## An Expert's View

**RICHARD C. BLAKE**
PARTNER
GUNDERSON DETTMER STOUGH VILLENEUVE FRANKLIN & HACHIGIAN, LLP

Richard represents public and private clients across a broad range of industries, as well as investment banks, and has extensive experience in preparing companies for IPOs and counseling public companies and boards on complex issues.

*Richard shares his thoughts on developments in the IPO market:*

**Have issuers contemplating an IPO shown increased interest in adopting dual-class share structures or non-voting share classes?**

Traditionally, only a small minority of IPO issuers used a dual-class share structure. The sale of non-voting dual-class stock in the Snap Inc. IPO earlier this year, however, certainly has issuers focusing on the topic again. We are getting questions about dual-class share structures, non-voting share classes, and other ways for founders to maintain control after an IPO, such as the voting agreements Mark Zuckerberg received from pre-IPO investors in Facebook, Inc.

The Snap Inc. IPO has also angered institutional investors, who unsuccessfully petitioned Snap Inc. to abandon its non-voting dual-class stock plans before the IPO. Many institutional investors have been publicly critical of Snap Inc.'s capital stock structure, and representatives from the Council for Institutional Investors and other investor groups recently appealed to the SEC to work with US stock exchanges to ban dual-class listed companies. Whether a ban is instituted or private ordering continues, and whether there will be an increase in dual-class listed stock, remain to be seen.

**Have you seen any notable trends in SEC comment letters on draft IPO prospectus disclosure in recent months? What are the key issues that the SEC staff is focusing on right now?**

Comments on an issuer's financial disclosure (its financial statements and the related MD&A section) continue to predominate in the SEC comment letters we are seeing. These comments include posing technical accounting questions, probing the issuer's MD&A explanations for year-over-year differences in the issuer's financial results, and asking about known trends in the issuer's business.

The SEC is also pressing issuers to provide more information about "key metrics" the issuer is disclosing in the MD&A section. Key metrics are operational and financial metrics, such as the number of customers or revenue retention rates an issuer provides in addition to traditional financial statement line items, such as revenue and expenses. More recently, the SEC is asking issuers to provide explanations for increases and decreases in key metrics, as they would for traditional financial statement line items. We have also seen the SEC continue to ask questions about and push issuers for substantiation of other key marketing disclosure, such as an issuer's total addressable market (TAM) or market share.

One area in which we are seeing fewer SEC comments is "cheap stock." Several years ago, the SEC issued accounting guidance indicating that issuers did not need to provide as much cheap stock disclosure in their MD&A. Since then, we have seen the SEC issue one or two cheap stock comments to an issuer, rather than five or more comments, which was common previously.

Overall, the number of comments received by issuers in IPOs is decreasing. A recent study indicates that the number of first-round comments given to issuers has decreased by as much as 40% in recent years. While the number of comments may be dropping, the SEC remains focused on key points an investor would find significant, such as financial information, key metrics, and marketing points.

**The average age of a typical company undertaking an IPO has increased considerably over the past 15 years. Do you expect this trend to continue? What are some of the factors influencing this trend?**

Companies today are taking two and sometimes three times as long to go public as they did during the heady dot-com days. A number of factors seem to be influencing this trend.

In 2010, the JOBS Act increased the SEC's statutory threshold for the number of securityholders above which an issuer is required to have to go public. As a result, private companies are now able to have many more shareholders without going public than they previously could.

Additionally, founders and institutional pre-IPO investors such as venture capitalists seem to be more comfortable waiting longer for a return on their investment than they previously were. This patience is attributable to investors' confidence that the value of their investment might increase more substantially and quickly away from the scrutiny of Wall Street.

As the market for secondary trading of private company stock has increased, it has also become easier for employees to receive pre-IPO liquidity and for institutional investors to acquire additional ownership without diluting other investors. This has alleviated some pressure on management teams to take a company public sooner than they wish. We anticipate that these trends will not change any time soon, and so we may need to come up with a better name than the mythical "unicorn" for a pre-IPO company with at least a billion-dollar valuation, because these companies are becoming more common.