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## GOING PUBLIC

### CHECKLIST: DUE DILIGENCE

In connection with taking a company public, the underwriter and its legal counsel are required to undertake a rigorous investigation of the company that intends to go public. This is referred to as the "due diligence investigation." The goal of the due diligence investigation is to understand fully the business of the company, the risks and problems facing it, and to assure that the company's registration statement is complete and accurate.

The following checklist is intended to provide you with a general idea of the documents and information that you will have to produce to cooperate with the underwriter and its legal counsel in its due diligence investigation.

#### **A. *Organization and Good Standing.***

- The Company's Articles of Incorporation, and all amendments thereto.
- The Company's Bylaws, and all amendments thereto.
- The Company's minute book, including all minutes and resolutions of shareholders and directors, executive committees, and other governing groups.
- The Company's organizational chart.
- The Company's list of shareholders and number of shares held by each.
- Copies of agreements relating to options, voting trusts, warrants, puts, calls, subscriptions, and convertible securities.
- A Certificate of Good Standing from the Secretary of State of the state where the Company is incorporated.
- Copies of active status reports in the state of incorporation for the last three years.
- A list of all states where the Company is authorized to do business and annual reports for the last three years.
- A list of all states, provinces, or countries where the Company owns or leases property, maintains employees, or conducts business.

#### **B. *Previous Financing Efforts; Authorization for Going Public.***

- Copies of any registration statements, private placement memoranda, or similar materials related to the Company.
- Copies of corporate resolutions authorizing the initial public offering.
- Any confidentiality or nonpublicity agreements.
- Any broker or investment banking arrangements.

#### **C. *Financial Information.***

- Audited financial statements for three years.
- The most recent unaudited statements, with comparable statements to the prior year.
- Auditor's letters and replies for the past five years.
- The Company's credit report, if available.

- Any projections, capital budgets, and strategic plans.
- Analyst reports, if available.
- A schedule of all indebtedness and contingent liabilities.
- A schedule of inventory.
- A schedule of accounts receivable.
- A schedule of accounts payable.
- A description of depreciation and amortization methods and changes in accounting methods over the past five years.
- Any analysis of fixed and variable expenses.
- Any analysis of gross margins.
- The Company's general ledger.
- A description of the Company's internal control procedures.

**D. *Physical Assets.***

- A schedule of fixed assets and identify location.
- All U.C.C. filings.
- All leases of equipment.
- A schedule of sales and purchases of major capital equipment during last three years.

**E. *Real Estate.***

- A schedule of the Company's business locations.
- Copies of all real estate leases.

**F. *Intellectual Property.***

- A schedule of domestic and foreign patents and patent applications.
- A schedule of trademark and trade names.
- A schedule of copyrights.
- A description of important technical know-how.
- A description of methods used to protect trade secrets and know-how.
- Any "work for hire" agreements.
- A schedule and copies of all consulting agreements, agreements regarding inventions and licenses or assignments of intellectual property to or from the Company.
- Any patent clearance documents.
- A schedule and summary of any claims or threatened claims by or against the Company regarding intellectual property.

**G. *Employees and Employee Benefits.***

- A list of employees including positions, current salaries, salaries and bonuses paid during last three years, and years of service.
- All employment, consulting, nondisclosure, nonsolicitation or noncompetition agreements between the Company and any of its employees.
- Resumes of key employees.
- The Company's personnel handbook and a schedule of all employee benefits and holiday, vacation, and sick leave policies.
- Summary plan descriptions of qualified and non-qualified retirement plans.

- Copies of collective bargaining agreements, if any.
- A description of all employee problems, including alleged wrongful termination, harassment, and discrimination.
- A description of any labor disputes, requests for arbitration, or grievance procedures currently pending or settled within the last three years.
- A list and description of benefits of all employee health and welfare insurance policies or self-funded arrangements.
- A description of worker's compensation claim history.
- A description of unemployment insurance claims history.
- Copies of all stock option and stock purchase plans and a schedule of grants thereunder.

**H. *Licenses and Permits.***

- Copies of any governmental licenses, permits or consents.
- Any correspondence or documents relating to any proceedings of any regulatory agency.

**I. *Environmental Issues.***

- Environmental audits, if any, for each property leased by the Company.
- A listing of hazardous substances used in the Company's operations.
- A description of the Company's disposal methods.
- A list of environmental permits and licenses.
- Copies of all correspondence, notices, files related to EPA, state or local regulatory agencies.
- A list identifying and describing any environmental litigation or investigations.
- A list identifying and describing any known superfund exposure.
- A list identifying and describing any contingent environmental liabilities or continuing indemnification obligations.

**J. *Taxes.***

- Federal, state, local, and foreign income tax returns for last three years.
- States sales tax returns for last three years.
- Any audit and revenue agency reports.
- Any tax settlement documents for last three years.
- Employment tax filings for three years.
- Excise tax filings for three years.
- Any tax liens.

**K. *Material Contracts.***

- A schedule of all subsidiary, partnership, or joint venture relationships and obligations, with copies of all related agreements.
- Copies of all contracts between the Company and any officers, directors, 5-percent shareholders or affiliates.
- All loan agreements, bank financing arrangements, lines of credit or promissory notes to which the Company is a party.
- All security agreements, mortgages, indentures, collateral pledges, and similar agreements.
- All guaranties to which the Company is a party.
- Any installment sale agreements other than for goods in the ordinary course of business.

- Any distribution agreements, sales representative agreements, marketing agreements, and supply agreements.
- Any letters of intent, contracts, and closing transcripts from any mergers, acquisitions, or divestitures within last five years.
- Any options and stock purchase agreements involving interests in other companies.
- The Company's standard quote, purchase order, invoice, and warranty forms.
- All nondisclosure or noncompetition agreements to which the Company is a party.
- All other material contracts.

**L. *Product or Service Lines.***

- A list of all existing products or services and products or services under development.
- Copies of all correspondence and reports related to any regulatory approvals or disapprovals of any Company's products or services.
- A summary of all complaints or warranty claims.
- A summary of results of all tests, evaluations, studies, surveys, and other data regarding existing products or services and products or services under development.

**M. *Customer Information.***

- A schedule of the Company's 12 largest customers in terms of sales thereto and a description of sales thereto over a period of two years.
- Any supply or service agreements.
- A description or copy of the Company's purchasing policies.
- A description or copy of the Company's credit policy.
- A schedule of unfilled orders.
- A list and explanation for any major customers lost over the last two years.
- All surveys and market research reports relevant to the Company or its products or services.
- The Company's current advertising programs, marketing plans and budgets, and printed marketing materials.
- A description of the Company's major competitors.

**N. *Litigation.***

- A schedule of all pending litigation.
- A description of any threatened litigation.
- Copies of insurance policies possibly providing coverage as to pending or threatened litigation.
- Documents relating to any injunctions, consent decrees, or settlements to which the Company is a party.
- A list of unsatisfied judgments.

**O. *Insurance Coverage.***

- A schedule and copies of the Company's general liability, personal and real property, product liability, errors and omissions, key-man, directors and officers, worker's compensation, and other insurance.
- A schedule of the Company's insurance claims history for past three years.

**P. *Professionals.***

- A schedule of all law firms, accounting firms, consulting firms, and similar professionals engaged by the Company during past five years.

**Q. *Articles and Publicity.***

- Copies of all articles and press releases relating to the Company within the past three years.