Company’s Direct IPOs: Should You Take the DIY Route?

by Dan Brecher on August 22, 2013

Most companies that undertake an initial public offering (IPO) partner with an investment bank to serve as an underwriter. The role of the underwriter includes helping to establish the initial share price and the public market, as well as seeking to interest analysts to follow the stock.

In the midst of the growing crowdfunding buzz, direct public offerings (DPO) have recently come back into vogue. In a Do-It-Yourself (DIY) DPO, the business sells shares directly to the public without using an investment bank as the middleman. Purchasers may include friends, family, customers, employees and other third parties. Well-known companies that have used direct public offerings include ice-cream giant Ben & Jerry’s and organic macaroni and cheese maker Annie’s Homegrown.

There are several reasons why a company may elect to undertake this type of IPO, in addition to setting its own pricing for the value of the business. Like a traditional IPO, the benefits include access to capital, the ability to offer stock incentives to employees, the added currency for corporate acquisitions, and the clout of being a publicly traded company.

In general, DPOs are less costly to conduct and can avoid many of the cumbersome registration and disclosure requirements associated with a traditional IPO. For instance, certain exemptions from federal securities laws are available to small and mid-size businesses seeking to conduct smaller offerings, companies with solely intrastate operations and non-profit enterprises. Companies may also explore the DIY IPO route after failing to attract an investment bank to underwrite the transaction.

Of course, there are also downsides. Because companies do not partner with an investment bank or broker-dealer, they must do a lot of the legwork in-house, and should consult with an experienced guide through this briar patch. Marketing the IPO can be both expensive and time-consuming, particularly for businesses that are not well established. The after-market can be a mine field for the uninitiated, particularly if there is an inability to attract a following of analysts or after-market broker interest in trading the stock.

While the growth of social media and online platforms catering to DPOs has made the process more manageable, there is also the old-fashioned approach. For Annie’s Homegrown and New York beer company Spring Street Brewery, the best way to reach investors was advertising the public offering on the product itself.

If you have any questions about company direct IPOs or would like to discuss the legal issues involved, please contact me, Dan Brecher, or the Scarinci Hollenbeck attorney with whom you work.