Setting Sail as a Public Company

Planning and executing for success

December 11, 2014

Agenda

- Introduction: Why care about Day 2? — Diana
- Finance operations and reporting considerations — Diana
- JOBS Act and other key legal considerations — Dan
- Q&A / Closing — Dan

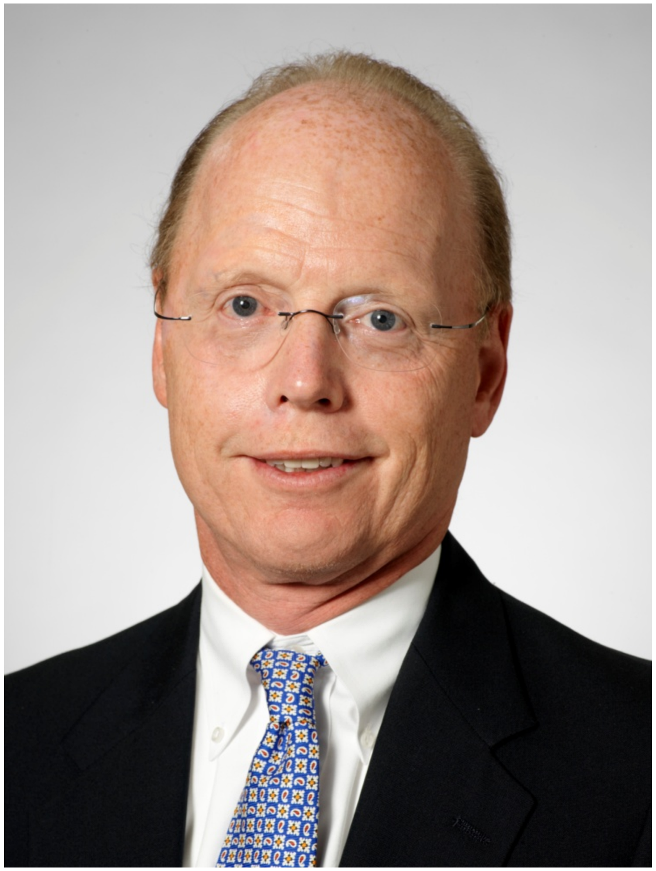
Housekeeping notes

- How can I get the slide presentation?
  - Slides will be posted on RoseRyan events web page following the event
- What if I have a hot question?
  - Type your question into the question box on the right
- How can I get the whitepaper?
  - Link to RoseRyan report to be sent in the email thank you note

Bio – Dan Winnike

Dan has one of Silicon Valley's most active practices representing publicly-held companies on disclosures and fiduciary responsibilities, financing and M&A matters. He has advised companies and underwriters on numerous IPO and follow-on equity offerings, including offerings for ADIC, Amyris, Ancor Communications, ArcSight, Flextronics International, The Good Guys, GoPro, Invivo, Natus Medical, Ontrack Data International, Sanmina, TriNet, TubeMogul, and Vocera Communications.   He regularly assists numerous publicly-held companies, including their Boards of Directors and Audit Committees on various matters including Sarbanes-Oxley compliance, Dodd-Frank Act and the JOBS Act and more.

He received a BBA in Accounting from the University of Notre Dame, and J.D. from the the University of Michigan Law School.



Dan Winnike
Partner
Fenwick & West LLP

Bio - Diana Gilbert

Diana Gilbert
Senior Consultant
RoseRyan, Inc.

Diana has over 25 years of corporate and operational finance experience focusing on technical accounting, process improvement and financial systems, due diligence and transitional support for mergers, acquisitions and divestitures, SEC reporting, Sarbanes-Oxley, and revenue recognition.

She is a member of RoseRyan's Technical Accounting group and Corporate Governance team. As a RoseRyan consultant she has advised such clients as Coupons.com, Vivus, DNAnexus, Alexza, ArcSight, Informatica, Mendel Biosciences, Anthera, Cepheid, and Zynga. Prior to RoseRyan, she held Corporate Controller positions at VNUS Medical Devices, Electroglas and Digital Interiors, various management positions at HearMe and CIDCO, and was a Senior Manager at KPMG.

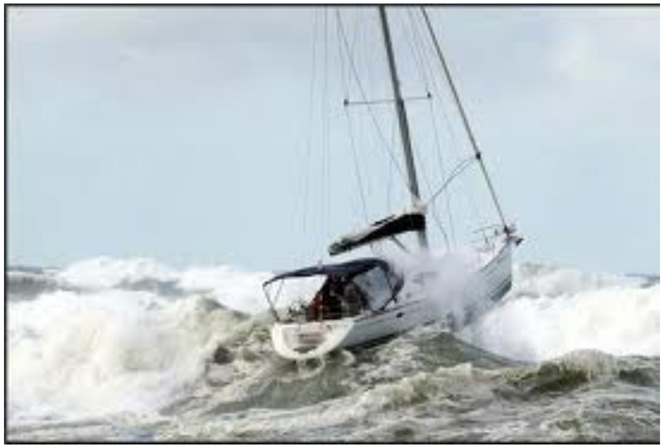
Diana is a CPA (inactive), and holds a BS in Business-Accounting from San Jose State University.

Finance operations and reporting considerations

Diana Gilbert
RoseRyan

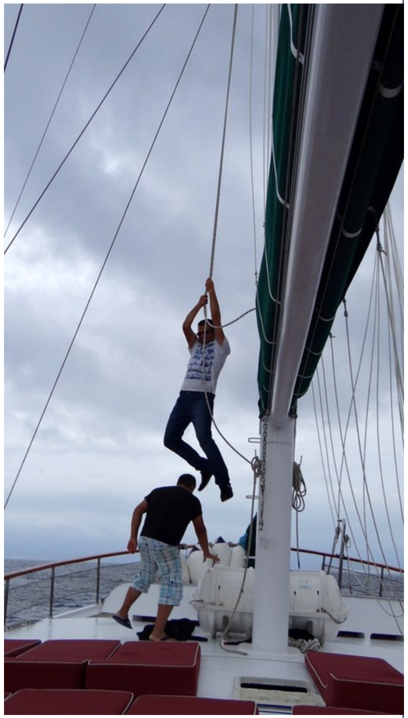
Introduction

- The IPO is an important milestone, but it should not be viewed as the "end game"
- Knowing how to "go public" is different that knowing how to "be public"
- After IPO…that's when the real work begins and most companies are not adequately prepared



Creating the Right Team

- **Objectives**
  - The right level of talent to handle increased compliance requirements
  - Sufficient staffing to address critical needs at peak times
  - A scalable department for a growing business
- **Increased Needs**
  - Quarterly financials, disclosures, MD&A, earnings releases, XBRL, proxy statements by new deadlines
  - Complex technical accounting issues and regulatory compliance requirements
  - Internal control documentation and monitoring



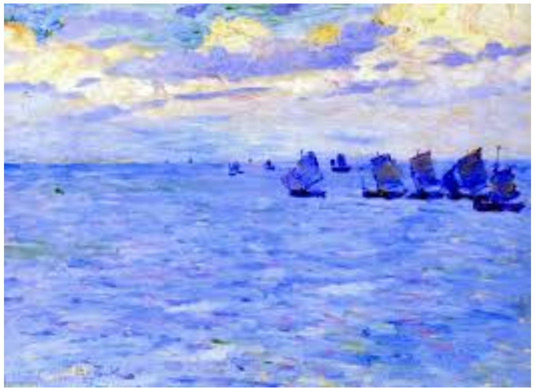
Don't let this be you

Avoiding Restatements

- **Close Process**
  - Streamline process to meet reporting deadlines
  - Maintain quality and accuracy
- **Effective Oversight**
  - Participation of knowledgeable reviewers
  - Verify supporting data and formulas
- **Technical Accounting Complexity**
  - Thorough understanding of <u>current</u> technical rules - get it right the first time
  - Involve your auditors to ensure they agree

Improving Transparency

- **Transparency of Disclosures**
  - Limit / prevent SEC comments
  - Build credibility through adequate and timely reporting
  - Manage & meet investor expectations



- **Best Practices**
  - Reflect what is happening and expected with your business and its market
  - 10Q and 10K filings should be consistent with website, releases and investor presentations
  - Ensure disclosures are clear to an outsider

Disclosure Committee

- **Best Practices**
  - Engagement of seasoned professionals, not just finance
  - Consider what might be missing, as well as what is included

- **Objectives**
  - Added comfort for CEO/CFO signing internal control certifications/attestations
  - Ensure reporting reflects the big picture in terms of what is meaningful to the company as a whole
  - Minimize SEC scrutiny

Other Considerations

- **Non-GAAP Reporting**
  - Compliance with Regulation G to prevent SEC comments
  - Consistent measuring / messaging
- **Key metrics for public disclosure**
  - What metrics you provide externally should be consistent with the information you use to manage the business internally
- **EPS estimates**
  - Weighted average shares forecast to estimate EPS for forward-looking guidance & planning

JOBS Act and other key legal considerations

Dan Winnike

Partner, Corporate Group

FENWICK & WEST LLP

JOBS ACT considerations

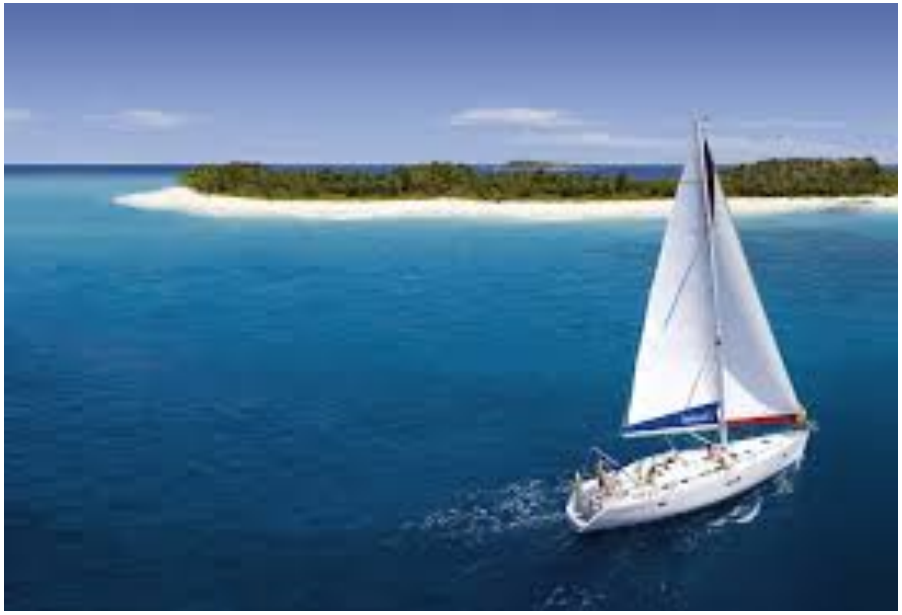
A. *Relaxed Rules for EGS*. Many EGCs have completed IPOs since early 2012. In addition to streamlining the IPO process (confidential filings and TTW are two primary areas), EGC status provides relief from SEC reporting and governance provisions <u>after</u> the IPO, including:

- For the Selected Financial Data required by S-K item 301, only need to provide historic data for years for which you provided audited financials in your S-1 or subsequently; and if you happen to do a registered debt offering while still an EGC, need only provide ratio of earnings-to-fixed charges for periods covered by previously or currently filed audited financials

Simplified Rules for EGCs

Why Build This?

When You Only Need This



Relaxed Rules for EGCs.

- Reduced compensation disclosure, corresponding to requirements for smaller reporting companies:
  - No CD&A
  - 3 rather than 5 NEOs (CFO not automatically included)
  - 2 yrs, not 3
  - Don't need Grants of Plan Based Awards and Option Exercises tables

Relaxed Rules for EGCs.

- Say on Pay and Say on Frequency provisions
  - Don't need say-on-pay while an EGC
  - Don't need say-on-frequency while an EGC
  - Will need say-on-pay in 1st year after ceasing to be an EGC; however, if an EGC for less than 2 years, can wait to complete say-on-pay prior to 3 years after IPO
  - JOBS Act doesn't define when say-on-frequency is required, and SEC hasn't spoken to this point; most people think it will transition like say-on-pay

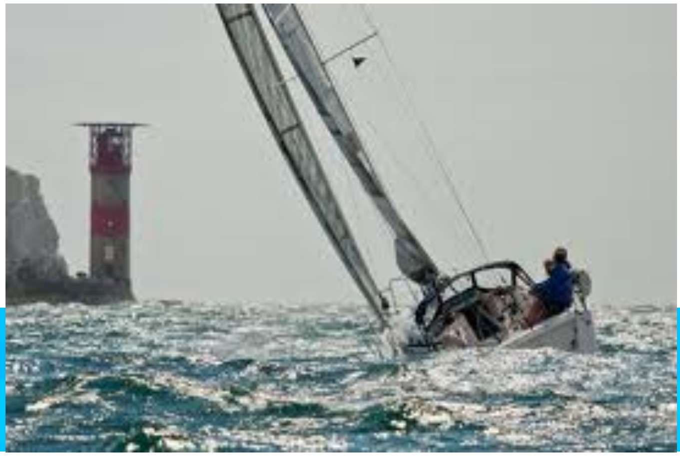
Relaxed Rules for EGCs.

- SOX 404 – No requirement for auditor to attest to effectiveness of company's ICOFRs
  - Recall that regardless of JOBS Act, following an IPO a company doesn't have to have management or auditor's report on effectiveness of ICOFRs until it has filed one annual report; so effectively due in second 10-K
  - While JOBS Act deferred the auditor's report for period of EGC status, it did NOT defer management's report

Exiting EGC Status

B. *Exiting EGC status*. It is important to keep track of when you exit EGC status, which can be abrupt

- Cease to be EGC on earliest of
  - Last day of fiscal year following the 5th anniversary of IPO
  - Last day of FY in first FY in which company has \$1b of gross revenue
  - As of any date if during the three previous years the company has issued > \$1b in non-convertible debt
  - The date on which it becomes a large accelerated filer



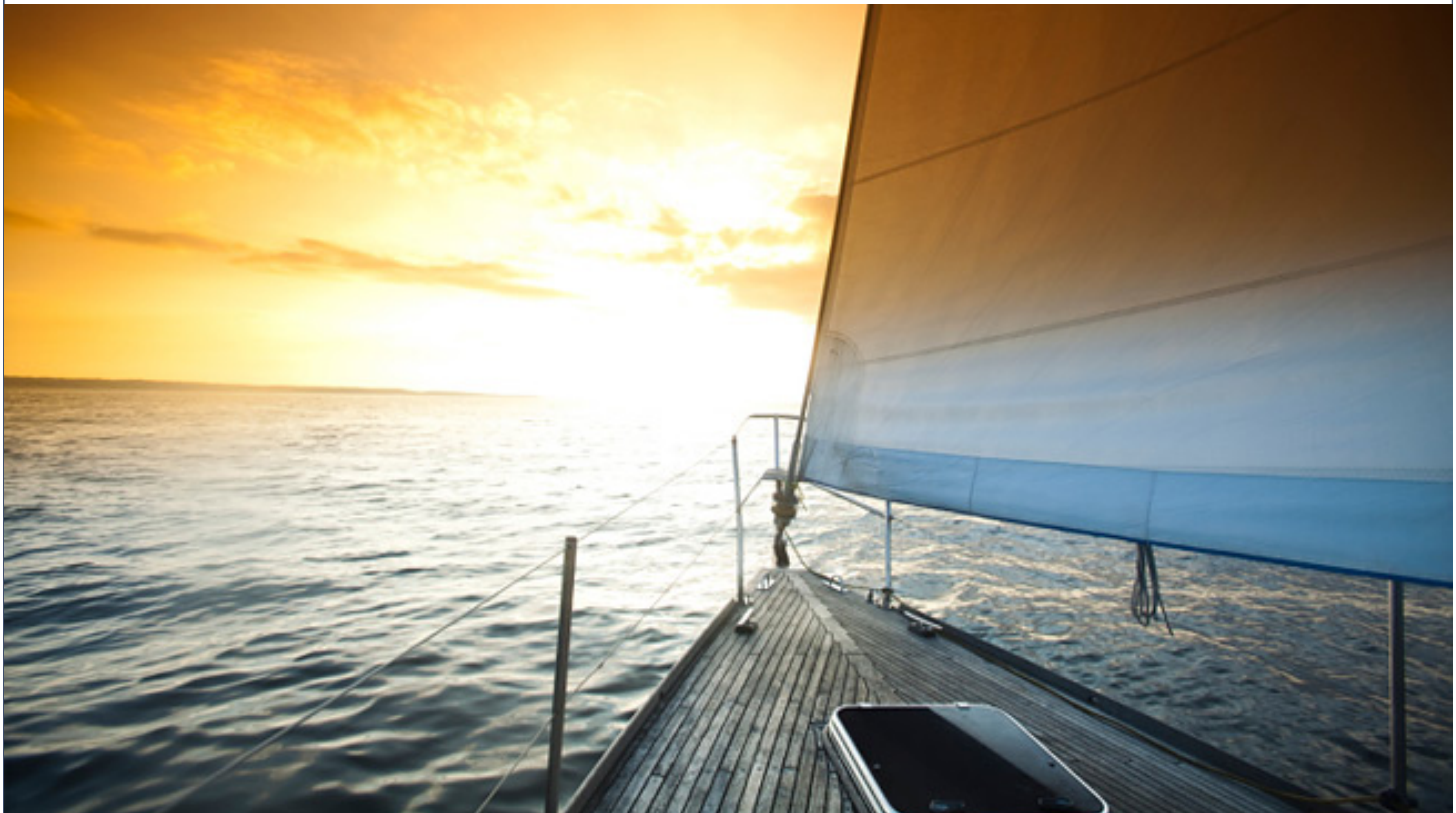
Exiting EGC Status

- Transition Notes
  - 5 year standard, - eg, calendar year company went public in 2012, will cease to be EGC 12/31/17.
  - $1b revenue standard - effective as of end of first year when $1b revenue is exceeded
  - Issuance of more than $3b of debt - this is calculated on a rolling, up to the latest date, basis; so look back to today's date three years ago
  - Large accelerated filer status - applies at the end of a fiscal year if as of the last day of Q2 of such year the issuer had > $700m of common equity (voting and non-voting) held by non-affiliates

Some items that activate when EGC status ends, in particular SOX 404 and CD&A, need significant lead time.

Additional post-IPO notes

- Recall that recent IPO companies are allowed to use a shortened version of the 302 certification to eliminate those sections that deal with ICOFR until the first quarter after the issuer has filed its first 10-K
- Immediately after IPO, issuers become subject to requirement to include XBRL exhibit with periodic filings and post on their website
- Officers of many newly public companies set up 10b5-1 plans for future trading; note that insider trading policies often limit the adoption of these plans to open windows, and then require some cooling off period before sales commence under these plans; this puts a premium on thinking through this process early to get these plans in place in time to allow trading by the execs.



Questions?

Contact Us

Diana Gilbert
RoseRyan
dgilbert@roseryan.com

Dan Winnike
Fenwick & West LLP
dwinnike@fenwick.com