public mind or arousing public interest in an offering can by itself be an offer under the 1933 Act. See *Gun Jumping*.

OPTION

A security giving its owner the right to purchase or sell a company's shares at a fixed date and agreed-upon price.

OVERALLOTMENT OPTION

The sale of shares by the underwriter in excess of those shares initially available. Also referred to as a "greenshoe" option.

OWNERSHIP CHANGE

For US tax purposes, a change in ownership of a corporation during a three-year period of greater than 50 percent, which limits the ability of the corporation to utilize pre-ownership change net operating losses.

POST-EFFECTIVE AMENDMENT

An amendment filed subsequent to the effective date of the registration statement.

POST-EFFECTIVE PERIOD

Period beginning with the effectiveness of the registration statement and ending with the completion of the "distribution" of securities or expiration of the prospectus-delivery period (typically 25 days). Certain communications limitations remain in place during this period.

PRELIMINARY PROSPECTUS

See *Red herring*.

PRICE RANGE

A proposed price per share range for the IPO within which investors can bid for shares and which is often printed on the cover page of a preliminary prospectus. The price range has a minimum price, known as the floor price, and a maximum price, known as the cap price.

PRICING AMENDMENT

Typically, the final amendment to a registration statement prior to effectiveness, which includes the offering price and final pro formas.

PRIMARY OFFERING

An offering in which the company sells newly issued shares and receives all of the proceeds from such sales.

PRIVATE PLACEMENT

An offering that is exempt from the SEC's registration requirements.

PRO FORMAS

Financial statements or financial information prepared as though certain acquisition or financing transactions had already occurred and provides a predicted outcome to investors.

PROSPECTUS

The primary selling document in an offering distributed to potential investors. It provides details about the offering and extensive financial and other information about the company. See also Preliminary prospectus and Final prospectus.

PROXY

A document prepared for a shareholder to authorize another person to act on his/her behalf at a shareholders' meeting.

PROXY STATEMENT

A document required by the SEC to be furnished to shareholders when soliciting shareholder proxies for shareholder meetings.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)

An organization established by the Sarbanes-Oxley Act to oversee the audit of public companies that are subject to US securities laws.

PUBLIC FLOAT

The aggregate market value of voting common stock held by non-affiliates.

QUALIFIED INSTITUTIONAL BUYER (QIB)

A non-individual investor that owns and manages at least \$100 million in securities.

QUIET PERIOD

Also known as the 'pre-filing period,' the period that begins on the date an offering commences (often date that Company retains an investment bank) and ends upon the public filing of the registration statement. Referred to as the quiet period because of the SEC's restrictions on publicity about the company and/or promoting its offering.

RED HERRING

The preliminary prospectus circulated during the waiting period to potential investors. Commonly referred to as a red herring because the disclaimer on the cover was required to be printed in red ink.

REGISTRANT

An entity that must file periodic reports with the SEC.

REGISTRAR

An agent that issues, transfers and cancels stock certificates as stock transactions occur.

REGISTRATION STATEMENT

The primary document required to be filed with the SEC in connection with the issuance of securities. As specified by the Securities Act of 1933, a US domestic registrant generally uses Form S-1 for an IPO.

REGULATION S-K

Regulation that sets forth the disclosure requirements for the non-financial statement portions of filings with the SEC.

REGULATION S-T

Regulation that governs the preparation and submission of documents filed via EDGAR with the SEC.

REGULATION S-X

Regulation that sets forth the financial statements to be included in filings with the SEC and provides rules and guidance on their specific form and content.

RESTRICTED STOCK

Securities usually issued in private placements that have limited transferability.

ROADSHOW

A presentation, or series of presentations, to potential investors, brokers and dealers by the company's executive management team and underwriters to facilitate a securities offering. The presentation can be made in various locations, typically New York, Boston, Chicago and Los Angeles, and can also be held virtually.

RULE 144A

An SEC exemption permitting the resale of securities without registration to qualified institutional buyers (QIBs).

SAFE HARBOR PROVISION

A provision that protects issuers from liability if specified disclosure requirements have been satisfied or, in certain circumstances, if a good-faith effort has been made to comply with such specified requirements.

SARBANES-OXLEY ACT OF 2002 (SARBANES-OXLEY/SOX)

The Act was signed into law on July 30, 2002, and represents the most significant reform in securities laws since they were first enacted.

SECONDARY OFFERING

An offering by a company's shareholders to sell some or all of their stock to the public. The proceeds of a secondary offering are received by the selling shareholders, not the company.

SECURITIES ACT OF 1933 (1933 ACT)

The primary legislation governing offers and sales of securities to the public. Under the 1933 Act, a registration statement containing required disclosures must be filed with the SEC before securities can be offered for sale, and the disclosures therein must comply with the Act's antifraud provisions.

SECURITIES EXCHANGE ACT OF 1934 (1934 ACT)

Legislation governing the trading of securities on the secondary market and regulating the exchanges and broker-dealers as a means of protecting the investing public. The 1934 Act requires companies registered under the 1933 Act to file periodic reports with the SEC and disclose certain information to the public.

SECURITIES AND EXCHANGE COMMISSION (SEC)

The U.S. agency responsible for regulating sales and trading of securities through the federal securities laws, including the 1933 and 1934 Acts.

SMALLER REPORTING COMPANY (SRC)

A company with revenues of less than \$50 million and public float of less than \$75 million. This designation allows companies to qualify for disclosure requirements that are scaled back, making it easier and less costly for smaller companies to comply with the SEC's disclosure requirements.

SOPHISTICATED INVESTOR

An investor who is capable of evaluating the merits of an investment for certain exempt offerings.

SPECIAL PURPOSE ACQUISITION COMPANY (SPAC)

Publicly-traded company that raises investment funds through an IPO for the purpose of completing an acquisition of an existing company, sometimes in a specified industry. The money raised through the IPO of a SPAC is held in a trust until the SPAC identifies a target for acquisition.

STAFF ACCOUNTING BULLETIN (SAB)

Bulletin detailing accounting-related interpretations and practices followed by the SEC staff.

STALENESS

The point in time during the year when certain financial statements become so old that the company will be required to include the subsequent quarter's financial statements and, with respect to third-quarter financial statements, the company will be required to include annual audited financial statements.

STOCK OPTION PLANS

Plans whereby employees are granted options to purchase a company's stock at a stated price within a specified period of time.

SYNDICATE

A group of investment banks that act together to underwrite and distribute an offering to achieve wider distribution and minimize risk.

TAX RECEIVABLE AGREEMENT (IRA)

An agreement between the pre-IPO investors and the company to share tax savings recognized by the company as a result of certain tax attributes available due to the form of the transaction (typically, net operating losses and tax-basis step-ups).

TESTING THE WATERS (TTW)

Refers to permitted communications and meetings between an issuer that is an EGC and certain sophisticated investors (qualified institutional buyers and institutional accredited investors) to solicit interest in the IPO offering.

TRUST

Fiduciary relationship in which a person, called a trustee, holds property for the benefit of another, called the beneficiary.

UNDERWRITER

A firm that acts as an intermediary between the company and the public in connection with the sale of the company's securities.

UNDERWRITING AGREEMENT

Agreement between the company and the underwriters that sets forth the terms and conditions of a securities offering, including the type of underwriting, the compensation, the offering price and the number of shares.

UP-C STRUCTURE

An IPO structure in which the public invests in a newly formed corporation that uses the IPO proceeds to acquire an interest in a partnership with the historical owners. Any economic interest retained by the pre-IPO investors continues to be in the partnership. The pre-IPO investors have exchangeable partnership units that provide similar liquidity rights as do those in a traditional IPO. A tax receivable agreement is typically executed in conjunction with the offering.

WALL CROSSING

The disclosure of confidential or inside information regarding the Company to recipients who agree to maintain confidentiality and trading restrictions. Often used in connection with testing the waters communications and discussions with potential investors.

WAITING PERIOD

The period of time between the public filing of a registration statement with the SEC and the date the registration statement becomes effective. During this period, no sales may take place. Written offers may only be made with a prospectus meeting the requirements of Section 10 of the Securities Act. Certain oral offers including roadshow presentations may occur during this time along with TTW activities with certain potential investors.

WARRANT

A security entitling its owner to purchase shares in a company under specified terms.