

Selecting an Underwriter for an IPO

Selecting the right underwriters, also referred to as the investment banks, is critical to the successful structuring and execution of a company's planned IPO

The lead underwriter, whose reputation within the industry reflects on the company, will be responsible for coordinating the efforts of the underwriting syndicate, assisting the company in preparing the registration statement, conducting the due diligence effort, providing the initial draft of the underwriting agreement and lock-up agreements, and leading the selling efforts.

Below you'll find a set of questions to jump-start your conversations with the underwriters and help you in determining which will best fit to lead a successful IPO.

But, before we continue, a couple of definitions:

- An "underwriter" is the investment bank who buys the shares from the company and resells them to the public.
- The "bookrunners" are the lead underwriters, who are in charge of the process.
- There are also "co-managers," who have smaller roles. Often, co-managers are there to help with retail distribution at the IPO and because they have good analysts to write about the stock.

Ideally, a company will be well known to several investment banks leading up to an IPO and in advance of a formal underwriter selection process, which is sometimes referred to as a "bakeoff." Meetings with representatives from several underwriters in the months and years leading up to an IPO are common, and offer the opportunity to develop a relationship with both the investment bankers as well as the research analysts at several of the lead candidates. These may include informal meetings from time to time with the investment bankers to learn more about the company and for the investment bankers to share their views on the industry. Oftentimes investment

bankers will reach out to the company directly, and a company's investors and legal counsel can also provide introductions to suitable investment bankers as well.

What follows below are the considerations for selecting the **lead underwriter** (often called the "left lead bookrunner"), and the **co-lead** (or "lead right"). Sometimes they're truly equal in economics and authority; they are then referred to as "joint lead bookrunners." This isn't intended to be comprehensive, but rather to start a conversation. What's most important is that the company and its board are comfortable with the underwriter and have confidence in the advice of its representatives.

Key Considerations

1. Understanding the business

Does the underwriter know what the company does, how it does it and its strategy? Does the underwriter know the industry the company operates in?

- Is there a dedicated institutional sales team who cover the company's industry?
- Is there a dedicated trading effort that covers the company's industry?
- Does the underwriter's view of the company align with the board's and management's view?

- Does the underwriter's research analyst's coverage of comparable companies in the same industry reflect insight into opportunities or challenges in the comparable companies and the industry?
- What are the underwriter's views of the market for IPOs in the company's industry, whether the company should attempt an offering in the near term, and the biggest risk factors to a successful completion?

2. Ability to position the company's story

Can the underwriter tell the company's story in such a way as to get a strong valuation and market reception?

- What is a good list of peer companies to whom the company will most frequently be compared in the aftermarket, and to which of those companies does the underwriter believe the company should most like to be compared? How would the underwriter position the company to achieve that objective?
- What are the key points that the underwriter would want to highlight in the lead paragraph of the prospectus summary to best position the company for its IPO?
- What are the key concerns that the underwriter believes the company will need to "market through" on the roadshow and how would the underwriter guide that response?
- A successful story requires views on deal size, use of proceeds, valuation metrics and post-money valuation — how would the underwriter advise on these tactical questions?

3. Reputation and experience

- The number of IPOs in the industry sector within the past three years and information about the "success" of those deals. (This information could include the underwriter's initial valuation approach; initial filing range, final offer price and the change from the

middle of the filing price range; information about the extent of over-subscription such as how many times oversubscribed the deal was; participation by existing stockholders as either buyers or sellers, utilization of overallotment option, any deviation or waiver from a 180-day lockup; and the market price after 1, 2, 7 and 30 days and the percentage delta to the offer price.)

- The number of follow-on offerings done for companies whose IPO the underwriter has underwritten, and number of months after IPO before first follow-on?
- Any success in selling shares to institutional buyer list in each of the last five IPOs that the underwriter has lead managed?
- Institutional and retail sales capability both U.S. and foreign, including market share and market presence?
- Any recent "failed" deals and insights into why they failed; in particular, transactions that were filed publicly and then were withdrawn or failed to price after the roadshow?

4. Overall quality of the team

- Qualifications (including the name and number of IPOs worked on over the past three years) of the proposed investment banking and equity capital markets ("ECM") teams for the IPO.
- The expected participation of each team member in the drafting, roadshow and allocation stages of the IPO process.
- Significant financings on which the day-to-day lead banker, and ECM and syndication professionals identified above have worked together as a team?
- How many concurrent transactions to which each team member expects to be assigned during the calendar year in which the IPO will occur.

5. IPO process

- What is the proposed IPO timetable, assuming the company wishes to move as expeditiously as possible?
- Any recommendation for “test-the-waters” meetings prior to the roadshow and list of potential investors with whom the underwriter would propose the company meet, in either a non-deal roadshow prior to the IPO or a “test-the-waters” meeting in advance of launching the IPO roadshow?
- Views on allowing the company’s investor(s) and/or management to participate in the offering?
- Timing and process of underwriter’s commitment committee in connection with the approval of the IPO and whether any member of the proposed team sits on the committee.
- Willingness to have multiple banks act as joint bookrunners and minimum economics for serving as lead manager, co-manager in the middle and co-manager on the right.
- all underwriting clients over the past three years in the company’s industry for which the underwriter has led or co-managed.
- Conflicts of interest – What clients of the underwriter presently or in the future might be considered competitors? How does the underwriter propose to manage potential conflicts, particularly in the case of another private company competitor seeking to go public at the same time as the company?

6. Other considerations

- Personality – The IPO managing underwriter team will likely also be working on the company’s follow-on offerings, so personality and fit is important for the success of a long-term relationship.
- Post-IPO support – Whether the underwriter’s research analyst has maintained research coverage on

Disclaimer

This publication is designed to provide Orrick clients and contacts with information they can use to more effectively manage their businesses and access Orrick’s resources. The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters. Orrick assumes no liability in connection with the use of this publication.

orrick.com

AMERICAS | EUROPE | ASIA

Orrick, Herrington & Sutcliffe LLP | 51 West 52nd Street | New York, NY 10019-6142 | United States | tel +1-212-506-5000
Attorney advertising. As required by New York law, we hereby advise you that prior results do not guarantee a similar outcome.

© Orrick, Herrington & Sutcliffe LLP 2020. All rights reserved. Email: IPOready@orrick.com

