Navigating IPOs in the post-COVID landscape

An interview with **Marc Deschenaux (Greenberg Hornblower Deschenaux & Partners, LLP)**

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Marc Deschenaux is the founding partner of Greenberg, Deschenaux, Hornblower & Partners, LLP, an international legal firm, specialising in corporate and government financings and intellectual property securitisation. Throughout the years, Marc has developed a renowned reputation for excellence within the world of corporate finance, from private offerings to initial public offerings (IPO's), in project financings and in government loans. He is well known for inventing Intellectual Property Securitisation, which limits the impact of human factors in investments.

In unprecedented times, help and advice on navigating complex IPOs should be left to the experts. That's why we got in touch with Marc, to dig a little more into the complicated world of IPOs, when they should be used, and how they can benefit the companies that do so.

How has COVID-19 impacted the IPO landscape?

COVID-19 negatively impacted the IPO marketplace on a variety of levels. Wall Street and investors don't like surprises, and the COVID pandemic had a lot of them, almost weekly. The shutdowns fatally or near fatally injured many businesses that would have been IPO candidates. Even if the IPO process could be started, investors want to keep their funds safe until a clearer economic landscape reveals itself. Money that would have been invested stuck with the existing companies that exhibited a continuing viability, not IPO's.

In addition to the practical, everyday difficulties of business during the pandemic, there was also a substantial political overtone. The efforts to combat the pandemic turned into finger pointing, with the government falling into a factional squabble hawked on every news channel and media. The results of the pandemic had the markets and major indexes booming, as pension funds and the public continued to back existing public companies, but paused many IPO processes. When someone is going to invest millions of dollars or more, they generally want to meet the board and management in person and spend some time with them. Video conferences did not fill the slot of the 'dog and pony show' that investors and businesses had come to rely upon.

What are the main advantages of an IPO?

The primary objective of an IPO is to raise capital for a business by selling shares to private and institutional investors under the aegis of the SEC. It also has other advantages. The company gets access to investment from the entire investing public to raise capital, broadening the marketplace for its shares from accredited investors to everyone. It also facilitates acquisitions by value for shares and then uses those shares as currency (share conversions). On the other hand, public shares establish the value of an acquisition target. Mergers and acquisitions find a mathematical foundation to which other values can be added or subtracted.

Credit worthiness of a public company is enhanced with required accounting procedures that are mandated by the federal law. A history of the company based on reporting can usually help a company receive more favourable credit borrowing terms than as a private company. Subsequent to a successful IPO, a company can raise additional funds through secondary offerings, having already qualified as a public company and undertaken steps to access the public markets. The truly difficult process of organising and certifying the books and records, has already been done and maintained through required reporting. Additional offerings are relatively straightforward after that.

Public companies can attract and retain better management and more skilled employees through liquid stock equity participation (e.g. ESOPs). Many companies will compensate executives or other employees through stock compensation at the IPO. IPOs can give a company a lower cost of capital for both equity and debt. Meanwhile, an IPO increases the company's exposure to capital, its prestige and public image, all of which can help sales and profits.

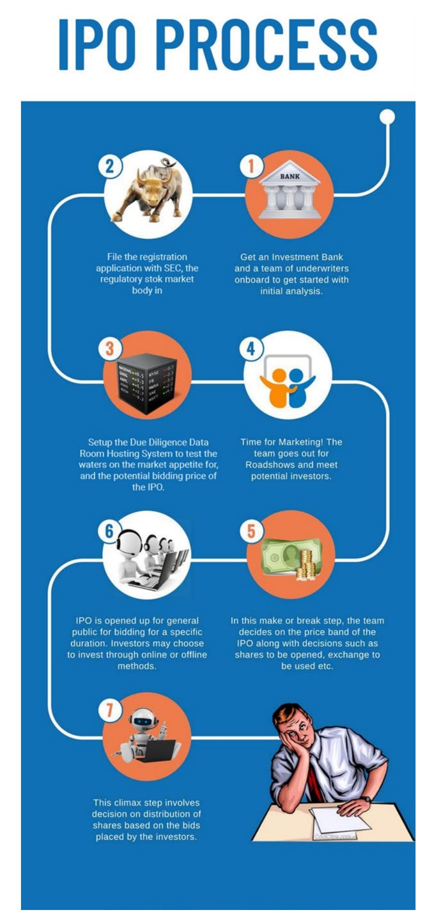
How do you determine whether an IPO is suitable for the business to achieve its goals?

Does the business need financing? Does it often apply for bank loans to meet operational demands? Does the company spend a lot of time and attention continually preparing information for the banks and other lenders? If the answer to these simple questions is affirmative, then an IPO should be considered. Let's not forget the individuals who founded the company now need a way to cash out. Creating a public value for their equity and for the shares of early investors is a primary exit strategy that is often considered at the birth of the enterprise.

Can you talk us through the process of an IPO?

The steps vary and become more complicated as you drill down into the actual process – you can rely on there being idiomatic issues – but the following are basic:

- Create and organise the documentation that set forth the condition of the company, such as a short summary and documented history of the company, corporate video, slide presentations, financial statements with auditors' notes, business plan, budget, and use of proceeds. Additionally, there should be a market analysis of the company and its industry, and an analysis of risks and factors with potential negative impact on the company's future. These are all elements of the disclosures that will need to be made to the SEC, future potential investors, existing shareholders, and the coterie of professionals that will need to be assembled. All these initial efforts will ease the way of the IPO.
- Assemble and contract the IPO Team, agreeing on remuneration, comprising underwriters, lawyers, certified public accountants, and securities and exchange commission experts.
- Select possible investment banks; create and deliver the pitch to them.
- Underwriters present proposals and valuations discussing their services, the best type of security to issue, offering the price, amount of shares and estimated time frame for the market offering.
- The company chooses its underwriters and formally agrees to terms through an underwriting agreement.
- Information regarding the company is compiled and reviewed for required IPO documentation, usually an S-1 Registration Statement. The S-1 is the primary IPO filing document. It has two parts; the prospectus, and the privately held filing information.
- The S-1 includes preliminary information about the expected date of the filing. It will be revised often throughout the pre-IPO process. The included prospectus is also revised continuously.
- Marketing materials are distributed for pre-marketing of the new stock issuance.
    - (i) Underwriters and executives publicise and market the share issuance to estimate demand and establish a final offering price. Underwriters can make revisions to their financial analysis throughout the marketing process. This can include changing the IPO price or issuance date as they see fit.
    - (ii) Companies take the necessary steps to meet specific public share offering requirements. Companies must adhere to both exchange listing requirements and SEC requirements for public companies.
- Add prestigious names to the board of directors.
- Ensure processes for reporting auditable financial and accounting information every quarter.
- The company sells its shares on the IPO date and issues shares to purchasers. Capital from the primary issuance to shareholders is received as cash and recorded as stockholders' equity on the balance sheet. Subsequently, the balance sheet share value becomes dependent on the company's stockholders' equity per share valuation.
- Some post-IPO provisions may be instituted. Underwriters may have a specified time frame to buy an additional share after the Initial Public Offering date. Certain investors may be subject to quiet periods.



What sets your exclusive Fast IPO service apart?

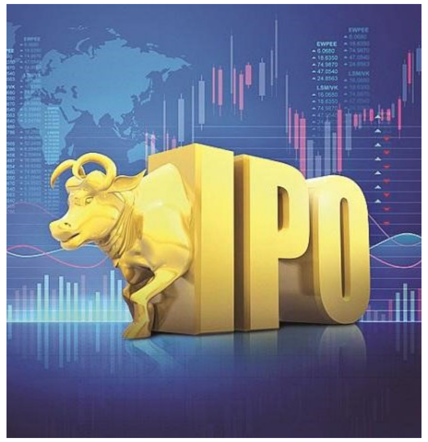
As its name says: it is fast and expeditious, owing to the focus and attention to detail and preparation that we give the process, as well as our knowledge of the key players in the field. It relies on the newly amended Regulation A+, which is limited to an annual raise of USD 75 million, plus a 'secret sauce' we developed that was submitted to and approved by the SEC, enabling fewer restrictions on the IPO.

Can you tell us more about your recent merger?

I had been partnered with Ralph Hornblower III in Deschenaux Hornblower & Partners LLP for almost a decade and with Richard M. Greenberg in Greenberg & Deschenaux LLP for almost two years, although I had known him much longer. It was uncomfortable for me to attribute each deal to one or the other of the firms. Moreover, my two partners have a common Harvard educational background and are two fine gentlemen.

During the beginning of the COVID-19 crisis last year, I was reflecting about which objective criteria could be chosen to attribute a deal to one or the other of the firms. I shared my reasoning with both my partners and asked them how they would envision a merger of both firms, and we did it first on our word through phone calls. I am extremely proud of being partners with these outstanding men, who happen to have cutting edge skills in more fields than just the law.

How does this move benefit your clients?
The wide range of experience and knowledge of the partners, their time availabilities and



their efforts are unified and coordinated. My estimation is that the new firm is at least three times more efficient than the previous two combined.

To what extent do clients benefit from your established relationship with leading investment banks?

Investment banks are not like drive through windows. They seek comfort in a history of dealing with their clients. Much of the relationship is based on trust, established over the course of years and previous deals. By having that type of relationship, months (perhaps years) are saved in the course of the IPO process.

How can you help a company protect its market position?

Market position can be helped with patents and copyrights, close administration and structuring of agreements. Often, companies fail by virtue of unwise or untenable agreements that have not been legally vetted. We also assist in lobbying for governmental action or inaction in support of the company.

What market techniques or strategies do you utilise?

As a legal firm specialising in IPO's and other public sales of shares, our strategy is to make sure that the company has sufficient funds to operate and to grow, in accordance with the vision of management. In that sense, we or management may envision a future growth path; we will be prepared to arrange for the funding to accomplish the goal.

Equally as important, we serve the company to ensure compliance with laws and regulations governing public entities. Many of the actions of the SEC or state governing bodies can and do result in disastrous criminal prosecutions. We steer the company away from those dangers by closely reviewing all activities that might pose negative legal and criminal consequences.

What are the biggest challenges clients often overlook?

Our clients are brilliant and visionary business people. They bring us insight into their businesses and markets. In turn, we try to advise on possible adverse conditions from the legal perspective. The clients sometimes overlook contractual provisions that may turn into lawsuits in the future, or don't reflect the reality of a transaction. We help with these problems, although it is the client leading the charge.

Is there anything else you would like to add?

We urge our clients to use our expertise on an ongoing basis, not limited to any specific transaction. This helps us steer through the reefs and shoals encountered by public companies and to assure additional resources, financial and human, when needed.

Greenberg, Deschenaux, Hornblower & Partners, LLP has been awarded IPO Law Firm of the Year by Corporate LiveWire Global Awards. The judges were particularly impressed with the leadership skills of the firm's founder, as well as his extensive experience in the field of IPO's and ability to raise private and public equities and debts for companies internationally, in a number of languages including French, Italian, English and German. His knowledge base is revered throughout the sector, where he is often invited to speak at conferences and universities worldwide. For more information, please visit ***www.deschenaux.com.***

Greenberg, Hornblower, Deschenaux & Partners, LLP