



The IPO Journey and the Aftermaths

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Type of issuers

- ***Domestic issuers*** – These issuers were incorporated in the US and have their main corporate headquarters located within the U.S. (DSPG, ORMAT, RAD-VISION, DPC etc)
- ***Foreign Private Issuers (FPI)***– is a company that was incorporated under the laws of a foreign country, less than 50% of its shares are held by US residents and meet the following conditions: More than 50% of the assets are located outside of the US. The business of the issuer is administrated principally outside the U.S.. And The majority of the executives officers or directors are not U.S. citizens or residents. (Most of the Israeli companies).

The implication of being an FPI vs. domestic will be addressed later-on.

Schedule of Events and Responsibilities

Successful IPO - SHAMIR - \$64.4M

Summary of Key Dates

Dates

Organizational meeting and due diligence	July 8-2004
First draft of F-1 distributed without financial statements	August 27-2004
Target filing date with audited financial statements where other parts of Prospectus are prepared well in advance	September 2-2004
Second submission to the SEC	December 15-2004
Third submission ro the SEC	January 14-2005
SEC Comment letter	January 31- 2005
Fourth submission ro the SEC	February 3-2005
Clearance from the SEC	February 10-2005
RoadShow - starts	February 14- 2005
Effectivness	March 10-2005
Signed Comfort letter	March 10-2005
Pricing	March 10-2005
Public offering effective	March 11-2005
Closing	March 16-2005

Schedule of Events and Responsibilities

Succesful IPO - Incredimail

Summary of Key Dates

Dates

Organizational meeting and due diligence	July 15, 2005
First draft of F-1 (Confidential filing)	September 2- 2005
SEC Comment letter (1st)	September 29- 2005
Second submission to the SEC (Amendment No. 1)	October 25- 2005
SEC Comment letter (2nd)	November 15- 2005
Third submission to the SEC (Amendment No. 2)	December 22- 2005
Fourth submission to the SEC (Amendment No. 3)	January 3- 2006
RoadShow - starts	January 3- 2006
SEC Comment letter (3rd)	January 6- 2006
Fifth submission to the SEC (Amendment No. 5)	January 26- 2006
SEC Comment letter (4th)	January 26- 2006
Clearance from the SEC	January 26- 2006
Effectiveness	January 31- 2006
Signed Comfort letter	January 31- 2006
Pricing	January 31- 2006
Public offering effective	February 3- 2006
Signed Bring Down letter	February 3- 2006
Closing	February 3- 2006

Registration

- The entire IPO process revolves around your company's registration with the SEC.
 - The attorneys generally take lead in drafting the registration statements.
 - The company's auditors must report on the financial statements included in the registration statements (5 years)+ issuance of comfort letter.
 - Underwriters – deal with how to present the company in the Prospectus, advise on pricing, timing and organize the road show.
 - Underwriter's counsel – their principal role is to ensure that the registration statements are complete and are not misleading.
 - Financial statements of significant acquired companies.

Registration (Cont.)

- Comfort letter – Comfort letter is issued by the accountants to assist the underwriters who are seeking to perform a “reasonable investigation”.
- Comfort letter is issued at the effective date.
- Bring down letter is issued at the closing date (generally 4 days after the effective date).
- Issuance of the Red Herring

The “Red Herring” – “Preliminary Prospectus”

- The Red Herring is typically printed after the company and its advisers conclude on the remaining comments from the SEC and it is not likely to require material revisions to it.
- The Red Herring prospectus may be distributed to the general public. It does not contain the exact offering price (a range is usually disclosed).

NASDAQ National Market Financial Requirements

Requirements	Initial Listing			Continued Listing
	Standard 1 Marketplace Rule 4420(a)	Standard 2 Marketplace Rule 4420(b)	Standard 3 Marketplace Rule 4420(c)	Standard Marketplace Rule 4450(a)
Stockholders' equity	\$15 million	\$30 million	N/A	\$10 million
Market value of listed securities or	N/A	N/A	\$75 million ^{1,2} or	N/A
Total assets and			\$75 million and	
Total revenue			\$75 million	
Income from continuing operations before income taxes (in latest fiscal year or in 2 of last 3 fiscal year)	\$1 million	N/A	N/A	N/A
Publicly held shares	1.1 million	1.1 million	1.1 million	750,000
Market value of publicly held shares	\$8 million	\$18 million	\$20 million	\$5 million
Minimum bid price	\$5	\$5	\$5 ²	\$1
Shareholders (round lot holders)	400	400	400	400
Operating history	N/A	2 years	N/A	N/A
Corporate governance	Yes	Yes	Yes	Yes

NASDAQ Small Cap Market

Listing Requirements

Stockholders' Equity	\$5 million or
Market Capitalization	\$50 million or
Net Income	\$750,000
Public Float	1 million
Market Value of Public Float	\$5 million
Minimum Bid Price	\$4
Shareholders	300
Operating History	1 year or
Market Capitalization	\$50 million
Corporate Governance	Yes

SEC Comments

- Once the registration statement is complete, it is sent to the SEC for review for the SEC Corporate Finance.
- Turn around 30 days.
- Typical areas of questions: Revenue recognition, cheap stock, taxes, equity and debt financing.

Restated Financial Statements for Three Months Ended 12/31/2005

During the three months ended December 31, 2005 the reasons cited for restated financial statements were as follows:

	<u>Reason for Restatement</u>	<u>Total</u>
1	Income Taxes	25
2	Statement of Cash Flows	18
3	Derivatives	17
4	Revenue recognition	16
5	Leases	15
6	Liabilities	13
7	Reclassifications	12
8	Business Combinations	10
9	Stockholders/Minority Interest	10
10	Other	120
	Total	246

Section 409A and Cheap Stock

- Late in 2005 the IRS issued proposed Reg under section 409A which deals with “Discounted options”. Failure to grant an option with an exercise price that is equal to or greater than FMV will result in the following tax consequences:
- ***For Optionees:*** a) Taxation at the time of vesting rather than the date of exercise; and b) a 20% penalty tax in addition to income tax.
- ***For Companies*** – Mainly withholding payments for applicable income and employment taxes at the time of option vesting.

Section 409A and Cheap Stock (Cont.)

- Options Subject to 409A – Mainly options that were not vested as of December 31, 2004.
- Determination of FMV –
 - Qualified Independent Appraiser (no more than 12 months before the transaction date).
 - In house written valuation – by a person with significant knowledge and experience or training in performing similar valuations”. (no more than 12 months before the transaction date).



After You Go Public

Compliance With Securities Laws

Periodic Reporting Requirements

- The 1934 Act
 - The Company must file a form 10-K/20-F report annually with the SEC.
 - Every quarter – companies file 10-Q/6-K.
 - Reportable event – Form 8-K/6-K within 4 days. (Reportable event – termination of material agreement, completion of acquisition, notice of delisting).

Regulation G – NON GAAP measures

- Section 401(b) of SOA requires the SEC to issue rules regarding “Pro-Forma Financial information”.
- Reg. G require presentation of numerical reconciliation to the GAAP results.
- Companies must disclose the reason why management believes the Non-GAAP measure provides useful information to the investors, such as: “*Management uses these non GAAP to evaluate its financial results, develop budget and manage expenditures...*”
- Non GAAP – may not exclude: a) charges that require cash settlements (except for EBITDA). B) charges or gains are reasonably likely to recur within two years.

Regulation G – NON GAAP measures (Cont.)

Symantec Corporation		
Reconciliation of consolidated statements of Operation to Non-GAAP statement		
	Nine Months Ended December 31, 2005	Three Months Ended December 31, 2005
<i>GAAP Results</i>	<i>38,039</i>	<i>90,734</i>
Adjustments to Non-GAAP:		
Difference between contract value and fair value of Veritas	274,067	106,380
Amortization of acquired product rights	297,672	85,036
Amortization of intangible assets from acquisitions	145,239	48,427
Acquired in-process research and development	284,000	-
Amortization of deferred stock compensation	33,236	12,329
Restructuring	20,492	15,566
Integration planning	15,339	2,185
Patent settlement	2,200	-
Provision for income taxes	(244,520)	(78,295)
<i>Adjusted results (Non-GAAP)</i>	<i>865,763</i>	<i>282,362</i>
Net income per share diluted - GAAP	0.04	0.08
Net income per share diluted - Non-GAAP	0.74	0.26

Sarbanes Oxley Act

- Was implemented to ensure more accurate disclosure of financial information to investors.
- Attempts to force auditors to take their auditing role seriously. Audit firms must register with SEC and be "audited". They can be punished for substandard work.
- Prevents a public accounting firm from auditing a client whose CEO, CFO or other employees were employed by the accounting firm within one year prior the audit.
- Audit partner rotation every 5 years.

Sarbanes Oxley Act (Cont.)

- The SOX:
 - Requires that only outside board members of a firm be on the firm's audit committee.
 - Prevents the members of a firm's audit committee from receiving consulting or advising fees from the firm.
 - Requires that the CEO and CFO of firms certify that the audited financial statements are accurate.
 - Allows public accounting firms to offer non-audit consulting services to an audit client only if the client pre-approves those services.

Sarbanes Oxley Act (Cont.)

- Expected changes in the 404 based on the “Advisory Committee” to the SEC:
- Full exemptive relief:
 - Market Cap < \$128m + Revenues < \$125m; or,
 - \$128m < Market Cap < \$787m + Revenues < \$10m.
- Exemptive relief from auditors attestation:
 - \$128m < Market Cap < \$787m + Revenues < \$250m.

Finalization of the recommendation is expected in April.

Business combination

- Reg. S-X Rule 3-05 requires that:
 - Financial statements of a significant acquisition should be filed with the SEC in any Act 1933 (for FPI) How significance is determined?
 - ***Investment test*** – Purchase price/total assets of the registrant.
 - ***Asset test*** – Total assets of the acquired company/total assets of the registrant.
 - ***Income test*** – Income before taxes of the acquired company/Income before taxes of the registrant.

Business combination (Cont.)

- If any of the Investment, Assets or income test is:
 - Between 20%- 40% - One year of audited FS.
 - Between 40%- 50% - Two years of audited FS.
 - Over 50% - Full set of audited FS.
- Audited financial statements of an acquired company generally will be a condition for closing in SPAs.