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## Securities Industry Experts Clarify the Realities of Taking a Private Company Public

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Public CEO, officers and directors fall into two camps: “Going public was the best decision we ever made,” and “If we knew then what we knew now, we would have stayed private.”

There is a very simple reason that going public transactions like IPO’s and [reverse mergers](#) bad. The control persons who decided to access the public markets were most likely authorities and experts in their respective fields - biotechnology, communications, transportation and entertainment - but they had a fundamental lack of understanding of what is involved in [going public](#), and successfully staying public.

Taking a private company public is nothing short of building a new company on top of an existing company. In the same manner that the private company was built, through careful planning, persistence and the ability to adapt, the creation of the new public requires the same degree, if not more, of the same elements.

### Considerations Prior to Going Public

Prior to even making the final decision to go public, the control persons of the private entity should carefully do a SWOT analysis by assessing their strengths, weaknesses, opportunities and threats. More importantly, they need to have a clearly defined reason as to why they intend to go public in the first place.

Jason Paltrowitz is the Executive Vice President of Corporate Services at OTC Markets Group Inc. OTC Markets Group’s financial markets, including the [OTCQX](#) and [OTCQB](#), provide investors with the information necessary to intelligently analyze, value and trade 10,000 U.S. and global securities.

“Having a publicly traded stock can provide enormous advantages to companies that are ready - from the ability to raise capital from the public markets and a public market valuation to increased visibility with customers, partners and investors and the ability to attract and incentivize top-notch talent,” Paltrowitz said. “My advice to private companies that are considering going public - whether via the new SEC [Regulation A+](#), a SPAC or other method - is to have in place a strong management team and team of advisors (legal, accounting and potentially an IR firm), have your financial statements in order and select the public market that is the right fit for your business.”

Generally speaking, CEO’s and directors of private companies believe that going public means the end of their capitalization concerns. The urban legend surrounding going public is that money simply falls from the sky. The money may indeed fall, but at first it’s going to fall out of the company coffers.

The creation of detailed business plans, PCAOB audits, legal fees, and manpower hours all cost money. The old adage of having to spend money to make money directly applies.

Internal “point men” assigned the task of preparing the company to go public will either have to be hired, increasing payroll expenses, or be reassigned from their existing responsibilities, compromising the performance of their previous duties. Either way, the bottom line is going to be impacted.

#### Raising Capital

Initial public offerings for small and emerging companies tend to be small; many are self-underwritten, and the capital raised is not enough to support needed growth. If the private company becomes a publicly traded entity through a reverse merger, the element of the capital raise is still a completely separate endeavor. Small companies that go public do not automatically have access to investment capital. Subsequent, well-planned capital raises such as PIPE’s and follow-on registered offerings must be initiated.

Mr. Leonard J. Sokolow is the President and CEO of Newbridge Financial Inc. and Chairman of Newbridge Securities Corporation. He possesses more than two decades of investment banking experience and is one of the most respected authorities in the public markets. Mr. Sokolow served as CEO of Union Atlantic LC, co-founded vFinance, Inc., served as President and CEO of Genesis Partners, Inc., and also served as the President of National Holdings Corporation.

“Those who would be deemed controls persons, especially officers and directors, of a public company should understand that a liquidity event for their share ownership should not be the primary driver of their decision to go public,” said Mr. Sokolow. “More likely than not, a liquidity event would be the result of value created, often ultimately realized in the form of a sale to or merger with a strategic company, for all of the stakeholders because of the compelling opportunities being public could provide. These include greater access to capital markets, financial and corporate governance transparency, and the associated business discipline as well as the ability to attract employee talent and effectuate mergers and acquisitions of complementary businesses, products or sales channels,” Sokolow continued.

#### Preparation of Audited Financial Statements

Every private company, regardless of its product or service, generally possesses financial statements. However, GAAP compliant financial statements audited by a PCAOB auditor are a completely different animal.

The PCAOB (Public Company Accounting Oversight Board) was established as a result of the creation of the Sarbanes-Oxley Act of 2002. The board’s aim is to protect investors and other stakeholders of public companies by ensuring that the auditor of a company’s financial statements has followed a set of strict guidelines.

Pubco audited financials are primarily based on the subject company’s existing financials, so if the existing “private variety” financials are in disarray, the creation of audited financial statements becomes even more vexing.

While a private company can successfully operate for years without financials that are current, procedurally correct and generally organized, a public company cannot. Additionally, PCAOB financials are subject to ongoing regulatory compliance and the scrutiny of shareholders. If they’re off by an amount that was considered de minimus when the company was private, they will not fulfill the reporting obligations of the new and improved public company. PCAOB financials are not graded A, B, C, D; they are graded as “pass or fail.”

Marcum LLP is one of the largest independent public accounting and advisory services firms in the United States. Marcum offers traditional accounting, assurance and tax, including domestic

and international tax planning and preparation; the firm's professional services include mergers and acquisition planning, family office services, forensic accounting, business valuation and litigation support.

Kim Lamplough is a Partner in Marcum's Assurance Division. She has more than 30 years of experience providing audit and financial reporting services to both domestic and international companies in the public and private sectors, including commercial, SEC, and not-for-profit clients.

"Going and being public, including the road show involved in attracting and securing investors, puts tremendous demands on top management, including the CFO," Ms. Lamplough said.

"Management should be sure that they already have appropriate skills and experience on their team, make strategic changes, or seek support from external consultants prior to beginning the process. Having a finance and accounting team that understands the requirements and challenges of going public will save time and money, both during the initial registration and on an ongoing basis thereafter. Whether in an [IPO](#) registration or a reverse merger with an existing shell, any company considering a going-public transaction should honestly assess the skills, experience and bandwidth of their finance and accounting team. This assessment should include identifying audit committee candidates. The more like an experienced public company the entity looks at registration, the better the response of investors will be. In short, the demands on a public company's finance and accounting team are very different from those of a private company. Any company looking to be public should address these differences as early in the process as possible."

#### Assembling the Pubco Team

Although some aspects of the going public process can be handled internally, the most important ones require the skill and expertise of a variety of specialists.

The selection of a PCAOB Auditor is a very important one, but the quarterback to the going public transaction is often the [securities attorney](#) and/or corporate and [securities law firm](#). Where there is a banker/underwriter they may take on such a role, but the majority of small company IPO's are self-placed.

Basic common sense dictates that the securities attorney spearheading the going public scenario possess at least ten years of experience in this particular field of endeavor and be currently active in the space.

In the short span of two or three years, applicable securities laws and industry standards can change dramatically; the going public scenarios that worked in 2006 may not work at all today. In addition to current legal expertise in taking private companies public, the securities attorney selected to steer the ship should also possess numerous long-standing working relationships with various corporate service providers and other key persons. Transfer agents, EDGAR filers, investment banks, and contacts within the SEC, FINRA, [DTC](#) and various exchanges are pivotal to the going public process. It is essential that cornerstone relationships already exist between the securities attorney and the aforementioned entities in order for the going public process to run smoothly.

Another crucial component of the pubco team is the investment banker. Although it is difficult for small companies to attract the attention and services of an established investment banking firm, it is possible. Recently, more speculative, visionary investment banking firms with long-term perspectives are making greater efforts to reach out and establish relationships with small companies that, after being carefully evaluated, are believed to possess prosperous futures.

Choosing the right transfer agent is also an important decision. A pubco should be sure to choose a transfer agent that is registered with the SEC and has a wide variety of experience with growth companies. A transfer agent is often an interface with pubco shareholders so it is imperative they are responsive, professional and knowledgeable.

Computershare was founded in 1978 in the suburbs of Melbourne, Australia. At the time it was nothing more than a start-up technology company designed to offer computer services to businesses that needed to automate processes. Today Computershare is one of the world's foremost transfer agent and investor services providers. Due to the fact that Computershare grew from such humble beginnings into a multibillion-dollar international juggernaut that spans 20 countries, has 16,000 employees and services more than 125,000 shareholders, their management team and account executive genuinely understand that even the smallest of public companies can eventually dominate their respective industry.

"If you are considering taking your company public, I recommend taking a holistic view of your company's potential life cycle," stated Jay McHale, President of U.S. Equity Services at Computershare. "Working with a transfer agent that provides a comprehensive suite of services can provide guidance on how they will support your company as it continues to evolve. We offer management of pre-IPO stock certificates, a dedicated team to support a company going public, support for your executives and directors as well as provide exceptional service to your shareholders. As the company grows, we can also provide support for corporate activities including mergers and acquisitions, rights offerings and tender offers as well as employee equity plans and efficient communications programs."

#### Financial Stability of Officers and Directors

The going public process is meticulous, time-consuming and requires absolute focus from the subject company's officers and directors. Since they are concentrating the majority of their time and effort on making the company's public debut a success, it is commonplace for officers, directors and other key persons to overlook their own financial stability. Fortunately, the possibility of losing a key person in the middle of an IPO or a reverse merger because their personal finances have fallen into disarray is a problem that can be avoided.

Chris Johnson is the Managing Director and Head of Wealth Advisory for Stifel Financial. Stifel has extensive financial advisory and capital-raising experience, having completed over 3,100 public offerings, 900 merger and acquisition transactions and 400 private placements since 2000. The company's investment banking practice focuses on the middle market. Stifel manages public offerings of equity and debt securities, raises debt and equity in the private markets, and initiates, structures, and negotiates mergers, acquisitions, and divestitures.

"Private company executives who are thinking about going public should also consider undertaking personal wealth planning 12-18 months prior to the proposed transaction," stated Mr. Johnson. "Unfortunately, executives are often (and rightfully) so focused on corporate-level strategies that they relegate their personal planning to the back burner. Indeed, holistic planning commenced well in advance of a transaction can serve to mitigate income and gift/estate tax burdens while also permitting an executive to focus on pressing, corporate-level issues during the final stages of the IPO."

#### Anticipating the Marketplace

Anticipating the marketplace is a lot like picking the winning horse at the race track: plenty of people do it, but most of them are wrong.

Ironically, this is the one aspect of going public where the CEO and control persons of the private entity have a distinct advantage over the going public specialists. As stated, those

working in accordance with the private company know their sector. They see firsthand if demand for their product or service is increasing or decreasing.

Hypothetically, the founders and operators of a retail website that sells cybersecurity software know if their products are becoming more widely used by an expanding demographic. They will also know who their competitors are, how strong their R&D team is, what potential pitfalls exist, and many other factors that can be collated to create a relatively accurate market forecast.

This is the step in the going public process when effective communication is the most important. In the same respect that these software engineers will have some initial difficulty understanding the dynamics of running a publicly traded company, the going public team will most likely have some trouble understanding how cybersecurity software works, or is even used, by the consumer. Each party must convey their technical knowledge to the other party in an understandable manner. [Going public specialists](#) such as securities attorneys and PCAOB auditors are accustomed to explaining how the going public process works when speaking to clients who have no frame of reference regarding taking a private company public.

By contrast, the software engineers generally speak to other software professionals so they may not be as adept at explaining their product and its importance in layman's terms. So as to avoid a communication breakdown or outright misunderstanding, the specialists who operate the private company should prepare language that can be easily understood by those outside of their technical arena. In doing this task, the business is giving securities counsel language for the company's SEC filings that complies with the federal securities laws' "plain English" requirements.

Once the communication bridge has been crossed, the two parties can then make a calculated projection as to whether prospective shareholders receive the subject company with open arms or raised eyebrows.

#### Building Investor Awareness

In the good old days, before crowded restaurants were silent because all patrons were staring into their mobile devices, building investor awareness was relatively simple. These days the control persons of a publicly traded company must create and operate a rather sophisticated image broadcasting team. If not, the company's history of success, or even its existence, will be the stock market's best kept secret.

Ralph Waldo Emerson once said, "If a man has good corn or wood, or boards, or pigs, to sell, or can make better chairs or knives, crucibles or church organs, than anybody else, you will find a broad hard-beaten road to his house, though it be in the woods."

While this may apply to the success or failure of a private company, it does not apply at all in terms of publicly traded companies. Investors will not undertake investigative research to discern if your company is truly the best in its sector. If the information is not consistent and made readily available, it will not be known.

Since successful private companies with a history of increased earnings (these are the best possible candidates for going public) already possess strong branding and core language that describes their product or service, additional attention must now be given to the individuals responsible for the success and the environment that exists that will permit long-term growth in the future.

One of the key elements that contribute to the success of a publicly traded company is the strength of their management team. Prospective investors need to know that there are some very accomplished professionals dedicating their collective efforts to ensure that the company is not just profitable, but that it has a virtually unlimited growth potential should such potential exist.

Control persons of the public company must also demonstrate their understanding of what it takes to run a publicly traded entity and that their first and foremost concern, aside from the success of the company, is the well-being and satisfaction of their shareholders.

A well-planned and precisely executed media effort is of the utmost importance. The company should release news as newsworthy events occur and be ready to answer any and all shareholder inquiries in a consistent, systematic and timely manner. In some cases these responsibilities can be outsourced, but public companies that take the time and effort to create their own internal media department have a tendency to perform the best over the long haul.

The news that the public company disseminates to the media and subsequently the investment community must be completely accurate. Redundant safeguards must be put into place to ensure that company spokespersons never make a statement that clearly violates regulatory compliance requirements. In addition to traditional fact-checking it is imperative that all communications intended for public distribution are reviewed by corporate and securities legal counsel to ensure absolute compliance.

In business, the only thing more important than the information itself is the source from which it emanates, so the public company must have people in place who perpetually monitor for news and information pertaining to the company that did not originate from the company.

As is obvious, shareholders who accumulate larger-than-average quantities of the company's shares are incentivized by financial gain. Whether they are "long" and want to see the share price improve, or "short" and want to see the share price decline, there are some individuals who will initiate their own media campaign in order to achieve their desired outcome.

Upon discovering any such unauthorized or seemingly manipulative news stories pertaining to the subject company, control persons must take immediate action to identify the source of the information and memorialize the fact that this news was written and disseminated without the company's knowledge or authorization. The FINRA office of Fraud Detection and Market Intelligence picks up on aggressive promotional materials very quickly, and if such materials are being disseminated, the company should expect a call.

Shareholders have become increasingly sophisticated since the advent of the Internet. The dawn of the information age has not only provided shareholders and prospective shareholders with access to more information faster, but has also instilled in them certain expectations regarding how seriously companies maintain their Internet presence.

If the subject company and its corresponding product or service cannot be found on multiple online platforms with a simple Google search, shareholders will perceive that if they cannot locate the aforementioned, others will not be able to as well.

The public company must maintain a consistent presence on Facebook, Twitter, [LinkedIn](#) and all other relevant online platforms so as to ensure investor awareness and investor confidence. Once again, this responsibility falls under the category of media relations and shareholder relations, so it is generally more effectively handled in-house.

Planning to Overcome the Wild Card

"Expect the unexpected": one of the best pieces of advice ever given or taken. Publicly traded companies are basically celebrities; their every action is scrutinized, their appearance is praised or criticized, and thousands of people (hopefully) will develop an ongoing interest in every last aspect of their structure and operations.

This newfound fame means that basically any type of unforeseen circumstance can present itself at any given time. So as to avoid going into "crisis mode," the public company must have people and plans in place that can deal with any eventuality in an effective and professional manner.

Panic breeds fear, and fear breeds more panic, so if the public company's response team is not prepared to address problematic occurrences of an unforeseeable nature, the subject company runs the risk of shareholders engaging in panic selling and/or shareholder lawsuits.

However, in the same fashion that first responder teams are trained, the public company's response team should be comprised of professionals with an even temperament and an abundance of experience in dealing with, and ultimately neutralizing, any and all wild-card scenarios.

SEC Reporting Requirements, Corporate Governance and Internal Controls

The [OTCQX](#) tier of OTC Markets and all national exchanges such as the [NYSE MKT](#) and [NASDAQ](#) have corporate governance requirements for listed companies, including requirements related to having a majority of independent directors, having an audit, compensation and nomination committee, having an annual shareholders meeting and distributing annual reports with audited financial statements to the shareholders. National Exchange requirements are more stringent than the OTCQX and will include required code of conduct, conflict of interest rules, shareholder approval rights that go beyond state law provisions and more.

The [Sarbanes-Oxley Act of 2002](#) ("SOX") implemented a requirement that the company's principal executive officer or officers and principal financial officer or officers execute certain personal certifications included with each Form 10-Q and 10-K. Under the CEO/CFO certification requirement, the CEO and CFO must personally certify the accuracy of the information contained in reports filed with the SEC and the procedures established by the company to report disclosures and prepare financial statements. In order to ensure the adequacy and accuracy of such reports and support the CEO/CFO certifications, a company must maintain adequate disclosure controls and procedures.

The SEC defines "disclosure controls and procedures" as "controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports filed or submitted by it under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its Exchange Act reports is accumulated and communicated to the issuer's management, including its principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure."

The aforementioned [SEC reporting requirements](#), internal controls and corporate governance standards are indeed complex. In reality, corporate and [securities attorneys](#) are the few specialists qualified to correctly interpret, apply and administer these regulations and requirements on behalf of publicly traded companies.

As established, the control persons of private and publicly traded companies, while experts in their respective fields, cannot be expected to possess a comprehensive knowledge of pubco operations. CEO's, officers and directors of publicly traded companies must have absolute confidence in the team of pubco experts they assemble.