CONSIDERATIONS IN GOING PUBLIC

This information has been prepared by the law firm of Robertson & Williams, 9658 N. May Avenue, Suite 200, Oklahoma City, Oklahoma 73120 (telephone number 405/848-1944) for the purpose of explaining some of the advantages and disadvantages to clients who want to raise capital by selling securities to the public for the first time. The following information includes a discussion of both securities laws as well as practical considerations.

INTRODUCTION

When a company wishes to "Go Public" it faces a complex, costly and challenging process. A company may have decided to go public for many different reasons based on the company's history, the desires of its largest shareholders and/or management, the need for financing or marketing its products or services and its financial position. Some of the most common advantages considered by a company deciding whether to go public are the following:

(A) **New Capital**. A company often needs to obtain new capital on the most favorable terms available in order to fund continued growth, increase working capital, expand plant and equipment, retire debt or diversify company operations. An initial offering by the company of its stock in a public offering is one source of new capital that despite the offering costs and the underwriters' or brokers' fees, can be obtained on favorable financial terms. Venture capital funds and other forms of private investment capital can be more expensive and may result in a greater dilution to the existing shareholders.

(B) **Future Capital on More Favorable Terms**. A public offering of stock will improve the company's net worth, often enabling it to borrow capital on more favorable terms. Once a public market has been created for a stock and if it performs well in the continuing aftermarket, substantial additional equity capital can be raised from the public and from institutions on favorable terms. The company offers investors some degree of security through liquidity and an ascertainable market value. Future financing alternatives are increased following an initial public offering.

(C) **Negotiability of Securities**. When a company's securities are publicly traded, they are more readily negotiable and have an ascertainable market value. This results in such advantages as:

- *Acquisition of Other Companies*. A company with publicly traded stock is in a position to make acquisitions using its own securities as a part of the consideration, thus preserving its cash or borrowing ability.

- *Employee Incentives*. Stock or options to purchase stock may be more attractive incentives for employees if the company's stock is publicly traded. Publicly traded stock improves the company's ability to attract and retain competent management personnel.

- *Liquidity for Present Shareholders*. Existing shareholders can more easily value their investment and can, in certain instances, more easily liquidate their investment.

- *Shares May Have More Value*. Shares which are publicly traded and hence are readily negotiable are frequently valued at a premium over shares which cannot be publicly traded.

(D) **Prestige**. Through public ownership of its securities, a company can gain prestige, become better known, and thereby improve its business operations. The company's customers and suppliers may also acquire shares of the company and thus have a financial stake in its success. This reason for going public may be especially applicable to companies distributing consumer goods, services or otherwise dealing with the public at large.

(E) **Immediate Realization of Gain**. In some instances, the initial sale of stock by the company can be accompanied by the simultaneous sale of some of the shares owned by the existing shareholders. This provides a "cash out" for some control persons or insiders such as venture capital companies that provided previous financing or others wishing to reduce their investment in the company. Underwriters however, usually viewed such a "cash out" with disfavor since it may be perceived as a "bail out" to the investing public and reduces the amount of the funds raised which go into the enterprise. If an Underwriter agrees to “piggyback” shares of investors or management, it will typically limit such shares to 10% or 15% of the offering.

There are certain disadvantages to going public which should be considered by a company contemplating becoming a publicly traded company. Among the most commonly cited disadvantages are:

(A) **Expenses**. The expenses of going public are substantial (see discussion below). Once the company is publicly traded, ongoing annual expenses can also be substantial (estimates range from $30,000 to over $100,000 annually even for small companies) and administrative problems can increase. Routine legal and accounting fees for most companies will increase (due primarily to additional audit and reporting requirements) and the company will incur additional fees of transfer agents or registrars, public relations consultants and the like. There is also a significant cost in terms of executive time devoted to shareholder relations and public disclosure.

(B) **Disclosure Obligations**. Once the public becomes owners of stock in the company, information required by federal securities laws must be disclosed. Owners of a privately held business are reluctant to make public such information as salaries and related party transactions. Management may also be reluctant to disclose sales, marketing information, key contracts and suppliers since such disclosure may place a company at a competitive disadvantage. All of these items are the subject of disclosure for a publicly traded company and can be easily looked up on the Internet.

(C) **Loss of Flexibility or Control**. By incurring a responsibility to the public, the owners of a business lose some flexibility in management. There are practical (if not legal) limitations on salaries and fringe benefits, relatives on the payroll and many other operating procedures. Opportunities which might have been available personally to the former owners may have to be turned over to the company if it is publicly held. The ability to act quickly may be lost, particularly when approval is required of shareholders or outside directors. The original owners of the company may be threatened with the loss of control of the company if a sufficiently large percentage of the stock is sold to the public. Subsequent securities offerings will continue to dilute their percentage interest. In addition, a large public market may increase the chances of the company being acquired through an unfriendly tender offer.

(D) **Market Expectations**. Once a company is publicly owned, management inevitably will consider the impact on the market price of its stock when making various decisions. The financial community's focus on quarter-by-quarter performance can deter a public company's long-term investment decisions or limit the practical alternatives of management. The financial community or the investing public may also have certain expectations regarding the payment of dividends which would limit the company's ability to retain capital for growth or expansion.

(E) **Higher Estate Tax Valuation**. Since a public market often increases the value of a company's stock, going public can create a higher valuation of a shareholder's stock for estate tax purposes. However, the ready negotiability of a publicly traded stock enables some stock to be sold more quickly to satisfy the estate taxes and other estate expenses.

Before a company decides to go public, it should consider what the alternatives are for financing its operations and capital requirements. The following and other alternatives should be discussed with your lawyers and accountants before a decision is made:

- venture capital financing
- bank or commercial financing
- private placement to investors
- government programs such as SBA lending, industrial development financing, grants
- partnership or limited liability company financing for certain activities suitable for such an investment

Some of these alternatives may not be available to particular companies or the cost in time, regulatory requirements or money may not make the alternative viable. The alternatives may not provide for the growth anticipated by the company or may unduly restrict management. These and other factors must be weighed before a decision is made to go forward with an offering.

ELIGIBILITY AND TIMING FOR GOING PUBLIC

In evaluating the advisability of going public, a company should seek the advice of a financial advisor to determine whether the proper time has come for the company to undertake a public offering. Investment banking firms familiar with the company's industry or with the local or regional markets in which the company intends to market its stock can assist the company in evaluating the company's eligibility for going public. If management is not familiar with any investment bankers, the company's legal counsel or its accounting firm may be able to make introductions. The company and its investment banking firm should consider the following factors to determine whether the offering should be made now or delayed:

(A) **The Company's Earnings and Financial Performance**. The company's track record, particularly over the last few years, is important. Most companies should have at least one year of good earnings and financial performance before their equity securities will be considered to be acceptable to public investors, unless a company can demonstrate that it is uniquely positioned in a market segment so as to be able to produce some financial performance in the near future.

(B) **The Size of the Company**. The company's size and the size of the initial public offering are important factors in determining whether the company is large enough to raise sufficient funds so that a sufficient number of shares will be outstanding to permit orderly trading after the offering. It is not possible to establish any rigid minimum standards; most underwriters prefer at least a 500,000 to 800,000 share offering, selling 25% to 40% of the company. If the stock is priced at $10.00 per share, the company's value would have to be in the $15 to $20 million range. The amount of sales, earnings and potential necessary to produce this kind of valuation will vary by company and industry, and the company's investment bankers can assist in this regard.

(C) **Market Conditions**. The general market conditions prevailing at the time will affect not only the price that the company will receive for its stock, but also the size of the public offering and its timing. Oftentimes markets will have "fad" industries in which it is easier to sell a particular type of company often at unrealistically high prices which are difficult to hold up in the after-market. Future financing in the public market can be very difficult for many such companies. Fads can be fickle!

(D) **Urgency of Capital Requirements**. The urgency for new money and the availability of adequate capital from other sources on satisfactory terms are important factors. The sale of stock will diminish the percentage equity interest of the present stockholders. If the company delays the offering, the company's net worth may increase and at some future time it may be possible to raise the same capital by selling a smaller equity interest to the public at a higher price.

(E) **Recent or Expected Adverse Results**. If the company's recent sales or earnings have been or may shortly be adversely affected by recent losses or by unusual or nonrecurring events or if other serious problems are foreseen, it may be advisable to postpone public financing until the company's performance has demonstrated that such problems can be overcome.

(F) **Timing of Audited Financial Statements**. The expected availability date for the company's annual audited financial statements should be considered in timing the offering since it may be less costly to delay the filing of the registration statement until shortly after the statements are prepared. This will avoid the expense of preparing interim financial statements. Availability of financial statements for recently acquired businesses by the company is also an important factor.

(G) **Management**. People are key indicators of suitability. Management's experience and track record are important factors in determining if a company should go public, if not the most important factor. More than anything else, start-up companies are selling their people and once an entrepreneur has established himself as a successful manager in a public company, investment bankers will continue to back him, even in new and unproven ventures. Another key area of management is in financial management.

SELECTION OF AN UNDERWRITER

Once the decision has been made to go public, the company should select a managing underwriter who will take the lead in forming the underwriting syndicate which will offer the stock to dealers and to the public. Investment banking firms vary widely in prestige, financial strength and the ability to provide the various services which the company requires and expects. Some underwriters are not ordinarily interested in first time offerings, while others specialize in them. Certain underwriters have special stature and experience in specific industries. An underwriter appropriate for one company may not be for another. A company is not required to sell securities to the public using an underwriter, however, most companies sell to the public in an underwritten offering because of the underwriter's ability to successfully price and sell the stock and maintain a trading market in the stock following the completion of the offering.

In selecting the underwriter, advice should be obtained from experienced advisors who have a background in the area of public offerings. Attorneys specializing in securities work and major accounting firms are usually in a position to offer reliable suggestions or guidance. Bankers can sometimes be consulted for recommendations in addition to executives of companies that have recently gone through the underwriting process. Some advisors warn against shopping an offering to a number of potential underwriters at the same time, while others recommend it in order to test the market, at least initially. There are some smaller and more speculative offerings where it may be difficult to find an underwriter, and only through several contacts can this be achieved in a reasonable amount of time. Conversely, there may be a reluctance on the part of an underwriter, particularly a smaller one, to invest the time and money it takes to thoroughly evaluate a proposal without some assurance that he has a chance at doing the underwriting.

There are a number of different kinds of underwriters which a company should consider:

- large nationally known underwriters with strong distribution capacity nationwide who will generally create a national market for the company's stock. These underwriters traditionally are involved in selling the securities of larger and well established companies, often in amounts exceeding $25 million.

- regional underwriters with strong distribution capacity in a several state geographic area, who can place the stock in that area or nationwide through a syndicate of other regional and local brokers. Regional underwriters traditionally will consider offerings of less than $25 million and sometimes below $10 million.

- small, local underwriters which together with other smaller brokerage houses can underwrite offerings for as little as $4 or $5 million and who may specialize in small speculative public offerings of unseasoned companies.

In these groups of underwriters can be found those which specialize in particular industries or who specialize in initial public offerings or tax shelters or bond financing.

What are the criteria to be considered in selecting a managing underwriter? Some important ones are:

(A) **Reputation and Ability to Distribute**. Is the managing underwriter's name well known and respected in financial circles, and does it have a record of successful underwriting of initial public offerings similar to that now contemplated? A good managing underwriter can put together a strong group of underwriters who can make a distribution to a large number of investors in small quantities, thus preventing large blocks of stock from landing in the hands of certain persons or institutions who might seriously depress the market for the company's shares if they sell, or attempt to take control of the company if they become disenchanted with management.

(B) **Ability to Advise**. Can the proposed underwriter give sound advice as to the optimal timing of the offering, the best price that can be obtained consistent with other objectives and the proper allocation of the offering between primary and secondary shares?

(C) **Ability to Provide Financial Advisory Services Following the Offering**. Has it given able financial counsel to other companies with whom it has done business after the public offering? Can it render advice and assistance in obtaining further private or public financing, making acquisitions and even finding executive personnel or directors?

(D) **Aftermarket Performances of the Security**. Underwriters are expected to provide aftermarket support for the security being sold. Accordingly, it is important to look at the managing underwriter's record in other public offerings. Has it provided a strong underwriting syndicate which will supply aftermarket interest and, as a result, good price performance for the company's shares and support for future offerings? Will it "make a market" in the shares after the offering, that is, will it make continuous bids for the shares for its own account in order to maintain a market? Will its research analysts help sustain the financial community's interest in the company with timely and perceptive reports on the company's progress?

(E) **Experience in the Company's Industry**. Has it underwritten offerings of companies in the same or a similar industry? The underwriter who can explain the company to the public will be a good choice.

(F) **Terms of the Offering**. What are the terms upon which the underwriter will do the offering, such as the kind of underwriting offered (firm commitment, "best-efforts" or something else), anticipated size of the offering and price, and other negotiable terms such as expense allocations, warrants, fees and commissions?

TYPES OF UNDERWRITING

Broadly speaking, underwriters may be expected to offer two types of underwriting:

(A) **Firm Commitment**. The underwriters agree to purchase all of the securities being offered for their own account, and rely upon themselves to resell the securities to the public. If the underwriters are unable to resell the securities, they must keep them until they can sell them later. Firm commitment underwriting are almost always used by the large underwriters, and are the strongest and most desirable arrangement from the company's standpoint.

Usually the managing underwriter will add a "green shoe" to a firm commitment offering (so-called because it was first used in an offering for the Green Shoe Company). This is an option for the underwriters to acquire from the company (or selling shareholders) and resell up to an additional 15 percent of the firm commitment stock, to cover over-allotments of the firm commitment stock to customers. The option allows the underwriters to obtain some additional stock at the same price as they purchased the firm commitment stock, in order to cover excess orders in a rising market immediately following the offering. If the market drops after the offering, it is likely the option will not be exercised.

(B) **Best Efforts**. Under such an agreement, the underwriters undertake to use their "best efforts" to sell the new issue as the company's (or selling shareholders') agent, but do not guarantee to purchase unsold securities for their own account. To the extent that purchasers cannot be found, the issue is not sold. "Best efforts" underwriting are less desirable and less frequent than the firm commitment underwriting described above for larger companies but much more frequent for smaller or unseasoned companies. Small, local underwriters are more likely to sell under a "best efforts" arrangement.

SELECTION OF OTHER PROFESSIONALS

In addition to the underwriter, there are several other professionals the company will work with in its offering.

(A) **Company Counsel**. The law firm hired by the company to assist in the offering must have experienced securities lawyers. They are primarily responsible for preparing the textual parts of the registration statement, preparing and organizing all required corporate books and records, assisting the outside directors and underwriter(s) and their representatives in their due diligence, negotiating with underwriter(s)' counsel, communicating with the SEC, preparing and transmitting stock exchange listing applications (if applicable), counseling management on the registration process and legal issues which arise, and generally coordinating the registration process.

(B) **Underwriter' Counsel**. Counsel will also be selected by the underwriter to represent it and the syndicate group. These attorneys have the primary responsibility for preparing, negotiating and supervising performance of underwriting documents (including, if used, the Letter of Intent), filings with the NASD and state securities regulators (so called "blue sky filings"), obtaining NASD and blue sky clearance, overseeing and participating in the underwriters' due diligence investigation, commenting on and critiquing the textual parts of the registration statement. The company normally pays their fees.

(C) **Accountants**. The accountants' primary role is to deliver for use in the registration statement a report on the company's financial statements after an audit. Also, the accountants usually assist in the preparation of all financial statements and financial information appearing in the registration statement. They also perform additional tests and procedures in order to provide "cold comfort" to the underwriters on the financial and statistical information in the registration statement apart from the audited financial statements. Although not required, usually the accountants are a "Big Six" or national firm whose selection has been explicitly or implicitly approved by the lead or managing underwriter. SEC experience is a must and since the SEC requires that the accountants be independent of the issuer, this normally precludes use of a smaller firm which has invested in, or has a member on the board of, the company.

(D) **Financial Printer**. A financial printer is a specialized printing and related services organization which is familiar with SEC format, type size, type face, inking and document size requirements. They are familiar with distribution requirements and timing for an offering and have 24 hour a day operations.

REGULATORY PARTICIPANTS

A company going public is subject to close regulatory scrutiny. The disclosure documents which are prepared are not only filed with the Securities and Exchange Commission but also with the state securities agencies in which the offering will be sold and with the National Association of Securities Dealers and others.

(A) **Securities and Exchange Commission ("SEC")**. The registration statement must be filed with, and be declared "effective" by the SEC before the securities may be sold to the public. During the registration process, the SEC's Division of Corporation Finance comments on the disclosures (both textual and financial) made in the registration statement prior to effectiveness. The SEC's Enforcement Division pursues violators of the registration and anti-fraud provisions of the Securities Act of 1933 and the registration, reporting, proxy, tender offer, "short-swing" trading, anti-fraud and other provisions of the Securities Act of 1934. Generally speaking, the SEC is concerned primarily with the adequacy of disclosures and the timeliness of required filings.

(B) **State Securities or Blue Sky Commissions**. The company is required to register or qualify under an exemption in each state in which the offering will be made. Almost all states have registration and anti-fraud requirements which parallel those of the SEC. While many states have adopted the SEC's disclosure oriented standards, a significant number of Midwestern and other states also impose substantive, "merit review" or "fair, just and equitable" standards on initial public offerings. These standards involve review of certain items such as adequate promoters' equity, "Cheap Stock," loans to insiders, excessive insider compensation, excessive dilution in tangible book value to be suffered by public investors, expense sharing and other matters.

(C) **FINRA**. The registration statement and underwriting documents must be filed with FINRA, a regulatory body governing brokers and a part of the NASD, where an NASD member (most underwriters are brokers who are members of the NASD) is selling the securities and/or when the securities will be quoted on NASDAQ. FINRA must indicate prior to SEC effectiveness that it does not object to the underwriting arrangements and compensation disclosed in the offering. Commonly, issuers in initial public offerings (as well as their underwriters) insist on quotation of the common stock on the NASD's Automated Quotation System ("NASDAQ") either on the National Market System ("NMS") or the small cap bulletin board.

(D) **Stock Exchanges**. Rarely is a first-time issuer eligible for listing of its shares on the New York or American Stock Exchanges. More commonly, first-time issuers are eligible for, and seek, listing of their stock on regional exchanges such as the Boston, Philadelphia or Pacific Stock Exchanges. In addition to achieving possibly greater trading market liquidity for the stock, this sometimes also is done to avoid registration requirements in "merit review" states.

TIMETABLE

For the average initial public offering, a substantial amount of preliminary work is required before a registration statement can be prepared and filed with the SEC. The amount of time to complete the preliminary work and the preparation of the registration statement depends on the magnitude of the task. A certain amount of restructuring, documentation, corporate cleanup and other "housekeeping" matters usually needs to be done prior to the registration statement being prepared and filed. Once the preliminary work is completed or well underway, the average initial public offering registration statement requires six to eight weeks to prepare, edit, print and file with the SEC.

When the registration statement has been filed, the waiting period begins. It is during this interval that the red-herrings are distributed and management may be called on by the underwriter to discuss the offering and the company with various brokers, institutions, etc. -- the "dog and pony show." The length of time the SEC and the state administrators take to review the registration statement varies depending on the SEC or the state's backlog, the time of year, the nature of the offering and what form of registration statement is used. For an S-1 or SB-2 registration statement, the SEC's current policy is to issue its comment letter within 30 days.

The nature of the SEC's and states' comments and the willingness or ability of the company to respond to comments which change the offering will determine how long it will take to be declared effective after the initial comment letters are received. Accounting disclosure requirements can also have an impact on when a registration statement is filed or when it can be declared effective. If the financial disclosure needs to be updated, it can cause delays.

The overall time lapse between the beginning of the company's first registration statement and the final effective date may well exceed six months and rarely is less than three months. Once the decision has been made to go public, this firm would be happy to prepare a preliminary timetable, giving you our best estimate on how long it will take your company to go public.

EXPENSES

The major expenses in "going public" are underwriters' fees, legal fees, accounting fees and printing costs. In addition, there are registration and "blue sky" filing fees. The fees given below are for a typical "Form S-1" registration statement. However, the fees for a Form SB-2 registration statement, which is available for certain smaller companies making initial public offerings can be less.

(A) **Underwriters' Compensation**. The underwriters' cash discount or cash commission usually ranges from seven to ten percent of the public offering price of a new issue of common stock. The underwriting commission on debt is traditionally less than that for stock. In smaller offerings, underwriters may also request other compensation, such as warrants to purchase stock, a right of first refusal on future offerings, or reimbursement for some of their expenses (including their counsel's fees). The maximum amount of direct and indirect commissions, fees and underwriters' compensation is regulated by the NASD and the nature of such compensation must be reviewed by it for fairness before the offering can proceed. Many state securities authorities also review the terms of underwriters' compensation for fairness.

(B) **Legal Fees**. Legal fees will vary considerably depending upon the circumstances surrounding each offering. Over the last several years, based on a sampling of registration statements filed with the SEC, offerings under $4 million averaged approximately $55,000 for legal fees; offerings between $4-6 million averaged $72,000 and offerings between $6-10 million averaged $109,000. The legal services generally include the corporate "housekeeping" work related to the offering, the preparation and clearance of the registration statement, negotiations of the underwriting agreement and closing of the sale of the securities to the underwriters. The legal fees will also tend to be higher if there is a large number of selling shareholders, because of the legal and administrative work for each seller.

In addition, the company will pay an additional legal fee for the underwriters' counsel and counsel who does the legal work in connection with the NASD and the state "blue sky" filings and clearances. The amount of such NASD and "blue sky" legal fees is generally between $15,000 and $30,000 for filings made with the NASD and with substantially all of the states, depending on the nature of the comments raised by the NASD and the state authorities and the degree of compliance by the company with the requirements of those authorities.

This law firm, like many, are willing to candidly discuss the fees for an offering and flexible ways to structure the fees and payment to make the offering easier to accomplish for smaller companies.

(C) **Accounting Fees**. Accounting fees will, of course, vary with the size of the company and the complexity of its operations. Accounting fees fluctuate widely and may be as little as $50,000 and may exceed $150,000. Fees may be at the lower end of this range if the auditors have conducted regular audits for the past few years and have just completed the company's annual audit. They tend to be significantly higher if there have been no prior audits or new accountants are engaged at the time of the offering, and will be higher if the company is required to include interim audited or unaudited financial statements. The accountants' fees include their preparation of the financial statements, their services in helping to respond to SEC staff accounting comments, and their preparation and delivery to the underwriters of the "cold comfort" letters.

(D) **Printing Costs**. While the law does not so specify, the underwriters and the attorneys almost always insist that the registration statement, the prospectus, the stock certificates and the underwriting documents be printed using a reputable financial printer who can also handle electronic filings on EDGAR - the SEC's electronic data base. Printing costs disclosed in recent registration statements for initial public offerings ranged from $40,000 to over $120,000. The registration statement and prospectus account for the largest portion of the printing expenses. Expenses are significantly affected by the length of the prospectus, the number of proofs and corrections made, and the number of prospectuses printed; they will also be somewhat higher if color photographs are used in the prospectus; they can be somewhat lower if the printer uses computerized typesetting to set the registration statement directly from the output of company counsel's word processing equipment.

(E) **Securities and Exchange Commission, NASD, and State "Blue Sky" Registration Fees**. The SEC registration fee is negligible in relation to the size of the offering, being a fraction of one percent of the maximum aggregate public offering price of the security. The company also usually pays for the NASD filing fee, which is also a fraction of one percent of the maximum public offering. The amount of state "blue sky" fees depends on the number of states in which the offering will be registered and the aggregate proposed offering price of the securities to be qualified in each state. If the company registers securities in all of the states which require filing and the aggregate public offering price for securities registered in each state is high, the state "blue sky" filing fees can amount to $30,000 or more.

(F) **Registrar and Transfer Agent's Fees**. These are fixed fees, depending on the number of certificates issued and the number of certificates transferred. Fees are usually no more than $5,000. In addition, if there are selling shareholders, there will usually be a custodian of their shares (usually the bank registrar or transfer agent) whose fees may be $2,500 or $5,000 depending on the number of selling shareholders.

Aggregate expenses for a first public offering excluding underwriting compensation, are typically in the $150,000 to $400,000 range. However, there are wide variations. Aggregate expenses disclosed in recent registration statements averaged approximately $180,000 for offerings under $4 million; $255,000 for offerings between $4-6 million; and $400,000 for offerings between $6-10 million.

LIABILITY

Under the Securities Act of 1933, civil and criminal liabilities may flow from misstatements or omissions in the registration statement and prospectus. The company, its directors, those officers who signed the registration statement, underwriters and experts are all subject to such liabilities. Each of these persons is jointly and severally liable, and the potential civil liability is the full sales price of the security.

The company is absolutely liable to misstatements or omissions in the registration statement. However, all other persons and firms are entitled to the "due diligence" defense against such liability. In general, this defense requires that each person must himself look behind the registration statement and after conducting a reasonable investigation have a reasonable basis to believe and in fact believe that the statements made in the registration statement are true and do not omit to state a material fact necessary to make them not misleading. (However, persons other than an "expert" are not required to investigate statements made on the authority of such expert, but are only required to have no reasonable grounds to disbelieve and not disbelieve the truth and completeness of statements made on the authority of such expert). The extensive corporate examination of the company by the underwriters, accountants and counsel is intended in part to establish this defense, and the company should not resist such probing into its affairs.

There is also liability under the Securities Act of 1933 for failure to deliver to purchasers a final prospectus in connection with all sales of the securities by the underwriters as part of their distribution, and all other sales of the securities (whether they are open market transactions or otherwise) within a specified number of days of the effective date of a registration statement relating to an initial public offering. There are also liabilities under the Securities Act of 1933 and the Securities Exchange Act of 1934 and rules under those Acts for engaging in fraudulent or manipulative activities in connection with the sale of such securities.

CONSEQUENCES OF GOING PUBLIC

There are certain continuing consequences arising under the Securities Exchange Act of 1934 once a company goes public. If any company has total assets of more than $3 million and a class of equity securities held by more than 500 persons at any fiscal year end, such class of equity securities must be registered under Section 12(g) within 120 days after the first fiscal year end on which the company meets these tests. Likewise, any company which has a class of securities listed on a stock exchange must register those securities under Section 12(b). These are one time registrations which apply to that entire class of securities and should be distinguished from registrations under the 1933 Act which relate only to specific securities involved in a particular offering.

Registration under the 1934 Act involves five separate sets of legal obligations relating to: periodic reporting, proxy solicitation, insider trading, tender offers and related matters, and the Foreign Corrupt Practices Act. Additional information on these topics can be provided by us at your request.

CONCLUSION

The process of going public is a major development in the business life of any company. It is a step which should be taken only after a thorough analysis of the advantages, disadvantages, consequences and alternatives means of financing. Going public is a relatively time consuming and expensive means of raising capital, although the commensurate benefits may more than outweigh these disadvantages in the appropriate situation.

Any company considering the possibility of a public offering should begin its planning long in advance. Many of the decisions which must be made in connection with a public offering require a long period of time to implement. Therefore, a well planned public offering is a project for which the preliminary steps and long range study should begin well before the securities can be sold.

The law firm of Robertson & Williams is experienced in securities matters including initial public offerings and continuing reporting requirements under the 1934 Act. We assist our clients in all aspects of business and tax planning, including formation and acquisitions, corporate finance and capital formation. The firm also has extensive experience in private placements, tax shelter offerings and has represented both issuers and underwriters, venture capital companies and individuals. Inquiries should be directed to Mark A. Robertson, Robertson & Williams, 9658 N. May Avenue, Suite 200, Oklahoma City, Oklahoma 73120, telephone (405) 848-1944, fax (405) 843-6707, E-mail mark@robertsonwilliams.com.

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