FENWICK & WEST

Direct Listing Considerations

October 2019

What is a Direct Listing?

A **direct listing** is a way for companies to become publicly traded by listing existing outstanding shares on a stock exchange without selling shares through an underwritten offering

How is a Direct Listing Different From a Traditional IPO?

	Direct Listing	Traditional IPO
Financial Advisors Role & Underwriting Process	✓ Company registers for resale existing outstanding shares without an investment bank underwriting the stock	✓ Company sells shares to an investment bank who then sells the shares to investors
	✓ Financial Advisors do not plan and participate in investor meetings	✓ Underwriters plan and participate in investor meetings
	✓ Company pays flat fee to Financial Advisors	✓ Company pays Underwriters a commission on sale of shares (typically 7% in an IPO)
Share Registration & Plan of Distribution	✓ No new shares are created and no capital is raised	✓ New shares issued by company and/or sold by existing investors
	✓ Gap between effectiveness of registration statement and trading of stock due to regulatory and logistical issues	✓ Stock begins trading on day immediately following effectiveness of registration statement
Stock Pricing & Trading Activity	✓ Prospective purchasers of shares place orders with their broker of choice at whatever price they believe is appropriate	✓ Purchases by initial investors made at IPO price set by company
	✓ Market-driven price discovery	✓ Book-building during IPO roadshow
	✓ Existing stockholders have access to immediate liquidity (no lock-up)	✓ Existing stockholders subject to underwriter lock-up (usually 180 days)
Investor Education & Guidance	✓ Publicly streamed "Investor Day"	✓ Meetings with institutional investors during IPO roadshow
	✓ Ability to provide public-company style financial guidance	✓ Limited in ability to provide financial guidance due to liability concerns
	✓ No information sharing with research analysts	✓ Research analysts assist with investor education

How is a Direct Listing Similar to a Traditional IPO?

- ✓ Organizational Meeting
- ✓ Due Diligence
- ✓ Registration Statement Drafting Process
- ✓ Quiet Period Restrictions
- ✓ SEC Comment Process

The Pros and Cons of Direct Listing

Pros	Cons
❑ Greater liquidity for existing stockholders and option/RSU holders	❑ Opening stock price will be completely subject to market demand and potential market swings; No ability of company and board to set price for shares
❑ Equal access for all buyers and sellers	❑ Less control over investors buying shares
❑ Greater transparency	❑ No additional capital raised by company
❑ Ability to provide public-company style guidance	❑ More comprehensive investor education needed – no traditional IPO roadshow to tell story to investors and no research analyst information sharing
❑ No dilution to existing stockholders	❑ May end up paying more to Financial Advisors than would have in standard IPO underwriting fees
❑ No lock-up restrictions	❑ Limited by the number of shares company employees and existing investors choose to sell on the open market
❑ Reduced IPO-related documentation (e.g., no underwriting agreement)	❑ Potential to miss out on participation by long-term or large investors as would be typical in an IPO process
❑ No FINRA review process	❑ Financial Advisors do not plan and participate in investor meetings
❑ “Well-trodden” path from an SEC and stock exchange perspective due to Spotify and Slack	❑ Logistical and communication hurdles in getting shares ready for trading upon listing
❑ Cost of capital cheaper in subsequent offerings	❑ D&O insurance more expensive

Considerations

- Company and board comfort with not being involved in setting market value and initial “price to public” for shares
- Capitalization of company; potential follow-on offering
- Dual class structure
- Existing investor interest in selling; VCs need to be willing to sell on day 1
- Size and diversity of stockholder base
- Role of Financial Advisors
- Determine whether direct listing triggers conversion of preferred stock and termination clauses in existing financing documents
- Timing of first day of trading following effectiveness of registration statement

Best Practices

Existing capitalization of company

- Ensure that the company is well capitalized
- Consider equity financing 6-12 months ahead of direct listing which includes traditional public equity investors

Educate existing stockholders about the process

- Need to have good understanding of selling interest

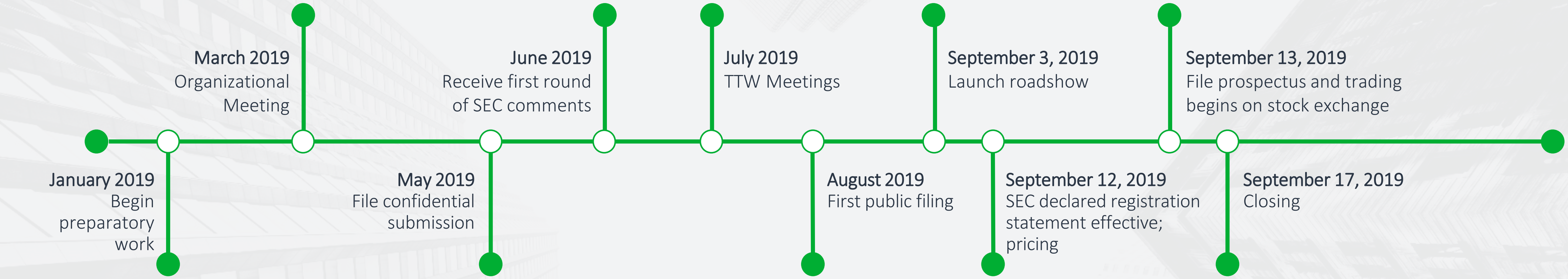
In order to create liquidity and facilitate price discovery, facilitate an active private market in stock prior to listing by removing transfer restrictions

Investor and research analyst education

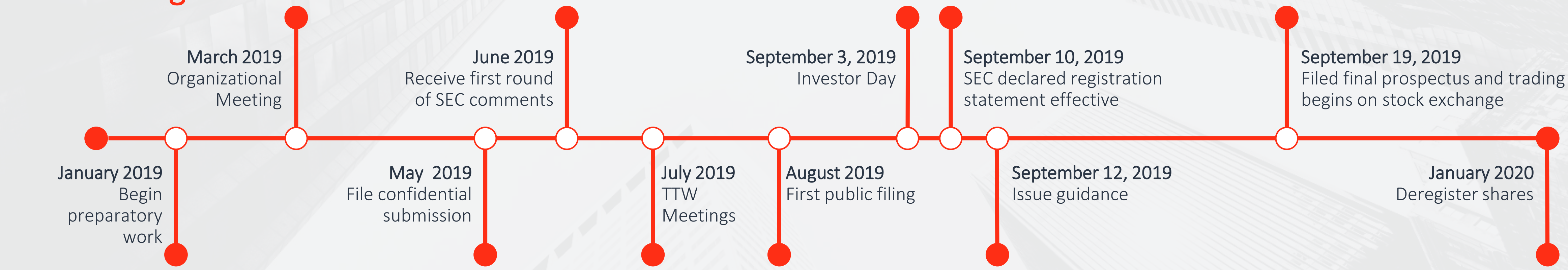
- With no underwriting syndicate, it is critical for management to be more involved in investor education
- Design extensive marketing plan 6-12 months ahead of direct listing

Timeline Comparison

Traditional IPO



Direct Listing



Case Study:

Consumer Technology

Began Trading Publicly April 2018

Historical Trading Information → **$132.50** Reference Price → **$143.82** Closing Price Day 1 → **$136.17** Closing Price Day 30 → **$145.86** Closing Price Day 90

$138.02 Closing Price August 2019

Lead Financial Advisors

Goldman Sachs & Co. LLC
Morgan Stanley & Co. LLC
Allen & Company LLC

Financial Advisor Fees

$35 Million

Case Study:

slack

Enterprise Software

Began Trading Publicly June 2019

Historical Trading Information	$38.50 Reference Price	$38.62 Closing Price Day 1	$33.25 Closing Price Day 30	$30.05 Closing Price August 2019

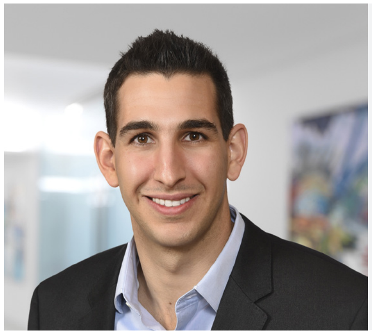
Lead Financial Advisors

Goldman Sachs & Co. LLC
Morgan Stanley & Co. LLC
Allen & Company LLC

Financial Advisor Fees

$22 Million

Fenwick.com



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Emphasis:

Capital Markets & Public Companies

Corporate

Ran Ben-Tzur provides strategic counseling on a wide range of corporate matters to high-growth private and public technology companies, primarily in the software, social networking, internet and mobility sectors. He has extensive experience in capital markets transactions and has represented numerous issuers and underwriters on initial public offerings and other equity and debt offerings, as well as SEC compliance and corporate governance. Ran's issuer-side initial public offerings include Facebook, Fitbit, Upwork, Zuora and Peloton Interactive. His underwriter-side initial public offerings include Jive, Rocket Fuel, Veeva Systems, New Relic, Impinj, Nutanix and Cloudflare. He also counsels emerging companies on day-to-day corporate matters and advises them on strategic financing transactions.

Representative Clients:

- Alteryx
- Applovin
- Credit Suisse
- Facebook
- Fitbit
- Fortinet
- Goldman Sachs
- J.P. Morgan
- Keywee
- Labdoor
- Morgan Stanley
- Peloton Interactive
- Proterra
- Turo
- Upwork
- Zerto
- Zoosk
- Zuora

Prior to joining Fenwick & West, Ran was enrolled in the Business Law and Policy Program at UCLA School of Law and received his J.D. in 2010. While attending law school, he served on the executive board of the *UCLA Journal of Law and Technology*. Ran also interned in the Los Angeles regional office of the United States Securities and Exchange Commission. He received his B.A. degree in business economics with a minor in accounting, *magna cum laude*, from the University of California at Los Angeles in 2006.

Prior to attending law school, Ran worked as an auditor at a national accounting firm.

Ran is conversant in Hebrew.

Ran is a member of the State Bar of California.