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INVESTOR RELATIONS PLANNING AMID AN ACTIVE IPO MARKET

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In recent months, the pace of initial public offerings ("IPOs") has accelerated appreciably. Analysts attribute the increase to myriad factors, including generally favorable capital markets, private equity firms seeking exits, and relatively strong fundamentals in key industries (retail, restaurant and energy, most notably).

But whatever the catalyst, the trend is undeniable: there were a total of 62 IPOs in the second quarter of 2013, an increase of 82% compared to 34 listings in the first quarter, and an increase of 88% compared to 33 listings in the second quarter of 2012.

In launching an IPO effectively, companies should be deeply cognizant of both the challenges and the opportunities. The opportunities – increased liquidity for general corporate purposes; greater access to capital in the future; more flexible compensation structures; and enhanced visibility in the marketplace – are well-known.

The challenges – establishing public credibility; identifying what shareholder value means for the company and building strategies to improve it; preparing for the increased oversight and scrutiny of both the press and regulatory agencies; and compliance with still-evolving disclosure policies – require ongoing and vigilant consideration.

Given the active IPO market, this memorandum is intended to provide a high-level review of the ways in which companies planning for an IPO – or those that are newly public – can mitigate these challenges (and maximize the opportunities) through structured and comprehensive communications programs. More specifically, we believe that adherence to the broad concepts below will go a long way toward <u>"bridging the gap" between a public company's stock market value and its *actual* intrinsic value</u>.

The attendant benefits are clear: lowered cost of capital (if stock is used in an acquisition, etc.), wider and more committed interest from institutional investors, deterred activist and takeover efforts, and higher compensation for employees.

For purposes of this discussion, Perry Street has identified three phases in the IPO communications process in which a company can successfully advance these objectives:

- The Quiet Period
- Listing Day
- Life as a Public Company

THE QUIET PERIOD

The Quiet Period extends from the time a company files a registration statement with the Securities and Exchange Commission ("SEC") until SEC staff declare the registration statement "effective." Although federal securities laws limit what information a company and related parties can release to the public during the Quiet Period,[1] a company should not confuse this time with a period of communications and investor relations ("IR") *inactivity*. Indeed, behind the scenes, a company and its advisors should be developing the protocols and infrastructure necessary for success. Representative steps in this process include:

- **Build the Team**: Life as a public company will entail significantly-enhanced scrutiny from virtually all stakeholders, as well as the potential for damaging marketplace rumors and attendant disclosure challenges. A team built around legal and compliance counsel, finance, and investor relations/communications will help ensure appropriate and duly-considered responses.

- **Refine Messaging**: Companies in a Quiet Period should be using the time to clearly <u>define</u> and <u>differentiate</u> the company through its communications. New shareholders should understand the company and its goals, and how the company believes its success should be measured.

- **Develop Key Collateral:** On "Day One" of a public listing, companies should have prepared some key investment-community materials, including:

    - Brochure,
    - Company fact sheet,
    - Press release announcing commencement of trading,
    - Management bios, and
    - Standard IR presentation for ongoing use, post-IPO.

- **Establish Strong IR Presence:** At a minimum, a designated investor relations web page will include placeholders for SEC filings (including the S-1), 10-Qs, annual reports, etc. The

[1] We would add here that investor relations and communications professionals should play an integral role in drafting the S-1 itself. Although primarily a legal and regulatory document, the investment thesis and narrative must be drafted with an eye toward the public market and prospective investors.

- company should also establish a relationship with a service provider to ensure that as material news is disclosed it automatically posts to the investor relations section of the web page, as required. In this phase, companies might also consider building a database of prospective investors.

- **Refine Disclosure Policies**: Companies should create written disclosure and/or communications policies that clearly delineate roles and guidelines for the IR process, including social media, and disseminate the policies internally to ensure that it is clear who is permitted to speak on behalf of the company and what they can communicate externally. A clear earnings guidance policy should also be part of the process.

LISTING DAY

The second important communications phase is Listing Day, the first day the stock is traded on the relevant Exchange. This commences the battle for investors' attention and – most importantly – their capital. The Listing Day offers a signature moment for a company to distinguish itself within its industry and earn a market value that accurately reflects its intrinsic value. The Listing Day program might include several components that will work to establish presence as a publicly-traded company. Listing Day activities typically include:

- Press release announcing the company's pricing,
- Breakfast ceremony with Exchange officials before the market opens,
- Bell ringing ceremony at the Exchange,
- Press release announcing commencement of trading,
- Communication to all employees (including, as appropriate, a Town Hall meeting or related event for employees) and,
- Media interviews with senior executives.

LIFE AS A PUBLIC COMPANY

After the IPO process, the company should turn to building and maintaining the new relationships it has established, which will require a continued effort to establish credibility; define the company; and provide information that meets the needs of investors and analysts. At this stage, the investor relations function must be in place and fully operational. The IR function has numerous responsibilities, including (but certainly not limited to):

- **Educating and Informing Stakeholders**: In addition to regular-course filings with the SEC, a company can leverage significant filings (e.g., quarterly reports and select material events) as opportunities to speak to and engage with stakeholders, particularly investors, clients and analysts. The company should communicate these corporate developments via press release in a timely manner and should consider media strategies to support the effort. Ensuring timely and transparent responses to analysts and large investor inquiries should also be paramount.

- **Developing Message Discipline**: It is integral that the company reiterate its vision for the future in every shareholder communication, at conferences, in one-on-ones, and as part of every significant milestone in between.

- **Securing and Expanding Shareholder Base:** A company should aim to secure its shareholder base and widen the number of institutions that follow it, perhaps with the intention of investing later. Equally important is the need for a company to establish solid relationships with independent governance arbiters such as Institutional Shareholder Services (ISS) or Glass Lewis, who are particularly vital in an age of greatly increased investor activism.

- **Communicating Credible, Consistent Earnings Milestones**: Quarterly analyst conference calls and annual analyst meetings should be scripted, and Q&As should be developed and updated on an ongoing basis. A company should monitor feedback from both buy- and sell-side analysts to gauge their concerns/interests in the company, especially following quarterly earnings or other material announcements.

GOING FORWARD

While each of these concepts is integral to the successful launch of an IPO, it is also important that a company maintain a robust and proactive IR strategy, especially in an environment of continued market volatility and increased activist efforts. Consistent, transparent, and frequent communication concerning the levers of success can help ensure healthy shareholder relationships through good times and bad.