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Raising Equity through Public Securities Offerings

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With what appears to be a tightening of the equity markets, developers that once may have raised equity through a private placement of securities are examining the benefits and burdens of a public offering. Securities can only be issued or sold, however, in compliance with applicable state and federal regulations. The developer must give investors full disclosure of all material facts related to the offering, and the offering must be registered with securities regulators ("going public") or qualify for an exemption from such registration.

Basically, going public involves the offering of part ownership of the company to the public through the sale of company stock. If the company qualifies as a "small business issuer," it can choose to file its registration statement using one of the simplified small business forms. A small business issuer is a company that 1) had less than \$25 million in revenues in its last fiscal year, and 2) whose outstanding publicly held stock is worth no more than \$25 million.

A small business issuer may register an unlimited dollar amount of securities using Form SB-2, and may use this form again and again so long as the company satisfies the small business issuer definition.

The U.S. Securities and Exchange Commission (SEC) created the SB-2 Initial Public Offering (IPO) to replace S18 Blind Pool offerings, which are no longer allowed. Small companies may use the SB-2 IPO to raise an unlimited amount of money. It also allows the company to use forecasts in its prospectus and a shorter audit stream of one year. Form SB-2 also allows a small company to complete a fast-track offering within nine to 15 weeks.

SB-2 IPOs allow young/emerging companies to secure capital otherwise unattainable by conventional means. The benefits of going public, however, come with costs. Here is a list of some of the pros and cons to consider in determining whether to go public.

Advantages include:

- > **Increased capital** A public offering will allow the developer to raise capital to use for various corporate purposes such as working capital, acquisitions, research and development, marketing, and expanding plant and equipment.
- > **Liquidity** Once on a public exchange, the company shares attain a market value and can be resold. This allows the developer to attract and retain employees by offering stock incentive packages. Moreover, investor confidence can be enhanced as they now have the ability to trade their shares.
- > **Valuation** Public trading of a company's shares establishes a value for the company that is set by the market rather than subjective standards set by a private valuator. This is helpful for a company that is looking for a merger or acquisition.
- > **Increased prestige** Public companies are more visible than private companies. This increased exposure can give public companies greater access to the capital markets and markets to sell their goods or services.

Disadvantages include:

- > **Time and expense** Conducting an IPO is time-consuming, expensive and can take up to a year or more to complete. Further, a company can expect to spend several hundreds of thousands of dollars on attorneys, accountants and printers. Additionally, the underwriter's fees can range from 3 percent to 10 percent of the value of the offering.
- > **Disclosure** The SEC's disclosure rules are extensive. When a company becomes publicly held, the SEC requires it to reveal, on an ongoing basis, sensitive information including business strategies, financial results, and executive salaries and compensation arrangements.
- > **Stock price** Management's decisions may be affected by the market price of the shares and the belief that it must get market recognition for the company's stock.
- > **Falling stock price** If the shares of the company's stock fall, the company may lose market confidence, which may affect lines of credit, secondary offering pricing, the company's ability to maintain employees, and the personal wealth of insiders and investors.

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