

Optimizing your liquidity event: Practical advice from the trenches

June 12, 2013



Agenda

- Welcome & Introductions Todd Rumberger
- Top 5 Deal Killers Todd Rumberger
- Finance & Accounting Plans Pat Voll
- Ingredients for a Successful Exit Yoomin Hong
- An IPO Experience James Fay
- Fireside Chat - Q & A Ron Heller

Speaker bio: Pat Voll

Pat Voll has worked on numerous IPOs in various finance management positions and in consultant and auditor roles. She also has significant experience in mergers and acquisitions and has worked at both target companies and acquiring companies.

Before joining RoseRyan, where she leads the compliance and ERM practice, Pat served as CFO, controller or vice president of finance for a variety of public companies and as an auditor with Price Waterhouse.



Pat Voll
Vice President
RoseRyan



Speaker bio: Todd Rumberger

E. Thom (Todd) Rumberger Jr. is a partner with Foley & Lardner LLP, where he focuses his practice on private equity, mergers and acquisitions and venture capital and on guidance to Internet, software, telecommunications, digital media and financial services companies through all stages of their growth.

Before joining Foley, he was a shareholder with an Am Law top 10 firm and worked with a Silicon Valley venture capital firm.



Todd Rumberger
Partner
Foley & Lardner



Speaker bio: Yoomin Hong

Yoomin Hong focuses on origination and execution of strategic and financing transactions for clients in the cleantech sector as vice president of the Clean Technology and Renewables Group at Goldman Sachs.

She previously worked in the Bank Debt Portfolio Group of the Americas Financing Group, where she handled refinancings, restructurings and amendments of syndicated leveraged loans. Before joining Goldman, she worked at Citi.



Yoomin Hong
Vice President
Goldman, Sachs & Co.

Speaker bio: James D. Fay

James D. Fay is responsible for NeoPhotonics' finance and legal functions. He previously served as the company's vice president of legal affairs and general counsel. Before joining NeoPhotonics, he was senior vice president of corporate affairs and general counsel for @Road. He led NeoPhotonics and @Road through IPOs on the NYSE big board and Nasdaq Global Market, respectively.

He has worked on numerous acquisitions and IPOs. He also led the sale of @Road to Trimble Navigation in 2007.



James D. Fay
Vice President and CFO
NeoPhotonics Corporation

Moderator: Ron Heller

Ron has 20+ years of investment banking experience, primarily advising technology companies on mergers and acquisitions and private placements. Prior to joining Woodside Capital, Ron was a Senior Director of Newforth Partners, a boutique M&A advisory firm in the technology sector. Previously, Ron was a Director in the Equity Private Placements Group of Credit Suisse First Boston's Technology Group. Before CSFB, Ron worked in investment banking with Houlihan Lokey, Venturi & Company, and Frost & Berman in the San Francisco Bay Area. Ron began his finance career at Smith Barney in its Corporate Finance department from 1985 to 1990 in New York, London and San Francisco.



Ron Heller
Managing Director
Woodside Capital Partners

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June 2013

Powering your liquidity event: practical advice from the trenches

Top 5 M&A Deal Killers

Presented by:
Todd Rumberger, Esq.
Partner, Foley & Lardner LLP

Key stakeholders lack consensus

- An important constituency (investors, management or key employees (usually developers), don't support the exit plans.



- Are your founder technologists prepared to continue work with acquirer post deal (if not, you're in trouble)

IP Rights are in disarray



- IP assignments from all founders (former founders?)
- PIAs from existing and former employees, and contractors?
- Consistent use of NDAs to protect trade secrets (software).
- Patent filing properly assigned to company, have not missed deadlines (if provisional to utility), etc.
- Software code well documented and can it be integrated?
- Have developers kept track of and complied with inbound IP licenses (open source, freeware/"copyleft", off the shelf) → free software or "copyleft" open source software causes acquirers the most concern as compliance with the licenses like GNU General Public License (GPL) is complex and difficult. (Issue: complexity turns on whether target "distributing" such software "embedded" as part of its product or using it as "back-end" software)
- Bottom Line in Purchase Agreement:
 - Best case: nothing to disclose against IP rep or, if something, a thoughtful explanation.
 - Worst case – acquirer finds significant problems target did not know about.
- Acquirer's lack of comfort of Seller ownership and inordinate fear of infringement that can blow up a deal → Most common big deal point issue #1: IP infringement rep

Equity issues and undocumented promises

- Are your equity/option grants to employees and others in order?
 - » Promises of equity been properly and formerly documented?
 - » Appropriate Board resolutions for grants, setting fmV of common stock (options – 409A)
 - » Fully executed RSPAs or Option Agreements
 - » Sec. 83(b) elections timely filed
- Any disgruntled employees or founders no longer with company (now's the time to settle up, not after you get a term sheet for millions)



Assignment/change in control

- Review your material contracts (customer, licenses, supplier) to determine if other party's consent is required for transaction
- Where IP involved, rules re assignment are complex, unclear and often counterintuitive.



Over-anticipating one strategic buyer

- If anticipated purchase price big enough, use of a financial advisor can help here (maybe even an “auction”), but not common in early stage exits
- Despite corp dev sponsor's best intentions, acquirer CFO/deal approval committee has pressure to push back hugely on price if they think they can - a competitive environment helps offset that
- Communicate anticipated deal terms and important deal points up front





Take away ...Failure to
prepare in advance

Finance and Accounting Plans

Pat Voll, Vice President



Foundations for Financial Statement Integrity

- Reduce risk
 - Provide timely and accurate financial data
 - Avoid delays to transaction completion
- Create confidence
 - Provide reliable financial projections
 - Respond to information requests timely
- Add value
 - Align resources, processes to support business growth



Preparing for a liquidity event

Assess stumbling blocks and building blocks



- Systems capabilities
- Equity
- Technical accounting matters
- Streamline close/financial reporting
- FP&A capabilities
- Internal controls

Managing your transaction

- Team/roles
 - Finance and accounting are important contributors
 - Help set realistic timetable
- Data warehouse
 - Pull important finance agreements, schedules and documents
- Registration statement/acquisition agreement is a collaborative document
 - Review entire document for accounting/reporting issues
- Establish SEC/acquisition response team



What's next?

- Financial reporting infrastructure
- Earnings release process
- SOX/Internal controls



Keys to Success

- Plan ahead – things take longer than you think
- Coordinate timing with significant company events, product introductions, etc.
- Complete major corporate projects prior to your liquidity event
- Coordinate timing with your auditors in advance
- Plan for an increased workload before, during and after

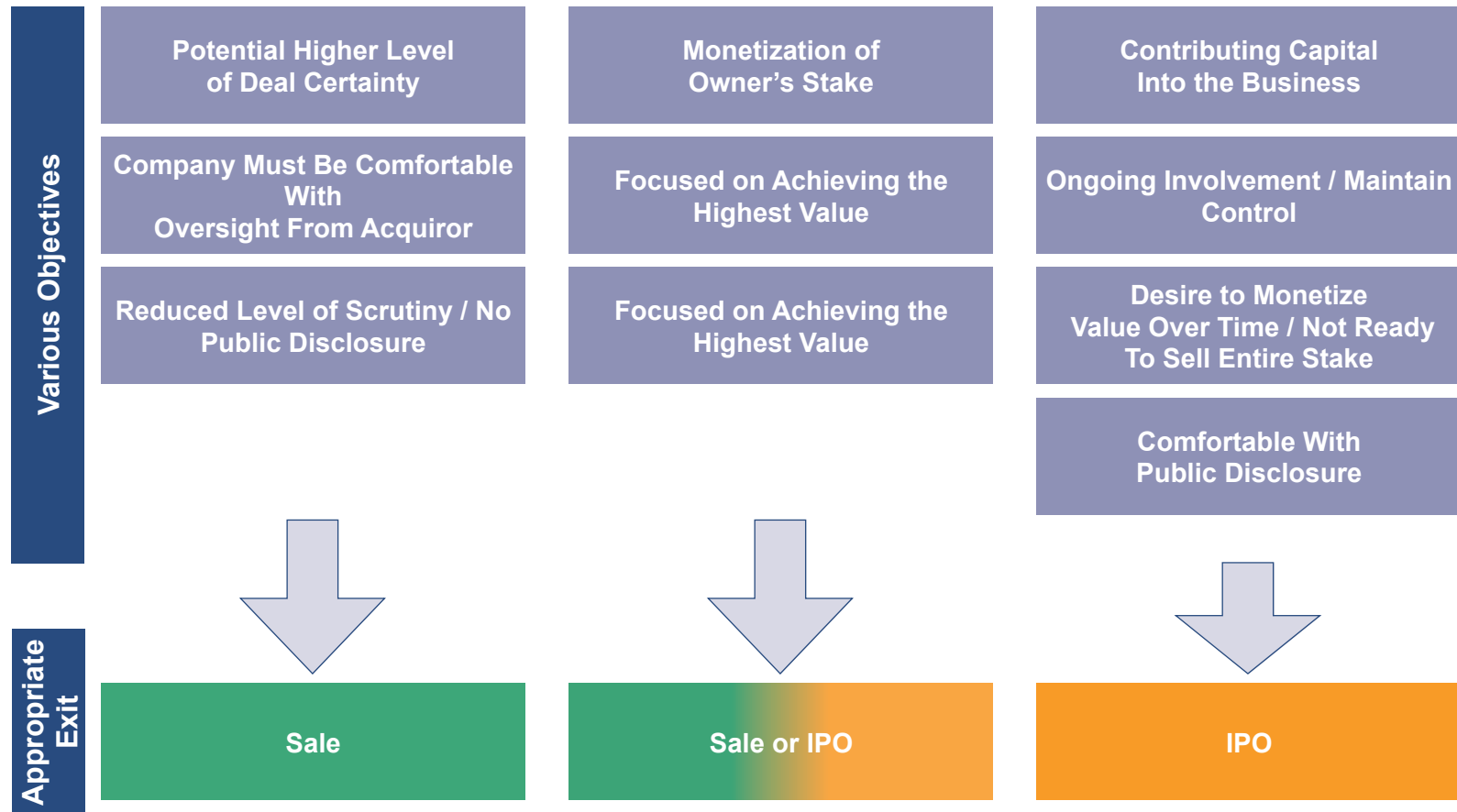


Ingredients for a Successful Liquidity Event: IPO vs. Strategic Sale

June 2013

Exit Options Often Driven by Owner's Objectives and Priorities

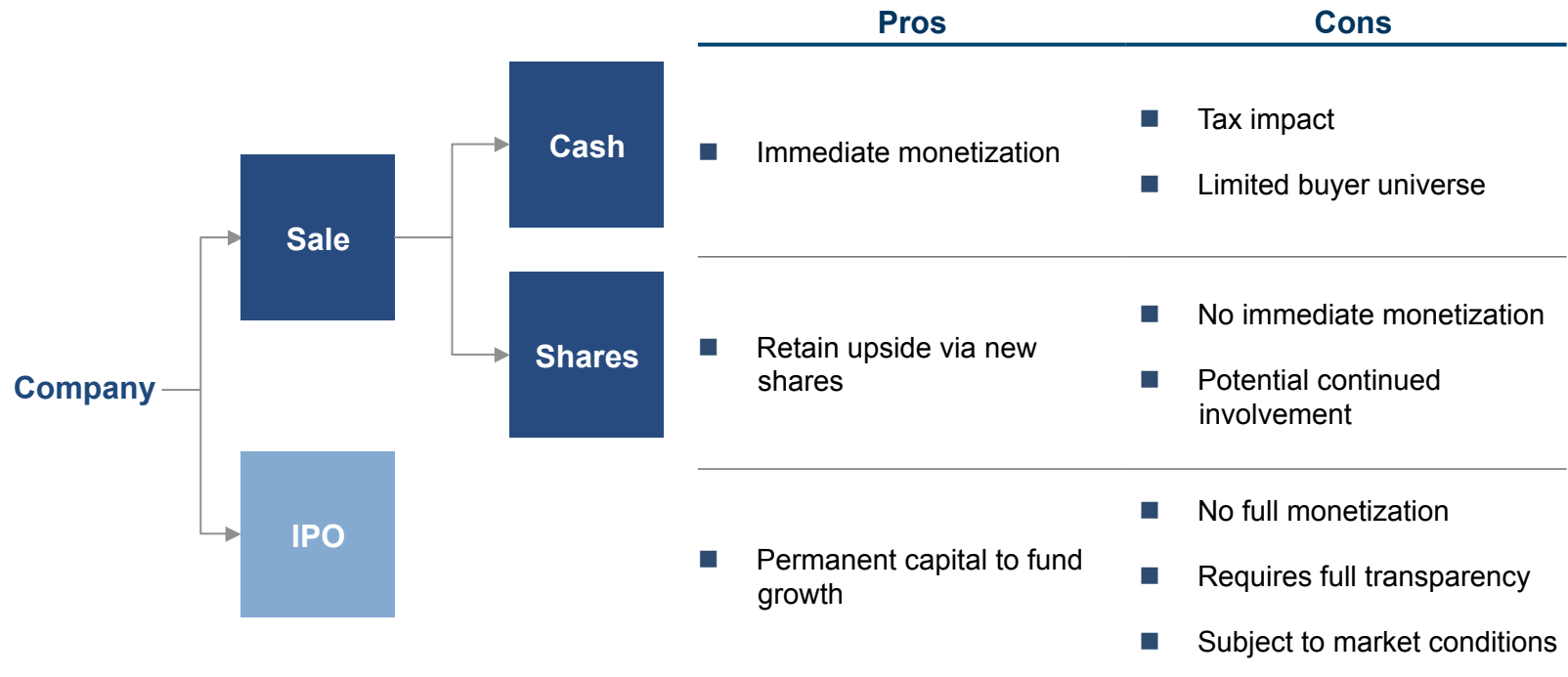
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Exit Options: IPO vs. Sale

Pros and Cons

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Criteria that Have Led to Less than Successful IPOs

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1

Going Too Early

4

Underwriters Who Lack
Credibility in the Sector and
Generally

2

Business Agreements With 3rd
Parties Are Equivocal

5

Unproven Technology With
Milestone Risk

3

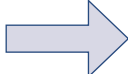
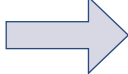



Perception That Management
Will Underachieve Relative
to Expectations

6

Unrealistic Valuation
Expectations

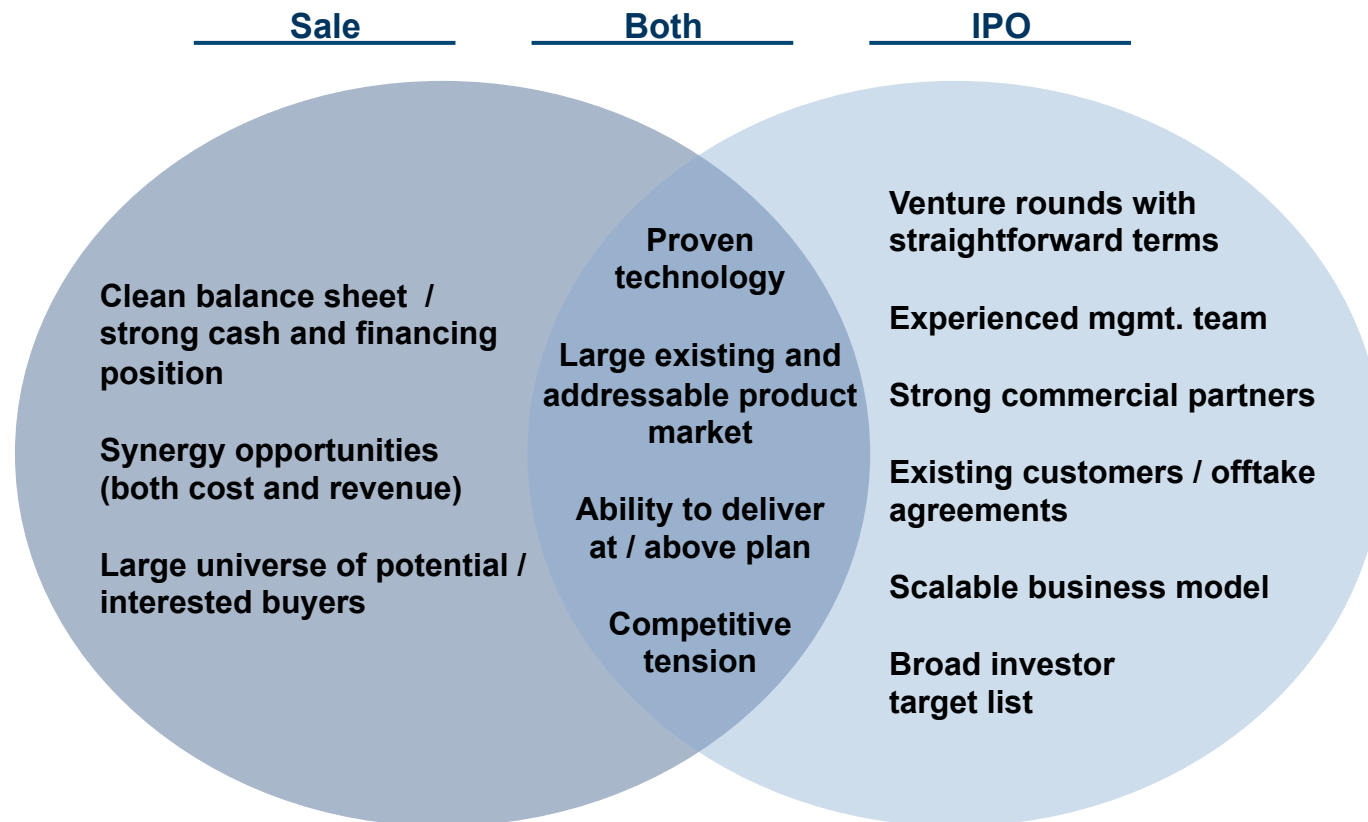
Criteria that Have Led to Less-than-Successful Sales

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Criteria		Mitigate by...
1	Waiting Too Long	 <ul style="list-style-type: none">■ Avoid Overcomplicating the Process
2	Holding Out for Too High A Price	 <ul style="list-style-type: none">■ Be realistic about price■ Focus on the process, not valuation
3	Poor Agent Selection	 <ul style="list-style-type: none">■ Do not select advisors based on valuation; this can lead to inflated expectations and lack of traction with buyers■ Analyze merits of the advisors based on targets, experience, relationships, team, and process
4	Not Running Processes in Parallel	 <ul style="list-style-type: none">■ Dual-track process can create the best competitive tension■ Additionally, it creates a deadline for the strategic process
5	Avoid Overcomplicating the Process	 <ul style="list-style-type: none">■ Keep process focused and as simple as possible

Ingredients for a Successful IPO or Strategic Sale

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Items That Create Tension and/or Uncertainty Between: Management Underwriters, VC's, and Public Investors

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Items That Create Tension

- 1 Private Placement Terms, Including
 - Full Ratchet Anti-Dilution Protection
 - Fixed Discount Security With High Discount Rate
 - High Valuation in Private Round Prior to IPO
 - Consent Rights for IPO
 - Lack of Post-IPO Lock-Up
- 2 Governance Composition (Insiders vs. Independent)
- 3 Supermajority Voting Rights / Sunset Provisions

Items That Create Uncertainty / Reduced Valuation

- 1 Government Subsidy / Reliance
- 2 Unproven Technology
- 3 Lack of PPAs / Customer Off-Takes
- 4 Reliance on Uncertain Financing
- 5 Capital Intensity / Additional Equity Needed in Near-Term
- 6 Difficulty in Modeling

How to Prepare / What to do Now?

-
- Update deck for private placement investors
 - Maintain constant dialogue with relevant parties
 - Ensure management and board of directors are on the same page
 - Prepare a draft S-1, allowing you to jump into a market window
 - Ensure adequate infrastructure is in place for public company



NeoPhotonics

Optimizing Your Liquidity Event –
An IPO experience

Delivering High Speed Communications @ 100 Gig

NeoPhotonics

NeoPhotonics

OUR BUSINESS

- Photonic Integrated Circuit (PIC) Optical Products
- Platform Technologies
- Vertically Integrated



OUR GLOBAL CUSTOMERS



OUR SCALE

\$245M

TTM Revenues

20%

'06 - '12

Revenue CAGR

2,500

Employees - US,
China, Japan & Russia



The NeoPhotonics IPO

NYSE: NPTN

7,500,000 Shares



Transaction highlights

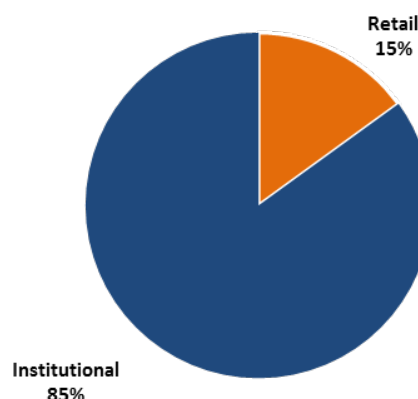
- \$83 million IPO
- Priced on February 1, 2011
- BofA Merrill Lynch & Deutsche Bank co-led
- Filed at \$10, Priced at \$11 (top end) & closed at \$13.25
- Order book was over 15x covered with Tier 1 accounts putting in sizeable orders (70+ orders >10%)
- Offering upsized by 7%
- Demand by region US: 72%, Europe 26%, Asia 2%

Common Stock

- Key investment themes included:
 - Leading provider of PIC technology
 - Broad product portfolio
 - Global Tier 1 customer base
 - High volume, vertically-integrated manufacturing platform
 - Strong financial performance outpacing market

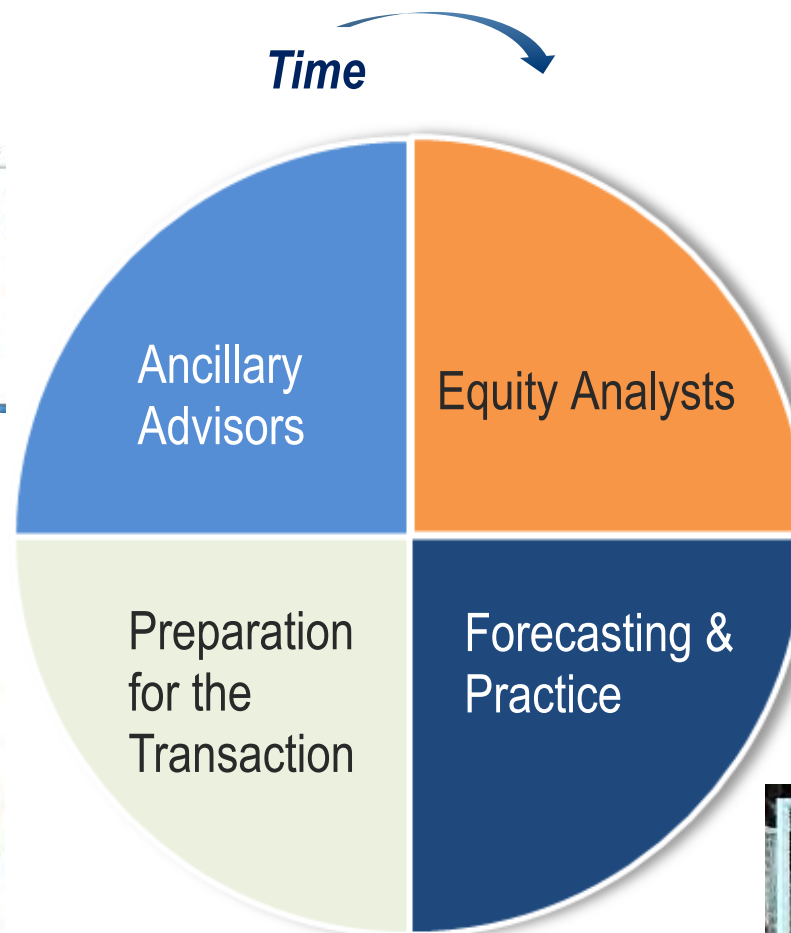
Roadshow schedule

Day 1	New York
Day 2	Frankfurt
Day 3	Amsterdam / Geneva
Day 4	London
Day 5	Mid-Atlantic
Day 6	New York
Day 7	New York
Day 8	Boston
Day 9	Denver / LA
Day 10	San Francisco
Day 11	Chicago



Actions that Drove Successes in the IPO

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J.P.Morgan

citi Goldman Sachs

Bank of America Merrill Lynch

NOMURA

Morgan Stanley

BARCLAYS CAPITAL

Deutsche Bank

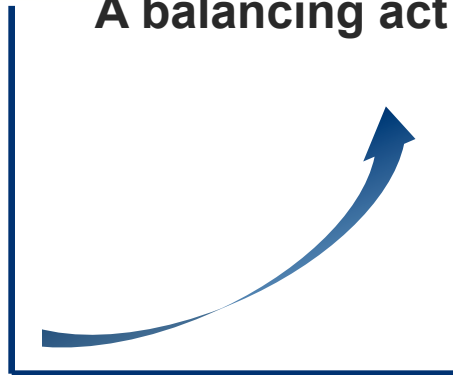
CREDIT SUISSE



Lessons Learned in the IPO

A balancing act

Risk



Time

Learning the hard way



≠



Equity analysts (again)



Underwriters



“Fireside Chat” Q & A

Moderator:

Ron Heller

Managing Director, Woodside Capital

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Panelists:

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