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3 Ways The Pandemic Has Changed How IPOs Are Done

By **Tom Zanki**

Law360 (May 22, 2020, 9:53 AM EDT) -- The coronavirus outbreak has shaken up how initial public offerings are done in ways that could last beyond the pandemic itself, including a shift to virtual roadshows that deal advisers say provide certain efficiencies that companies may enact permanently.

After stalling in March when COVID-19 was declared a pandemic, IPO activity has resumed at a modest pace in recent weeks. Deal-makers who steer IPOs say they are seeing notable changes in how companies are executing such offerings, including switching to virtual communications with investors and providing more rigorous disclosure to reflect the pandemic's fallout.

These changes appear unlikely to end soon and could become regulator fixtures of IPOs. Here, Law360 takes a look at three ways the pandemic is altering how IPOs are practiced.

Roadshows Have Gone Virtual

Lawyers say the biggest change to IPOs since the pandemic is the shift to a virtual roadshow, which is a marketing event whereby companies and their underwriters pitch their IPO to investors in order to measure demand and determine a price. The traditional in-person IPO roadshow lasts seven or eight days, consisting of traveling to big cities across the country.

With face-to-face gatherings ruled out for a while, companies have adopted virtual roadshows. The result has been travel-free affairs completed in four days, about half the normal length. All nine operating companies that have completed IPOs since April 1 priced their deals at the midpoint or higher of their ranges, suggesting the offerings were well-received by investors.

Given time and cost savings, lawyers expect virtual roadshows will become more common after the pandemic ends. A shorter sales pitch also exposes issuers to less market volatility, which can surface amid a longer roadshow and disrupt pricing strategy.

"The less market risk you take while your deal is on a roadshow, the better it is for the transaction, just to state the obvious," said Latham & Watkins LLP partner Nathan Ajiashvili, who has steered two IPOs among biotechnology companies since the pandemic was declared. "That is a benefit to the companies and to the underwriters of having a more compressed roadshow."

Ajiashvili added that a virtual roadshow also enables a wider geographical reach, making it practical to attract European or Asian investors in a U.S. domestic offering without the travel.

At least one company that executed a virtual roadshow is happy with results. Lyra Therapeutics Inc., a venture-backed maker of therapies for ear, nose and throat disorders, raised $56 million on April 30 after pricing its IPO at $16 a share, the top of its range.

Lyra CEO Maria Palasis said the company's underwriters managed the virtual roadshow well.

"The advantage is efficiency — many meetings in a small amount of time, no stress of getting from city to city," Palasis said in a statement to Law360.

Palasis added there are also disadvantages to the virtual format. Because teams are not together at physical meetings, executives don't get to know investors personally and can't read body language. For virtual roadshows to work, Palasis said it is important that investors are familiar with the company, including its technology or the diseases for which it is developing treatments.

"All of our meetings are with folks who have done their homework," Palasis said.

Cooley LLP partner Charlie Kim said a company needs a committed investor base to turn deals around quickly, so a four-day roadshow may not be possible for everyone. Kim and other lawyers said it's likely that a hybrid scenario will emerge, where companies travel to select cities when in-person meetings are necessary and conduct the rest of the roadshow virtually.

"There are some challenges but, in general, I am seeing good investor interaction on these deals through the virtual process," said Kim, who has advised two IPOs for biotechnology companies since the pandemic was declared.

Virtual meetings with investors are not entirely new. The Jumpstart Our Business Startups Act of 2012 authorized a process known as "testing the waters," which enables companies to begin limited communication with select investors in order to gauge market demand for an IPO before formally filing paperwork. More of these meetings are conducted virtually nowadays, lawyers say, which can lay groundwork for better informed investors well before the roadshow.

"Even before this pandemic, we started to see more testing-the-waters meetings go virtual," said Davis Polk LLP partner Yasin Keshvargar, who has worked on two recent IPOs. "That will only increase."

Disclosure Is Getting More Rigorous

Companies must stand ready to update their disclosures while preparing an IPO in order to keep investors abreast of new developments as they happen. That requirement has become more pronounced amid the pandemic, because its far-reaching consequences are still playing out.

This holds true for existing public companies as well as IPO candidates. Kim noted that, at the beginning of the pandemic, companies were uncertain as to how their operations would be affected. But disclosures have become much more elaborate in the past two months.

Life sciences and medical device companies are reporting more thoroughly how their clinical trials have been delayed as a result of the pandemic and related reduction in patient enrollment. Cancer-focused Ayala Pharmaceuticals Inc., which recently completed an upsized $55 million IPO, listed 52 COVID-19 references in its registration statement, describing how it is managing disruptions caused by the pandemic.

"You are seeing a lot more sophisticated and detailed disclosure," Kim said.

Goodwin Procter LLP partner Rick Kline said many technology issuers are using a "kitchen sink" approach when describing conceivable risks to their businesses caused by the pandemic. Alerting investors to potential risks can help companies reduce liability to lawsuits if their stock plunges. Because of the lasting uncertainty surrounding the pandemic, lawyers say public companies and IPO candidates are likely to craft extensive COVID-19 disclosures for an extended time.

"That's going to sustain now that people understand what a pandemic could do to the global economy," Kline said.

Companies Are Rethinking Forecasts

An increasing number of public companies are ceasing to provide earnings guidance, given the difficulty of offering investors long-term foresight amid the pandemic. When preparing an IPO, private companies typically provide some forecast of future performance to financial analysts.

In a recent blog post, Cooley's capital markets team said IPO candidates should think about what models of future performance they are comfortable with providing to analysts under current circumstances. The firm advises that companies work with their finance teams and investment bankers to consider what information is most important to analysts and what areas they should avoid, considering the challenges of predicting performance in the coming year and beyond.

Ajiashvili said companies need to have proper assumptions built into whatever models they use.

"It makes it very difficult to forecast your one-year or two-year outlook, when you don't know how long the pandemic will last," Ajiashvilii said.

--Editing by Rebecca Flanagan.