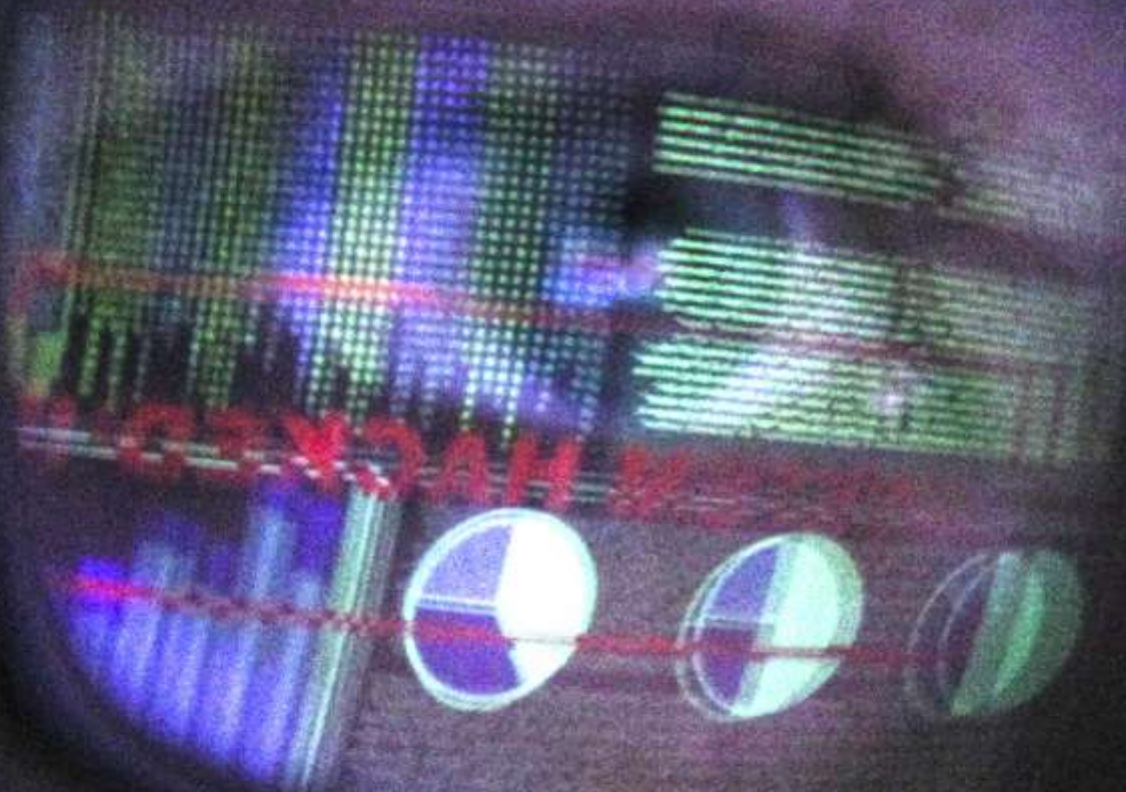


Trends in US IPO registration statements

November 2019



Building a better
working world



Strong fundamental environment for new listings in the US

Investor interest in the initial public offering (IPO) market was strong through the first nine months of 2019. While the rate of IPOs has declined from the prior year, 2019 IPOs are raising more capital. Companies completed 126 IPOs and raised \$44.2 billion in the first nine months of 2019,¹ compared to 209 IPOs that raised \$52.5 billion in all of 2018. In addition, a high-profile direct listing in each of 2018 and 2019 is generating strong corporate and investor interest in the direct listing process.

Since the Jumpstart Our Business Startups Act (JOBS Act) of 2012,² which created the category of an emerging growth company (EGC), most companies that have gone public have been EGCs. And most of those EGCs have used many of the Act's accommodations, which include filing confidentially, providing reduced executive compensation disclosures, and including only two years of audited financial statements instead of three. EGCs continued to dominate the IPO market in 2019, accounting for 90% of IPOs in the first nine months of the year.

Securities and Exchange Commission (SEC or Commission) Chairman Jay Clayton has made capital formation and increasing the attractiveness of US public capital markets a priority. The Commission has recently taken several actions to help accomplish this.

In 2018, the SEC changed the definition of a smaller reporting company (SRC) to allow more companies to qualify for significant disclosure relief. The threshold for an IPO registrant to be an SRC is an estimated public float of less than \$250 million, or annual revenue of less than \$100 million and an estimated public float of less than \$700 million. These companies can provide scaled disclosures in their IPO registration statements that go beyond the relief available to them as EGCs. A recent SEC proposal would also exempt SRCs with annual revenue of less than \$100 million from the requirement to obtain an external auditor's opinion on internal control over financial reporting (ICFR) even after they are no longer an EGC.

In 2019, the SEC extended certain EGC accommodations to non-EGCs by adopting a rule allowing non-EGCs to gauge market interest by holding "test-the-waters" discussions about potential securities offerings with certain institutional investors prior to filing a registration statement.

Since 2017, the SEC has allowed non-EGCs to submit IPO registration statements for nonpublic review. The SEC staff also allows non-EGCs to omit certain financial information from their IPO registration statements, which has allowed them to avoid the time and expense of preparing and filing interim financial information that will not be needed when the filing becomes publicly available.

Officials at the Commission continue to remind companies that they may request waivers from certain financial reporting requirements under Rule 3-13 of Regulation S-X. Such waivers permit companies to omit certain financial statements or provide alternative information that may be of comparable benefit to investors.

“

Main Street investors — the market participants we have at the forefront of our minds — will not assess our work by the number or percentage of rules and initiatives we complete, but rather will be looking at what our efforts substantively do for them. ... [E]ncouraging capital formation in our public markets provides a broader and more attractive set of investment opportunities to Main Street investors.

Chairman Jay Clayton

¹ The term IPO activity refers to IPOs of companies listed on US exchanges. It includes IPOs by foreign companies that list shares on US exchanges but excludes IPOs of special purpose acquisition companies and business development companies.

² The JOBS Act is available at [gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf](https://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf).

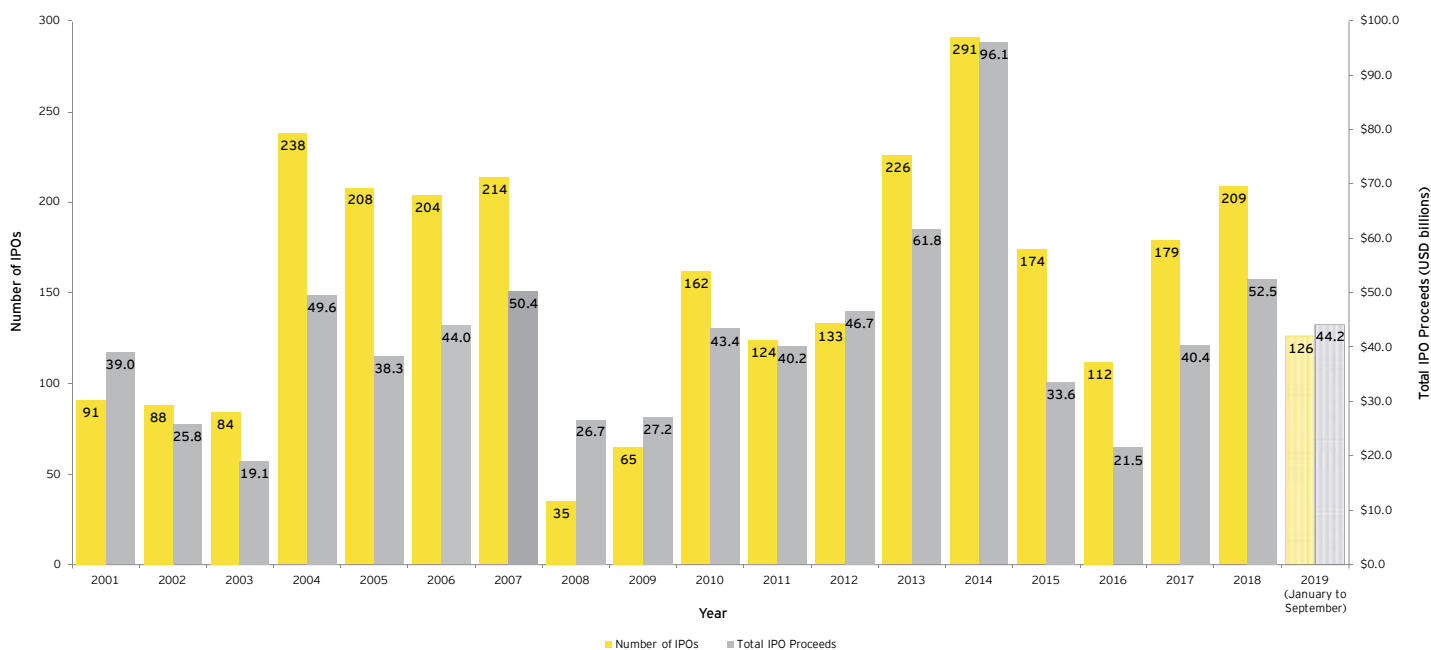
Overview of the US IPO market

IPO activity in 2019 began slowly, which can be attributed to significant declines in market indices during the fourth quarter of 2018 and the accompanying reduction in investor risk appetite, the US Government partial shutdown and a variety of geopolitical uncertainties. However, during the second quarter a wave of much-anticipated, household name “unicorns” launched and priced their IPOs, driving a significant portion of the capital raised for the year to date.³ For the first nine months of 2019, the total capital raised was unchanged year over year; however, the number of IPOs decreased by 24%. In recent months, investors have started exhibiting a preference for profitability over absolute growth, which may have dampened IPO activity.

While 2019 will ultimately be considered an active year for IPOs in US markets, IPO deal volumes remain below the nearly two-decade peak in 2014.

According to an EY Global analysis,⁴ the long-term decline in US IPOs over the past two decades can largely be attributed to significant changes in the public and private capital markets. For example, private companies today have broader access to capital than in previous decades, allowing them to grow larger and stay private longer than they could in the past.⁵ Companies that have conducted public offerings in recent years have tended to be larger and more mature than companies that went public in the mid-1990s.

Number of effective IPOs and total IPO proceeds by year (2001-2019*)



* Based on nine-month information for 2019.

³ Unicorns are private companies that have an estimated market value of greater than \$1 billion.

⁴ *Looking behind the declining number of public companies – An analysis of trends in US capital markets* (EYG No. 01934-171Gb).

⁵ The SEC’s Division of Economic and Risk Analysis noted in its *Report to Congress – Access to capital and market liquidity*, that companies raised \$2.58 trillion more capital through US private markets than they did through registered offerings in the US from 2010 through 2016.

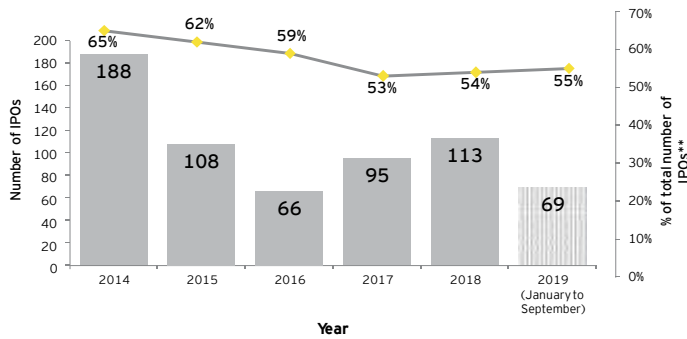
Due to a prolonged period of low interest rates in the US and increasing capital balances, institutional investors (e.g., mutual funds, hedge funds, venture capital funds, private equity firms) in search of higher returns have assumed more risk and have invested in emerging private companies.

This trend has significantly increased the private capital available to emerging private companies, allowing them to stay private longer.

The percentage of IPOs backed by financial sponsors such as private equity firms or venture capital funds has been lower in recent years. Financial sponsor-backed IPOs represented 55% of all IPOs in the first nine months of 2019, remaining relatively consistent with the past two years.

In the 2019 period, financial sponsor-backed IPOs accounted for approximately 53% of total capital raised in the public market, down from 68% over the previous five years as a result of declining financial sponsor-backed deal count overall.

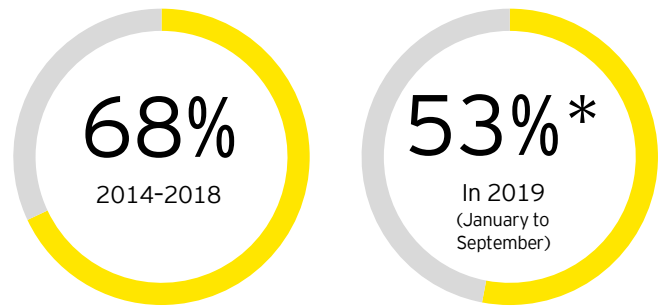
Financial sponsor-backed IPO activity (2014-2019)*



* Based on nine-month information for 2019.

** The fever line above the bars shows the percentage of IPOs backed by financial sponsors.

Percentage of capital raised in IPOs backed by financial sponsors



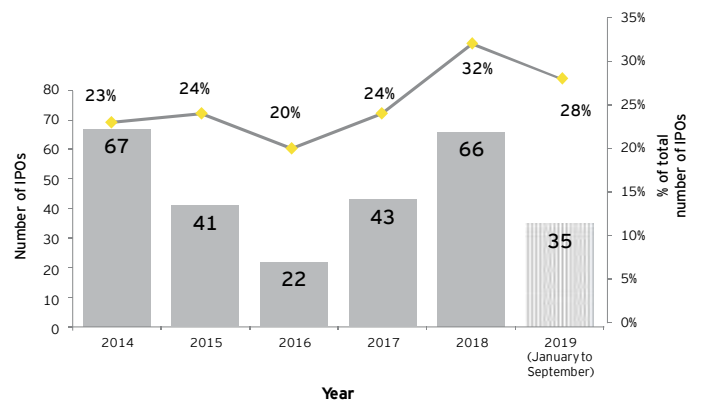
* Represents the capital raised by financial sponsor-backed IPOs as a percentage of total capital raised.



Companies based in foreign jurisdictions that raise capital on US stock exchanges in cross-border offerings have been a significant driver of US IPO market volumes in recent years. Companies based in China, Israel, the United Kingdom and Canada accounted for the majority of these cross-border IPOs on US exchanges.

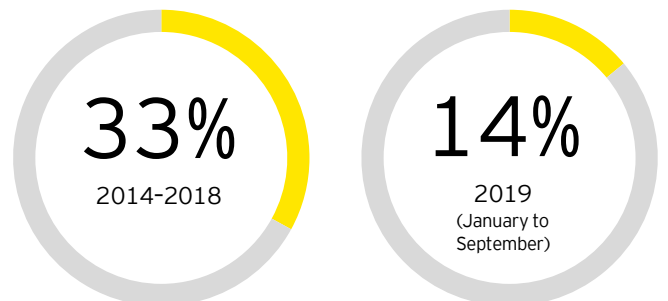
Despite this, cross-border IPO activity slowed overall in 2019, both in number and as a proportion of overall US IPO activity after particularly strong cross-border activity in 2018. The US continues to be one of the top destinations for cross-border IPOs overall. The capital raised by cross-border IPOs as a proportion of the total capital raised on US stock exchanges dropped significantly to 14% in 2019 from 33% in 2014 through 2018.

Cross-border IPO activity (2014-2019)*



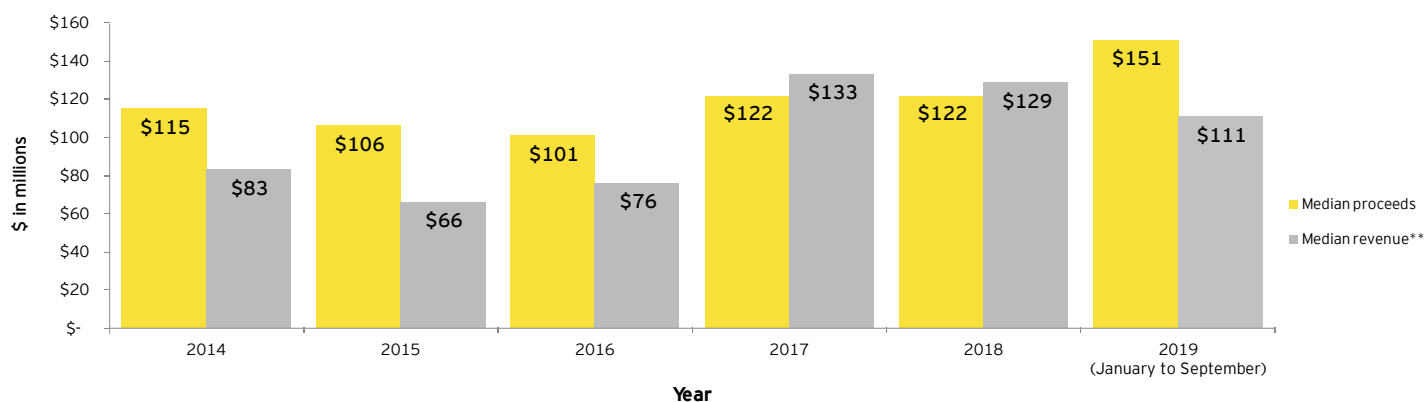
* Based on nine-month information for 2019. The term “cross-border” IPO refers to an offering on a major US stock exchange by a company that is domiciled outside the US.

Capital raised by cross-border IPOs



Excluding biotech and other companies that have not yet generated revenue, the median annual revenue of companies that went public has fallen slightly over the past three years, while median IPO proceeds have increased. During the first nine months of 2019, the median annual revenue of companies that went public was \$111 million compared with \$129 million in 2018 and \$133 million in 2017. For the same population of companies, the median IPO proceeds increased to \$151 million during the first nine months in 2019 compared with \$122 million over the prior two years.

Median IPO proceeds and revenue (by year)*

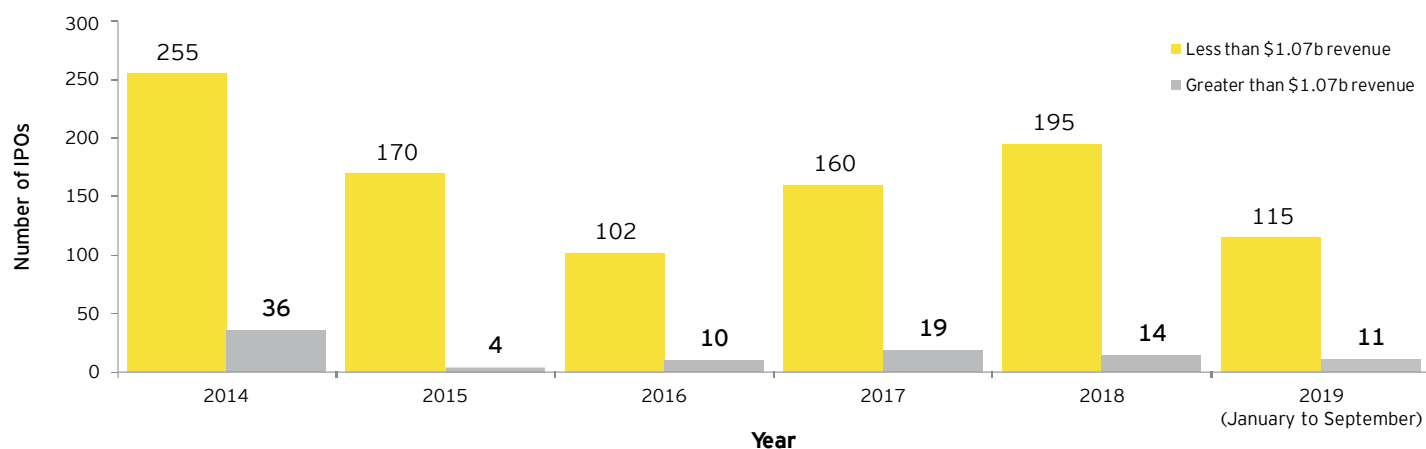


* This table excludes biotech and other companies without any revenue.

** Median revenue is calculated based on the most recent annual revenues presented in the registration statement.

Roughly 89% of the companies that have gone public since 2014 have been EGCs. This is in part due to a number of large private companies, commonly referred to as unicorns, choosing to remain private and continue to grow before conducting an IPO.

IPOs of companies with less than \$1.07 billion in revenue and revenue of \$1.07 billion or more* (by year)



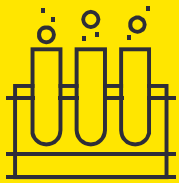
* \$1.07 billion in revenue refers to revenue in the last audited fiscal year presented in the registration statement. In 2017, the revenue limit to qualify as an EGC rose to \$1.07 billion from \$1 billion. For years prior to 2017, this table reflects IPOs of companies with less than \$1 billion in annual revenue and revenue of \$1 billion or more.

Trends in US IPO registration statements

The health care and technology sectors continued to be the top industries for IPOs, accounting for roughly 72% of all IPOs in the US in the first nine months of 2019 and 56% of IPOs since 2014. Health care remains the most active sector, accounting for 38% of IPOs in the first three quarters in 2019. Health care IPOs raised \$10.9 billion in the first three quarters of 2019, up from \$6.2 billion raised in the same period in 2018.

Technology continues to be the second most active industry for IPOs, accounting for 34% of IPOs in the first nine months of 2019. Technology IPOs raised \$26 billion, almost twice the amount raised during the same period in 2018, driven by the IPOs of Uber Technologies and Lyft. Even without the \$10.7 billion raised in those two transactions, technology sector IPOs during the first nine months of 2019 have raised more capital than during the comparable period in 2018.

IPOs by top industries during 2019*



38%

Health care



34%

Technology



7%

Financial services



4%

Oil and gas

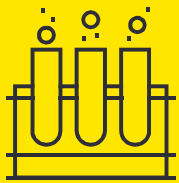


3%

Real estate

* Based on nine-month information for 2018.

IPOs by top industries during 2014-2018



36%

Health care



20%

Technology



7%

Financial services



6%

Real estate



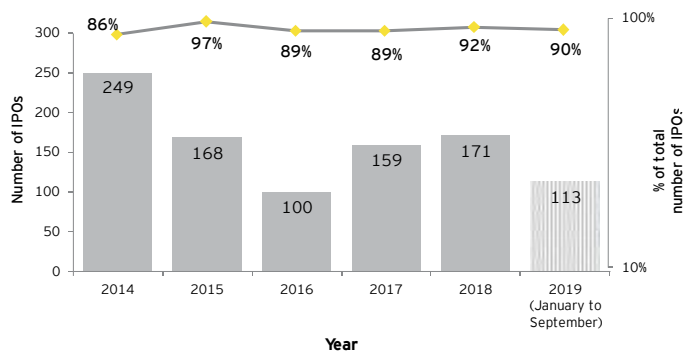
5%

Oil and gas

In the years since the JOBS Act created emerging growth companies in 2012, hundreds of private companies have gone public using the relief provided by the law. This trend continued in 2019 with 90% of companies filing as EGCs.

An EGC may choose to make certain scaled disclosures in its IPO registration statement and submit its draft registration statement confidentially. Under the JOBS Act, certain regulatory requirements (e.g., obtaining independent auditor attestation of internal control over financial reporting) are phased in for EGCs during a five-year period known as an IPO “on-ramp,” unless a company loses its status earlier by exceeding EGC revenue, debt issuance or public float thresholds.

EGCs dominate the IPO market



Direct listings are attracting attention

Direct listings present an alternative to traditional IPOs for companies looking to go public that already have a diverse shareholder base and don't have an immediate need for new funding. In June 2019, Slack Technologies became publicly traded via a direct listing transaction, following in the footsteps of Spotify in 2018. In a direct listing, a company's outstanding shares are listed directly on a stock exchange for resale, and the company doesn't sell newly issued shares to the public through an underwritten offering.

Because existing shareholders sell shares on a stock exchange at prices driven by market demand, there is not an explicit need for an underwriter. However, there remains a role for financial advisers, which can be filled by the investment banks that traditionally serve as underwriters, other advisors or a combination thereof.

Advantages of a direct listing include:

- ▶ No lock-up agreements (selling restrictions for existing shareholders)
- ▶ No dilution of existing holdings
- ▶ Reduced fees to advisers and investment banks
- ▶ Option for public “Investor Day” presentation rather than a lengthy roadshow
- ▶ Expanded investor access

The main disadvantages and challenges of a direct listing are:

- ▶ No capital raised in the transaction
- ▶ Uncertainty around the source of initial liquidity
- ▶ Direct listings are subject to certain specific stock exchange listing rules
- ▶ No price stabilization efforts due to lack of underwriters
- ▶ Raising equity capital in the future could be more challenging

In a direct listing, shares are registered via a 1933 Act registration statement, and the company is subject to the same filing and review process as in a traditional IPO. Financial statement and disclosure requirements for the registration statement are the same in a direct listing as in an IPO, and registrants conducting a direct listing may avail themselves of the same EGC accommodations available to traditional IPO registrants.

Because direct listings are a relatively new innovation, the SEC staff may focus more attention (i.e., issue more comments) on disclosures about the unique risks of direct listing, such as potential share price volatility.

Once the registration statement is declared effective, it is kept effective for at least 90 days to avoid holding period restrictions imposed by Securities Act Rule 144 on existing shareholders.

Nonpublic review program

In 2017, the SEC staff expanded its nonpublic review program beyond EGCs and certain foreign private issuers (FPIs) to all companies. Companies can elect to submit the following draft registration statements for a nonpublic review by the SEC staff:

- ▶ IPO registration statements (e.g., Forms S-1, F-1, S-11)
- ▶ Any Securities Act registration statements prior to an IPO (e.g., registration statements for an exchange offer of debt securities on Form S-4)
- ▶ Registration statements used to list securities on a national exchange pursuant to Section 12(b) of the Exchange Act (e.g., listing securities on the national exchange in a spin-off transaction using Form 10 or Form 20-F)
- ▶ Registration statements for additional offerings conducted within one year of an IPO

Like EGCs that seek a confidential filing review under the JOBS Act (see description of the confidential filing review process below), companies that seek a nonpublic review have to publicly file IPO or initial registration statements, including all prior draft registration statements, 15 days⁶ before a road show or the anticipated effective date. Companies generally price their IPOs within two weeks after launching a road show.

Like EGCs, companies submitting draft registration statements for nonpublic review are not required to have their officers or directors sign the registration statements. Companies also are not required to include the consents of auditors and experts.

Under the nonpublic review program, companies can omit certain financial information from their draft registration statements. EGCs and non-EGCs may omit from draft registration statements annual and interim financial information that they reasonably believe they will not be required to present separately at the time of the contemplated offering (for EGCs) or the initial public filing (for non-EGCs). However, both EGCs and non-EGCs must include all required interim financial statements when they first publicly file their registration statement.

The SEC staff advises companies using the nonpublic review process to include a cover letter describing the anticipated timing of their public filing and effective date, as well as which additional financial statements will be included in the “filed” registration statement. The staff also recommends that the cover letter describe any significant transactions that would have been reflected in the omitted interim financial statements and will be disclosed when subsequent interim or additional annual financial statements are filed, the anticipated accounting treatment and the anticipated disclosures (if known). This will help expedite the filing process because waiting to disclose significant events or transactions until the public filing without notifying the SEC staff in advance could cause delays if the staff has significant comments.

With the exception of financial statements that may be omitted, the SEC staff expects draft registration statements to be substantially complete at the time of submission.

Confidential IPO registration statement submission

EGCs are eligible to use confidential IPO review accommodations. Unlike submissions made under the nonpublic review program, confidential draft submissions cannot be obtained by third parties under the Freedom of Information Act.

The vast majority of the EGCs that have filed IPO registration statements since the JOBS Act was enacted have taken advantage of the confidential review accommodation.

The SEC staff reviews draft registration statements using the same process and timetable as it does for publicly filed registration statements. The SEC staff generally has a target of less than 30 days to issue comments on all initial Securities Act filings, including nonpublic and confidentially submitted registration statements. According to the SEC’s Annual Performance Report,⁷ the SEC staff issued initial comments on Securities Act registration statements within an average of 25.5 days in 2018.

The median number of days it took companies to go public from initial submission to IPO date was approximately 125 days for both EGCs and non-EGCs. Although the registration statement process for EGCs has historically been longer than for non-EGCs, the expansion of the nonpublic review program to all companies has closed this gap.

⁶ Mandated by the Fixing America’s Surface Transportation (FAST) Act of 2015.

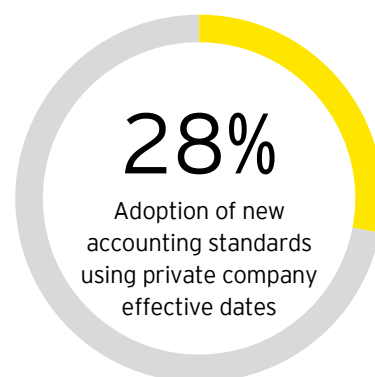
⁷ The FY18 report can be found at https://www.sec.gov/files/secfy20congbudget_0.pdf.

EGC scaled disclosures during IPO on-ramp period

EGCs may take an “à la carte” approach to using the scaled disclosures allowed by the JOBS Act. Nearly all EGCs have elected to provide reduced executive compensation disclosures in their IPO registration statements, and most EGCs have elected to provide audited financial statements for two years rather than three years.

New EGC registrants are increasingly choosing to adopt new accounting standards using private company effective dates, largely because doing so gives them more time to adopt major new standards on topics such as revenue recognition, leases and credit losses.⁸ Otherwise, these companies would have had to adopt these standards using the public company effective dates. From 2018 through 2019, 59% of EGCs elected to adopt new accounting standards using private company effective dates compared with 16% of EGCs from 2014 through 2017.

Use of disclosure relief (2014-2019)



* Excludes EGCs that also qualify as smaller reporting companies or foreign private issuers.

** Excludes EGCs that also qualify as smaller reporting companies or have reporting histories of less than two years.

⁸ Accounting Standards Codification Topics 606, *Revenue from Contracts with Customers*, 842, *Leases*, and 326, *Financial Instruments - Credit Losses* are effective for most public companies for annual reporting periods beginning after 15 December 2017, 2018 and 2019, respectively. Similar new standards under International Financial Reporting Standards as issued by the International Accounting Standards Board became effective during 2018 and 2019.

The following table summarizes some of the scaled disclosures that EGCs can choose to make during their IPO on-ramp period:

Requirements for registrants*	Scaled disclosures EGCs can choose to make
Follow public company effective dates for new or revised accounting standards	Follow private company effective dates for new or revised accounting standards
Three years of audited financial statements in common equity IPO registration statement	Two years of audited financial statements in common equity IPO registration statement ⁹
Five years of selected financial data in IPO registration statement, subsequent registration statements and periodic reports	Two years of selected financial data in IPO registration statement; selected financial data in subsequent registration statements and periodic reports begins with earliest audited period presented in IPO registration statement
Compensation, discussion and analysis section and compensation disclosure for five named executive officers in IPO registration statements and subsequent annual reports**	No compensation, discussion and analysis section and compensation disclosure for three named executive officers in IPO registration statements and subsequent annual reports
Management assessment and auditor attestation of internal control over financial reporting beginning with second Form 10-K following IPO	Only management assessment of internal control over financial reporting beginning with second Form 10-K following IPO

* Requirements are for registrants other than those that meet the definition of a smaller reporting company or an EGC.

** FPIs are exempt from the requirement to provide a compensation, discussion and analysis section.



⁹ The FAST Act amended the JOBS Act to allow an EGC to omit annual financial statements that at the time of its confidential submission or public filing it reasonably believes will not be required when the registration statement becomes effective. Thus, an EGC might be able to file or submit an IPO registration statement with only one year of audited financial statements if it expects to provide an additional year of audited financial statements in a pre-effective amendment prior to distributing a preliminary prospectus to prospective investors.

Accounting standards issued after the JOBS Act

The percentage of EGCs electing to use private company effective dates for adopting the new or revised accounting standards increased to 64% in the first nine months of 2019 from 51% in 2018.

With major new accounting standards on leases and credit losses becoming effective, more EGCs are taking advantage of this relief that generally gives them one additional year to adopt new standards. The FASB recently proposed deferring certain effective dates for its new standards on credit losses and leases.¹⁰

While more EGCs are choosing this relief, other EGCs choosing public company effective dates may be trying to assure investors that their financial statements will be comparable to those of other public companies.

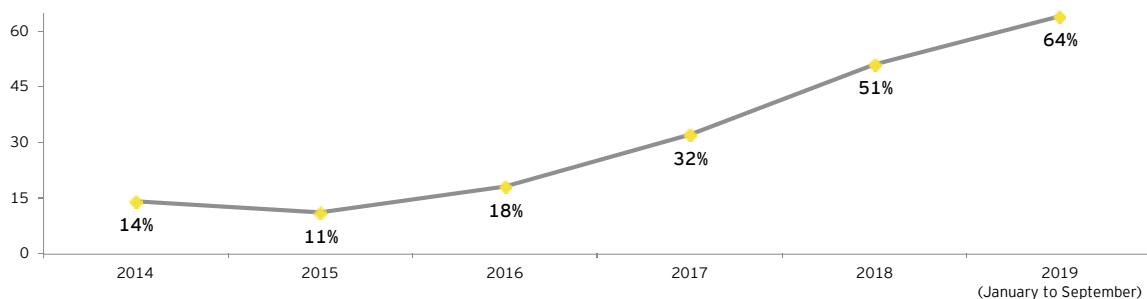
Under Section 107(b) of the JOBS Act, an EGC that chooses to follow public company dates must make an irrevocable election to opt in to public company transition and adopt all new or revised accounting standards on the public company

dates. The SEC staff has indicated that it will not object if an EGC initially decides to retain the ability to take advantage of the extended transition period but subsequently elects to follow the requirements for public companies.

An EGC that elects to follow private company effective dates may early adopt a new or revised accounting standard, if the standard allows early adoption by private companies, without adversely affecting its ability to follow the extended private company transition relief for other new or revised accounting standards.

Companies that lose EGC status should be aware that they will no longer be able to defer the adoption of new accounting standards that were previously deferred under their EGC status. A calendar year-end company that loses EGC status on the last day of 2019 and that had elected to retain the private company transition relief will be required to file its audited annual financial statements for 2019 reflecting the adoption of the new leases standard as of the public company adoption date (1 January 2019).

Use of relief for adopting new or revised accounting standards by year



How we see it

EGCs that retain the transition date relief should assess whether they have a high likelihood of losing their EGC status before the private company adoption date. If so, they should plan accordingly to timely adopt any new accounting standards required in filings after they lose EGC status.

¹⁰ Under the FASB's proposal, SEC filers excluding SRCs, would continue to adopt the new credit losses standard in 2020 (including interim periods), but all other entities, including eligible EGCs, would adopt the standard in 2023 (including interim periods). Also, public business entities, certain not-for-profit entities and employee benefit plans would continue to adopt the new leases standard in 2019 (including interim periods), but all other entities, including eligible EGCs, would adopt the standard in 2021 for annual periods and 2022 for interim periods.

Compliance with auditor attestation of internal control over financial reporting

EGCs are not required to provide an independent auditor attestation report on their internal control over financial reporting (ICFR) under Section 404(b) of the Sarbanes-Oxley Act for as long as they retain their EGC status. Nearly all EGCs have taken advantage of this relief. Only non-accelerated filers (i.e., public companies with a public float of less than \$75 million) are permanently exempt from Section 404(b).

Like other filers, EGCs are required to disclose management's assessment of the effectiveness of their ICFR as required under Section 404(a) of the Sarbanes-Oxley Act, generally beginning with their second annual report after becoming a public company.

During 2019, the SEC proposed exempting SRCs with annual revenue of less than \$100 million from the requirements of Section 404(b) of the Sarbanes-Oxley Act. The proposal is intended to provide relief for smaller companies that no longer qualify as EGCs because their five-year on-ramp has expired but have yet to begin generating meaningful revenue.

New auditing standard on the independent auditor's report

Auditors are not required to discuss critical audit matters in their auditor's reports for EGCs. This additional information in the auditor's report is mandated by a Public Company Accounting Oversight Board auditing standard that is being phased in for public company audits, beginning this year. If an EGC loses its status because it becomes a large accelerated filer, its auditor will be required to discuss critical audit matters in reports on the company's financial statements for fiscal years ending after 30 June 2019.



Common IPO accounting and reporting pitfalls

Submit a substantially complete registration statement

Companies often run into delays if they submit an incomplete registration statement to the SEC. Companies should be aware that the SEC staff expects registration statements, including those submitted confidentially or on a nonpublic basis, to be substantially complete. When it is submitted, the registration statement should include all disclosures, exhibits, financial statements and financial statement schedules required by the Securities Act of 1933, unless omission is otherwise permitted by the SEC staff.¹¹

Financial statements of other entities

Rule 3-05 of Regulation S-X requires registrants to provide the financial statements of significant businesses that the registrant has recently acquired or will probably acquire, and Rule 3-09 requires them to provide financial statements of significant equity method investees. Significance is determined using formulas provided in the SEC rules and can be complex. Companies contemplating IPOs should consider these additional financial statement requirements and the time and effort needed to prepare and audit them. In some cases, a company may wish to request relief from these requirements from the SEC staff, which also takes time.

Pro forma financial information

Pro forma financial information may be required in an IPO registration statement for various reasons, including showing the effects of significant consummated or probable acquisitions or dispositions. Pro forma adjustments are often a source of significant judgment and an SEC staff focus area. It is important for management to determine whether pro forma financial information will be needed and to allow enough time to prepare such information and make sure it complies with Article 11 of Regulation S-X. In pre-effective amendments, companies may use placeholders for pro forma adjustments that are not yet determinable but will be prior to effectiveness.

Predecessor entity determination

IPO structures in recent years have become more complex, and in transactions such as those involving an “Up-C” structure,¹² a “put together” of multiple entities or a carve-out of operations from another company, the registrant may need to determine whether any entity is a predecessor entity, as defined in Rule 405 of Regulation C and if so, which entity or entities. In these situations, certain information must be provided for the predecessor (i.e., the same information as for a registrant), including separate schedules, selected financial data, management’s discussion and analysis and other disclosures required under Regulation S-K.

¹¹ For example, a draft registration statement may omit annual and interim financial information that a company reasonably believes it will not be required to present separately at the time of the contemplated offering (for EGCs) or the initial public filing (for non-EGCs).

¹² A structure that is commonly referred to as an “Up-C” establishes a newly formed holding corporation to conduct an initial public offering and hold an interest in existing pass-through entities (e.g., limited liability companies or partnerships). Such structure allows the existing holders to retain the pass-through tax benefits or exchange their interests for common shares of the registrant and often share in the additional tax benefits resulting from the step-up in tax basis (e.g., by means of a tax receivable agreement).

Valuation of share-based payments

The SEC staff continues to challenge the valuation of share-based payment awards issued in the 12 months before an IPO when a security's fair value was significantly lower than the anticipated IPO price. Companies should be aware of the AICPA's Accounting and Valuation Guide, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, which provides a framework and describes leading practices for valuing private company securities. Companies contemplating IPOs should obtain contemporaneous valuations from independent valuation specialists to support the fair value of securities issued as compensation in the period leading up to an IPO.

Non-GAAP financial measures

The SEC staff continues to issue comments on compliance with the presentation and disclosure requirements for using non-GAAP financial measures. As a reminder, all public companies are prohibited from presenting non-GAAP financial measures in ways that are misleading or give them greater prominence than GAAP measures. Lately, the SEC staff has also challenged whether a non-GAAP measure is inappropriate because it employs an individually tailored accounting principle that makes it misleading.

Prominence refers to both the order of presentation and the degree of emphasis. In May 2016, the SEC staff updated its guidance on the use of non-GAAP measures and identified certain uses that the staff considers misleading or providing undue prominence.

A measure may involve tailored accounting principles if it:

- ▶ Changes an item from an accrual to cash basis or from gross to net
- ▶ Proportionately consolidates an entity not eligible for that treatment under US GAAP
- ▶ Reflects part, but not all, of an accounting concept (e.g., current income tax expense but not deferred income tax expense)
- ▶ Renders a measure inconsistent with the economics or terms of an agreement

To avoid staff comments about non-GAAP financial measures, companies planning IPOs should include clear and specific disclosure of why a particular non-GAAP measure is useful for investors and how it is used by management. The statements a company makes about non-GAAP measures during the IPO process may signal how it plans to communicate with investors in the future; therefore, it is important that non-GAAP disclosures in the IPO registration statement be given careful consideration.

Other SEC comment areas

The SEC staff issues comments on a variety of accounting and disclosure issues and requests additional information when it believes that a company planning an IPO may not have complied with SEC requirements. While any comment might cause a delay, companies planning IPOs should carefully consider their disclosures in the following five most frequent SEC staff comment areas for IPOs.

Comment area	Comment rank for the 12 months ended 30 June	
	2019	2018
Management's discussion and analysis	1	1
Risk factors	2	2
Prospectus summary	3	*
Signatures, exhibits and agreements	4	4
Related party transactions and disclosures	5	*

* This topic wasn't in the top five comment areas in 2018.

Management's discussion and analysis

The SEC staff often requests that registrants explain the results of their operations with greater specificity, including identifying underlying drivers for each material factor that has affected their earnings or that is reasonably likely to have a material effect on future earnings. The SEC staff also often requests that registrants provide further details and explanation of changes in financial statement line items.

The SEC staff has increased its focus on performance metrics, including whether registrants have disclosed key metrics monitored by management and how those metrics correlate with material changes in the results of operations.

Risk factors – Item 503(c) of Regulation S-K requires a registrant to disclose significant risks it faces and how it is affected by each of them. Risk factors should be specific to the registrant's facts and circumstances and should not be general risks that could apply to any registrant. The SEC staff has questioned risk factor disclosures that could apply to any public company. It also may question the completeness of a registrant's risk-factor disclosures based on information included elsewhere in the document or other public information.

Prospectus summary – Item 503 of Regulation S-K requires registrants to provide a summary of the information in the registration statement in cases where the length and complexity of the document makes a summary useful. The prospectus summary should provide a brief overview of the key aspects of the offering. Registrants are encouraged to carefully consider and identify the most significant aspects of the offering and highlight those aspects in clear, plain language. The SEC staff frequently issues comments asking registrants to properly balance the disclosures between positive and negative information.

Signatures, exhibits and agreements – The SEC staff may question the completeness and adequacy of exhibits. In particular, we often see the SEC staff inquiring about the omission of material contracts that must be filed as exhibits to registration statements. The SEC staff also verifies that consents of experts, auditor's reports and the registration statement are signed by the proper parties.

Related party transactions – The SEC staff may request that registrants clarify or expand their disclosures about related party transactions as required by Item 404(a) of Regulation S-K. Item 404(a) requires a registrant to describe related party transactions (both actual and proposed) exceeding \$120,000 since the beginning of its last fiscal year and in which any related party had or will have a direct or indirect material interest. The SEC staff expects the description of a particular transaction to summarize the nature of the transaction in quantitative and qualitative terms and include any other material information. The SEC staff often questions inconsistencies and the completeness of disclosures provided under Item 404(a) by reviewing the notes to registrants' financial statements, disclosures in the business and risk factors sections and any agreements filed as exhibits.

Emerging areas of focus

Leases – While the SEC staff has not yet issued many comments on the application of the new leases standard, the comments it has issued have generally focused on the completeness of a company’s disclosures, including disclosures related to transition to the new standard and discount rates. We expect the number of comments to increase as more companies reflect the standard in their audited financial statements.

Phase-out of LIBOR – We expect the SEC staff to soon begin scrutinizing registrants’ disclosures about the anticipated phase-out of the London Interbank Offered Rate (LIBOR), which is expected to occur in 2021. The staff of the Division of Corporation Finance said in a statement that it is important for companies to inform investors about their progress in managing the transition to an alternative reference rate in a wide variety of existing commercial and financial contracts. Potential disclosures the staff cited include:

- ▶ Risks, if material, related to the transition and how they are being mitigated

- ▶ The status of company efforts to date and the significant matters pertaining to the transition that have not yet been addressed
- ▶ Material exposures to LIBOR that the company has identified but cannot yet estimate their effect

Brexit – We also expect the SEC staff to challenge whether affected registrants need to make additional disclosures in their filings to address the United Kingdom’s plan to withdraw from the European Union, which is known as Brexit. SEC officials have said that disclosures about the effects of Brexit, if material, should be robust and tailored to a company’s facts and circumstances.

EY resources

- ▶ SEC Comments and Trends, *An analysis of current reporting issues, September 2019* (SCORE No. 06976-191US)
- ▶ SEC Reporting Update, *2019 trends in SEC comment letters* (SCORE No. 06991-191US)



Other trends

Trends in restatements during IPO process

In anticipation of an IPO, companies generally go through a rigorous process to determine whether the financial statements they will include in a registration statement comply with applicable GAAP and the financial statement requirements under Regulation S-X.

In certain cases, during the IPO process, companies may become aware of errors in their historical financial statements that may require restated financial statements to be included in an IPO registration statement. Restating financial statements after a registration statement is submitted or filed with the SEC may significantly affect the IPO timeline.

Roughly 4% of the companies that went public in the first nine months of 2019 reported one or more restatements of their financial statements in their IPO registration statements. Areas of restatement during 2019 included debt, quasi-debt, warrants and equity, revenue recognition and deferred taxes.

Trends in voluntary material weakness disclosures

Companies continue to voluntarily disclose material weaknesses in IPO registration statements. About 40% of all IPO registration statements in the first nine months of 2019 included a disclosure of one or more material weaknesses in ICFR.

The SEC defines a material weakness as “a deficiency, or a combination of deficiencies, in ICFR such that there is a reasonable possibility that a material misstatement of the registrant’s annual or interim financial statements will not be prevented or detected on a timely basis.”

While a company going public is not required to disclose an identified material weakness in its registration statement, many do so to avoid any surprises for investors after their IPO that could adversely affect their stock price. In addition, Securities Act Rule 408 requires the IPO registration statement to include any material information necessary to make the required disclosures not misleading in the circumstances.

The following table summarizes the top three areas of material weaknesses reported in IPO registration statements in 2019, which account for the vast majority of material weaknesses disclosed. Other less common material weakness areas include debt and equity transactions, income taxes and specific transactions.

Ranking	Material weakness area
1	Lack of personnel with appropriate experience in US GAAP or SEC reporting
2	Financial statement close process
3	Information technology general controls



What's next?

The IPO market will continue to be affected by macroeconomic risks and uncertainties. They include geopolitical tensions, changes in trade policies, changes in interest rates and market volatility.

Positive returns for shares of most companies that have gone public in 2019 deals have created momentum for continued strength in the US IPO market. With an uncertain geopolitical environment and the potential for periods of volatility, many issuers are preparing for IPOs in the first half of 2020, ahead of the US elections in early November 2020.

Overall, market conditions remain encouraging, and the US continues to set the pace, having the top two globally ranked exchanges by IPO proceeds.

The SEC continues to focus on its mission to facilitate capital formation. In the coming months, we expect the SEC to finalize rules to streamline disclosure requirements for certain registered debt offerings and to exempt certain smaller reporting companies from the internal control attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002, among other things

We expect the SEC to continue to prioritize rulemaking that is intended to make the US public markets more attractive. Chairman Clayton has also signaled that the Commission will take a fresh look at expanding access to the private capital markets while preserving investor protection. While this may lead to reduced IPO activity, it could in turn increase the breadth of potential investment opportunities in private companies for more investors.

Appendix

2020 financial statement staleness dates for IPO registration statements

(For calendar year-end companies)

The tables below provide the dates in 2020 when a calendar year-end company must update its financial statements in an IPO registration statement with more current periods before that IPO registration statement becomes effective. These dates are known as staleness dates.

Domestic issuers

Staleness date	Which financial statements need to be added?	Financial statements become stale following:
February 18*	2019 annual audited financial statements for companies other than SRCs ¹	45 days after year end
March 31	2019 annual audited financial statements for SRCs	90 days after year end
May 14	Q1 2020 financial statements	134 days after year end
August 13	Q2 2020 financial statements	134 days after the end of the first quarter
November 12	Q3 2020 financial statements	134 days after the end of the second quarter

Foreign private issuers²

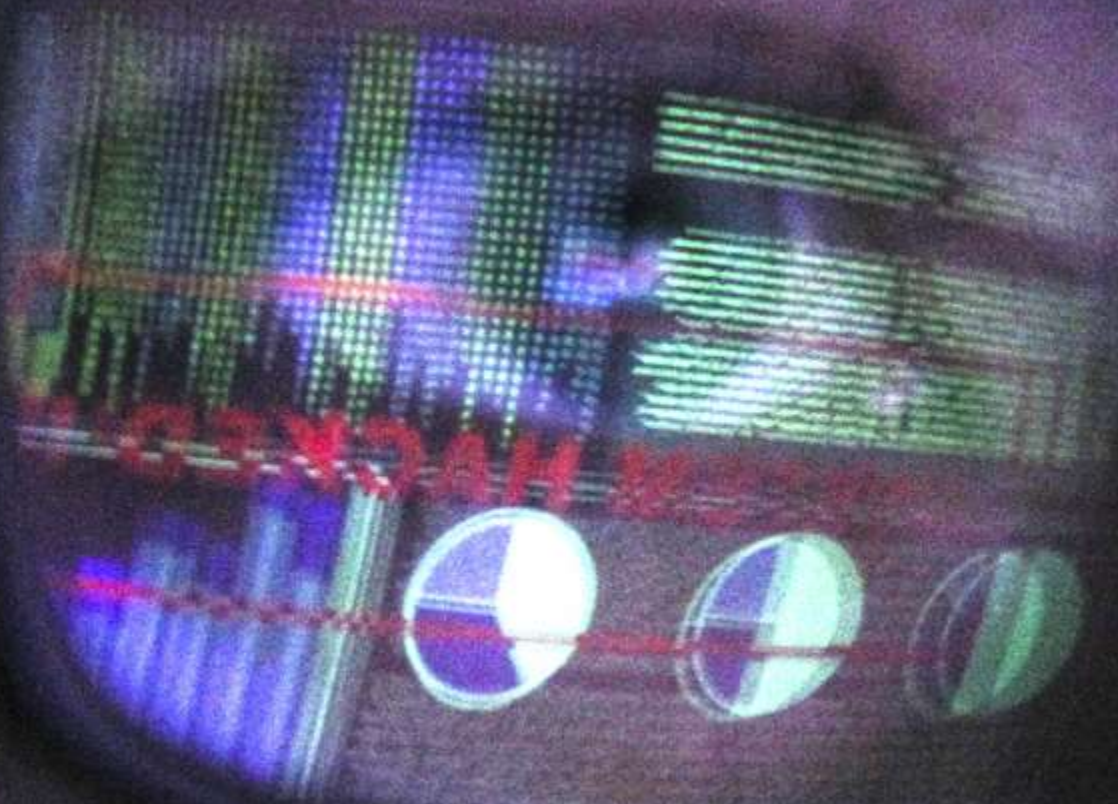
Staleness date	Which financial statements need to be added?	Financial statements become stale following:
April 1	2019 annual audited financial statements	15 months from prior audited balance sheet date ³
October 1	2020 interim unaudited financial statements for a six-month period at least as recent as 30 June 2020	Nine months after year end

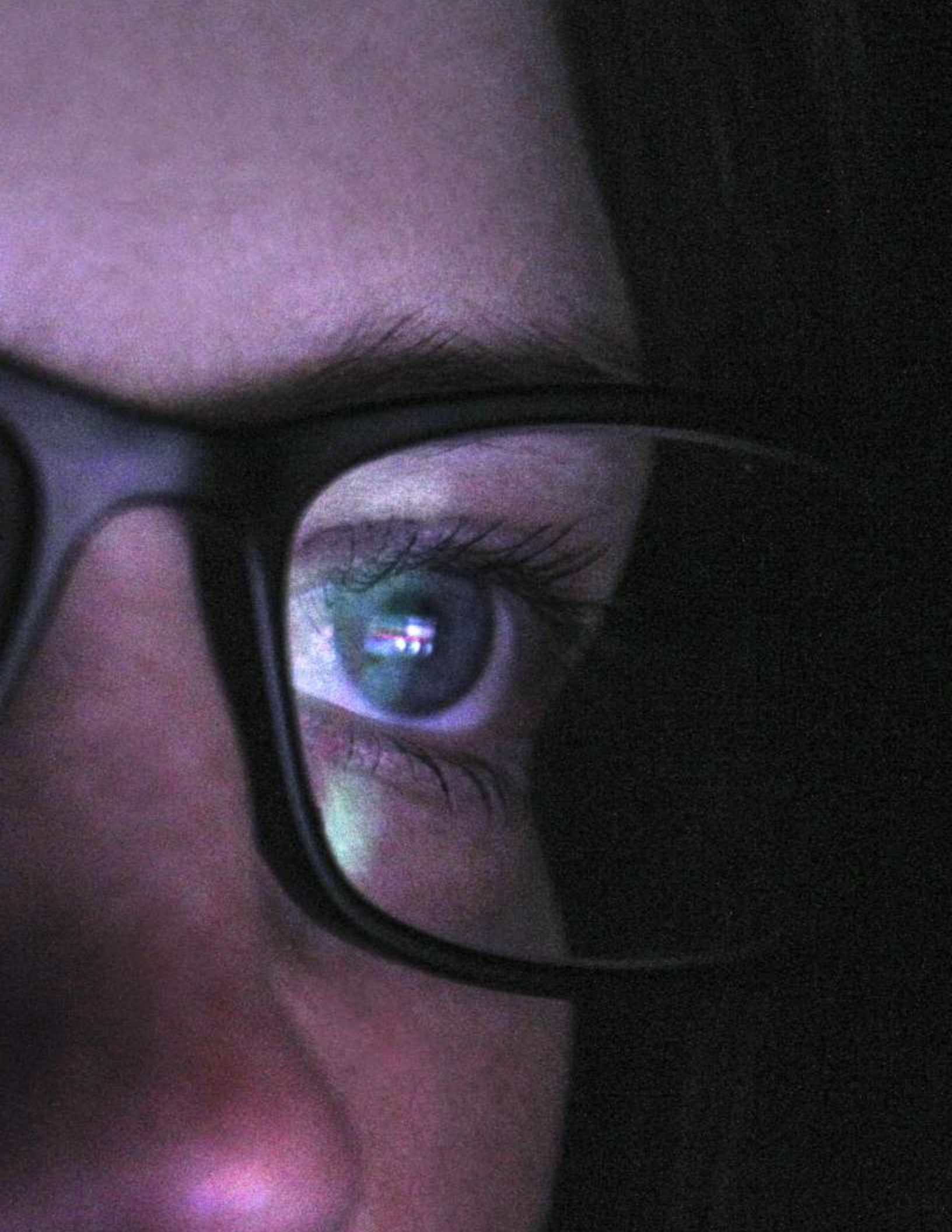
* This date reflects the permitted extension to the next business day when certain financial statements become stale on a weekend or holiday. For instance, annual audited financial statements of companies other than SRCs go stale on a Saturday (i.e., 15 February 2020), and therefore, need not be updated until the next business day (i.e., 18 February 2020 following the President's Day federal holiday) (Securities Act Rule 417).

¹ In this context, a smaller reporting company is a company with an anticipated public float of less than \$250 million or revenues of less than \$100 million and anticipated public float of less than \$700 million (Exchange Act Rule 12b-2).

² An FPI is an issuer incorporated or organized under the laws of a foreign country.

³ While an FPI's annual audited financial statements included in an IPO registration statement are required to not be older than 12 months at the time the registration statement is filed, the SEC recently codified the accommodation that the 15-month age of annual financial statements that applies to non-IPO registration statements may be used if the FPI can represent that it is not required to comply with the 12-month requirement in any other jurisdiction outside the US. The FPI must also be able to represent that complying with the 12-month requirement is impracticable or involves undue hardship. Our timeline assumes that FPIs meet these conditions (Form 20-F Instruction 2 to Item 8.A.5).





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SCORE No. 07645-191US

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Sources

For purposes of this report, an IPO is defined as a company's first registered offering of equity securities to the public.

This report discusses only IPOs for which the data provider Dealogic offers data on the issue date (the day the offer is priced and allocations are subsequently made), the trading date (the date on which the security first trades) and proceeds (funds raised, including any overallocation sold). Companies with the following Standard Industrial Classification codes also are excluded from our study:

- ▶ 6091: Financial companies that conduct trust, fiduciary and custody activities
- ▶ 6371: Asset management companies, such as health and welfare funds, pension funds and their third-party administration as well as other financial vehicles
- ▶ 6722: Companies that are open-end investment funds
- ▶ 6726: Companies that are other financial vehicles
- ▶ 6732: Companies that are grant-making foundations
- ▶ 6733: Asset management companies that deal with trusts, estates and agency accounts
- ▶ 6799: Special purpose acquisition companies

We have included only IPOs on the three major US exchanges: New York Stock Exchange (NYSE), NASDAQ and NYSE MKT.