Hale and Dorr LLP

2003/IPOreport

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The 2003 IPO market surged in the second half of the year to end on an up note despite producing the fewest IPOs in the U.S. since 1979. In 2003, there were 71 IPOs in the U.S. raising gross proceeds of $15.18 billion, compared to 75 IPOs raising $25.44 billion in 2002.

The first half of 2003 yielded a meager seven IPOs in the U.S. with gross proceeds of $1.12 billion, amidst economic uncertainty, stagnant markets and concerns surrounding overseas military actions. The IPO market rebounded during the second half of 2003 as economic conditions and the capital markets improved. The fourth quarter of 2003 produced 45 IPOs in the U.S. with gross proceeds of $9.21 billion—the highest quarterly number of IPOs since the fourth quarter of 2000—and December alone contributed 20 IPOs with gross proceeds of $6.02 billion.

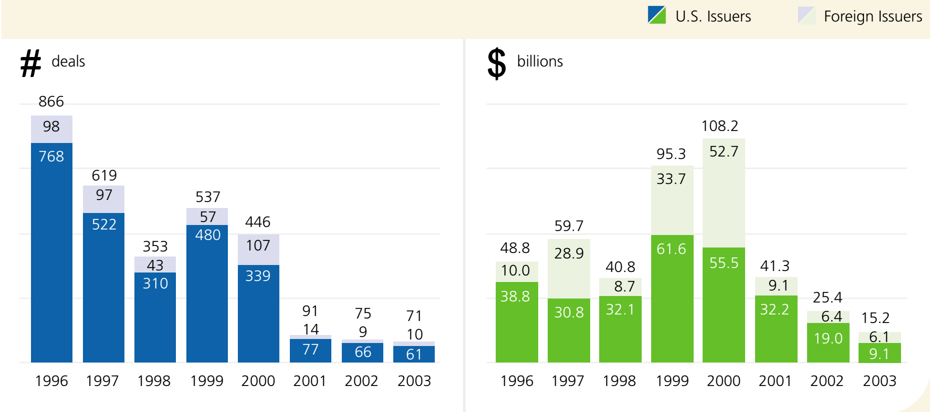
Average deal size declined 37%, from $339.2 million in 2002 to $213.8 million in 2003, reflecting the IPO market's renewed affinity for smaller technology and life sciences companies and fewer multi-billion-dollar IPOs. There were only two billion-dollar IPOs in 2003, compared to five in 2002 and 11 in 2001.

IPOs by U.S. issuers declined slightly, falling from 66 IPOs in 2002 to 61 in 2003. Gross proceeds from U.S. issuer IPOs declined 52%, from $19.03 billion in 2002 to $9.13 billion in 2003. In 2002, however, IPOs by two insurance companies accounted for nearly half of the year's proceeds.

In 2003, 28 IPOs (39% of the total) were by companies based in the eastern U.S. (east of the Mississippi River), a decrease from 34 IPOs (45% of the total) in 2002. IPOs by companies based in the western U.S. increased to 33 (47% of the total) in 2003 from 32 (43% of the total) in 2002. The remaining ten IPOs (14% of the total) were by non-U.S. issuers—an increase from nine IPOs (12% of the total) in 2002. Eastern U.S. IPOs raised $5.10 billion (34% of the total), western U.S. IPOs raised $4.03 billion (26%) and non-U.S. IPOs raised $6.06 billion (40%) of the year's IPO proceeds.

California led the 2003 state ranking by a wide margin, with 18 IPOs, followed by Illinois and Texas with four IPOs each. Over

U.S. IPOs – 1996 to 2003



the past five years, the state IPO leaders are California (358), New York (94), Massachusetts (74), Texas (67) and Florida (36).

Technology and life sciences companies grabbed the largest share of the 2003 IPO market, with 23 offerings, but declined as a percentage of all IPOs from 37% in 2002 to 32% in 2003. Offerings by financial services and insurance companies accounted for 21% of the IPOs in 2003, followed by consumer products companies (14% of the total) and biotechnology and pharmaceutical companies (11%).

The more favorable environment for emerging companies was evident in the listing choices of the year's IPO companies. In 2003, 65% of all IPOs were listed on Nasdaq and 31% were listed on NYSE, with the remainder listed on AMEX. While the percentage of IPO companies listing on Nasdaq fell short of the 88% reached in both 1999 and 2000, it was up from 53% in 2002.

Venture capitalists—who depend on IPOs as one of their two principal means of liquidity—fared only slightly better in 2003 than in 2002. The year produced 21 IPOs by venture-backed companies, compared to 20 in 2002. As a percentage of all IPOs in the U.S., venture-backed IPOs increased from 27% to 30%. In stark contrast, there were 202 IPOs by venture-backed companies in 2000, representing 59% of all IPOs.

On average, the market price for companies conducting IPOs in 2003 increased 28% by year-end, and more than three-quarters (56 companies) ended the year trading at or above their offering price. All sectors gained, ranging from an average increase of 59% for financial services and insurance companies to 2% for biotechnology and pharmaceutical companies.

The biggest first-day gainer of the year was Ctrip.com International, a consolidator of hotel accommodations and airline tickets in China, which soared 89% on its first trading day. Strong first-day gains were also produced by Digital Theater Systems and Kintera, a provider of web-based enterprise software to nonprofits, each increasing 47% on its opening day.

The best-performing IPO of the year was Accredited Home Lenders, a nationwide mortgage banking company, which ended the year 283% above its IPO price, followed by South African telecommunications company Telkom SA (up 202%). ■

We believe that innovation will remain a driver of long-term economic growth, and that the long-term prospects for many technology and life sciences companies are bright. By historical measures, the ebullient IPO market of the late 1990s was as aberrational as the tepid IPO market of the past three years. Although we do not anticipate a return to the market conditions of 1999 and 2000, the IPO market enters 2004 with the most momentum in three years and we expect continued improvement throughout the year. Many factors should contribute to the 2004 IPO market.

Capital Market Conditions

Stable and robust capital markets have long been a leading indicator of IPOs. In 2003, Wall Street managed to end its three-year losing streak—the first three-year losing streak since 1939–1941—with the Dow increasing 25% and Nasdaq up 50%. Perhaps equally important, both major indices ended 2003 above psychologically important thresholds, 10,000 for the Dow and 2,000 for Nasdaq.

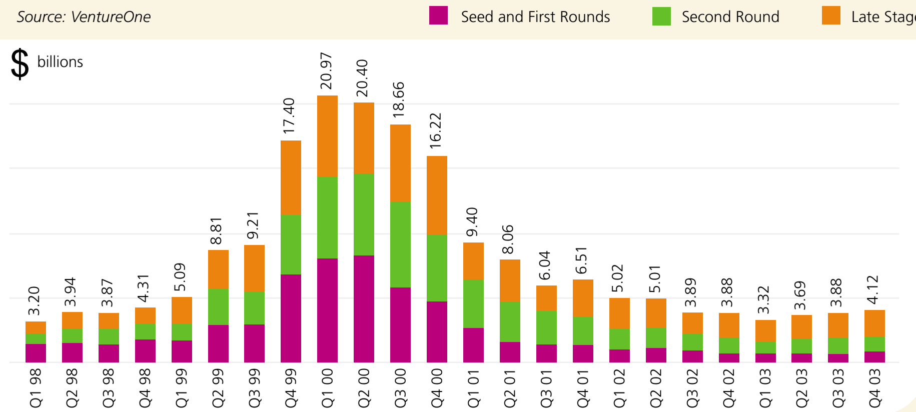
Another encouraging sign is increased investor interest in the stock market. Despite the market timing scandals that emerged late in the year, the total amount invested in stock mutual funds increased by $153 billion during 2003, compared to a net decline of $28 billion in 2002, according to the Investment Company Institute.

Most analysts expect the market recovery to continue through at least the first half of 2004. In January 2004, Nasdaq rose 3% and the Dow inched up slightly, despite a sharp sell-off in late January.

Economic Growth

Economic growth will continue to be a key determinant of market strength in 2004. Fueled by the technology sector, the U.S. economy enjoyed a remarkable ten-year period of growth that finally sputtered to an end in early 2001. The economy recovered in fits and starts in 2002, largely on the back of strong consumer spending and in spite of sharp declines in business investment. The economy improved further in 2003, with continued low interest rates and boosts from tax cuts and increased government spending on homeland security.

Equity Financings for Venture-Backed Companies – 1998 to 2003



The general consensus appears to be that the economy will continue to strengthen in 2004. Short-term interest rates are at the lowest level since 1958. Corporate earnings are up, consumer confidence is high and IT spending appears to be on the rebound.

Still, optimism is tempered by concerns over continuing military conflict and the threat of terrorist attacks, a growing federal budget deficit and the possibility of rising interest rates. Business investment remains well below the levels of the late 1990s, consumer spending could slow down if interest rates climb and a spike in inflation could take the wind out of economic recovery.

Investor Confidence

Notorious corporate and accounting scandals, followed by revelations of conflicts of interest in investment banking practices, roiled the markets in 2002. Regulators reacted swiftly with new legislation and new rules that have helped restore investor confidence, and the worst appears to be behind us. (Please see the article on page 8 for a summary of the "global settlement" relating to investment banking practices.)

A new and sustained focus on corporate governance is driving real improvements in accountability to stockholders, board oversight of management and the qualifications of board members. (Please see the article on page 12 for a discussion of the "Five I's" of effective boards.)

Nature of IPO Candidates

IPO candidates in 2004 will need experienced management, superior products or market positions, and strong growth and earnings prospects. Most successful IPO candidates will be profitable, with substantial revenue, although there will likely be room for some promising biotechnology companies.

We expect most VC-backed company IPOs in 2004 to come out of the life sciences sector. At the end of 2003, there were 18 VC-backed companies in IPO registration, of which 14 were biopharmaceutical companies, two were software companies, one was a semiconductor company and one was a business services company. One of these, Eyetech Pharmaceuticals, went public in late January and jumped 54% on its first trading day.

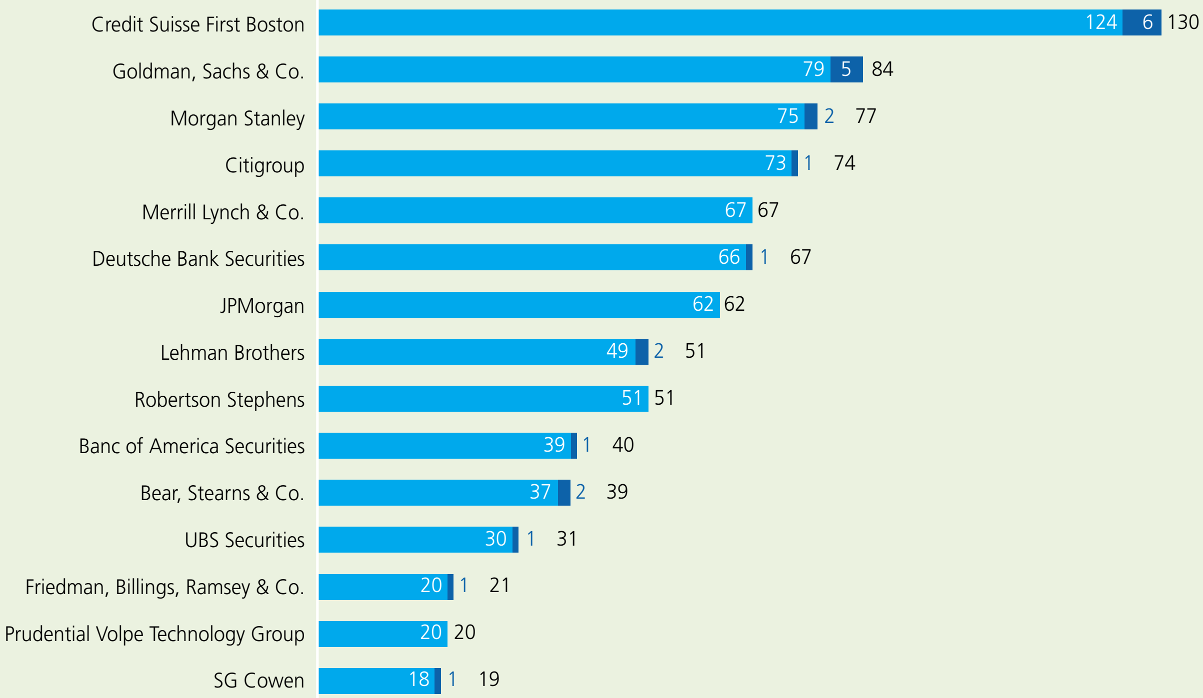
Longer term, the pool of IPO candidates will be impacted by recent trends in venture capital investing. The pipeline of innovative start-ups—future IPO candidates—has slowed considerably. According to VentureOne, only 29% of total U.S. venture capital financings were for seed and first rounds in 2002–2003 (1,127 deals), down from 55% in 1999–2000 (4,872 deals).

The numerous new requirements facing public companies have not yet been completely phased-in. It remains to be seen whether this new disclosure—and liability—environment, and the unprecedented focus on corporate governance, will deter some IPO candidates. Improvement in the M&A market for VC-backed companies could also prompt some IPO candidates to opt for liquidity through acquisitions. ■

January 2004

Underwriter Ranking and Geographic Mix

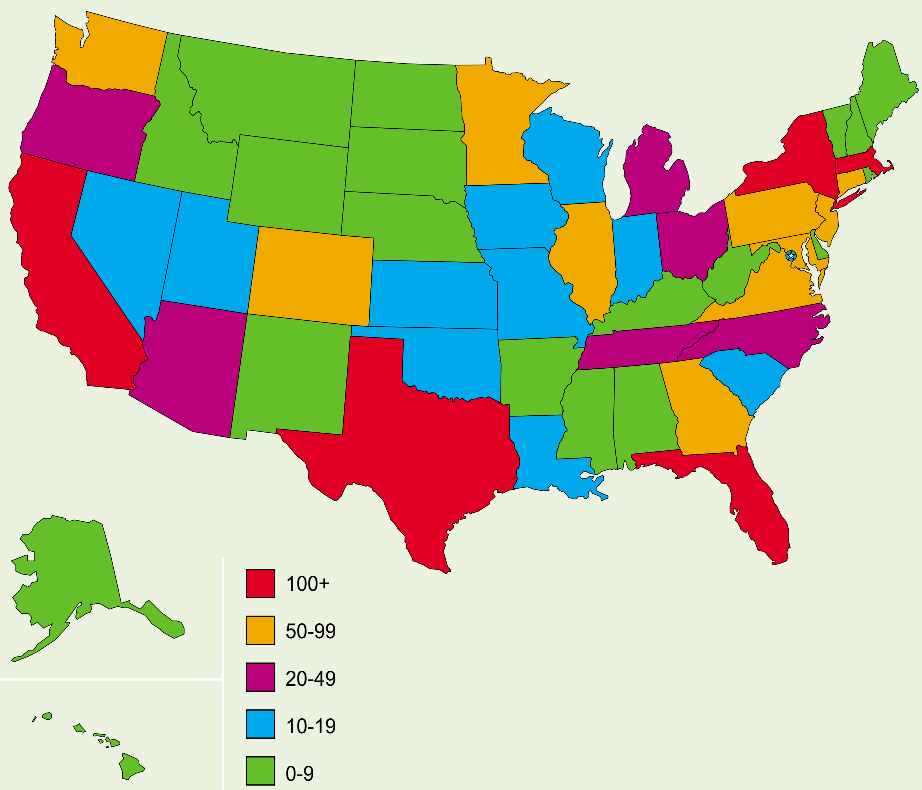
Lead Underwriter in Eastern U.S. IPOs – 1996 to 2003



The above chart is based on companies located east of the Mississippi River.

State	#	$ millions	State	#	$ millions
AK	1	140.0	MT	1	40.0
AL	6	310.9	NC	31	1,569.1
AR	4	168.0	ND	2	113.1
AZ	36	1,998.4	NE	6	427.8
CA	710	50,310.6	NH	9	402.9
CO	80	5,664.7	NJ	86	10,450.3
CT	54	10,260.6	NM	5	678.4
DC	15	1,397.0	NV	11	1,106.0
DE	4	505.9	NY	244	39,902.7
FL	157	9,717.8	OH	41	3,247.3
GA	75	10,900.8	OK	17	2,565.9
HI	2	60.5	OR	25	1,676.2
IA	13	2,842.1	PA	83	10,370.3
ID	3	662.5	RI	7	565.9
IL	86	17,525.8	SC	11	817.0
IN	18	2,825.3	SD	1	6.4
KS	13	1,092.7	TN	27	1,948.9
KY	9	1,221.7	TX	213	25,354.3
LA	11	635.1	UT	15	701.1
MA	155	13,088.4	VA	78	9,069.0
MD	51	5,866.2	VT	2	131.7
ME	6	752.5	WA	69	15,036.1
MI	32	3,278.7	WI	16	1,204.1
MN	56	2,689.6	WV	2	125.2
MO	18	6,817.8	WY	1	8.4
MS	5	310.1			

IPOs by State – 1996 to 2003



Law Firm Ranking – 1996 to 2003

Law Firm Ranking – 2003

The above charts are based on companies located east of the Mississippi River and do not include other law firms tied for the last place shown.

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2003 IPOs

Open Solutions	$87,946,080	Counsel to Issuer	December 2003
Wolfson	£79,500,000	Counsel to Issuer	October 2003
Acusphere	$52,500,000	Counsel to Underwriters	October 2003
O.P.T. Ocean Power Technologies Inc	£25,000,000	Counsel to Issuer	October 2003
First Marblehead	$213,900,000	Counsel to Issuer	November 2003
NitroMed	$61,380,000	Counsel to Issuer	November 2003

SELECTED IPOs, 1998-2002

Akamai	$234,000,000	Counsel to Issuer	October 1999
SRA International, Inc.	$103,500,000	Counsel to Issuer	May 2002
Prodigy	$168,000,000	Counsel to Issuer	February 1999
Bookham Technology	$352,439,120	Counsel to Issuer	April 2000
DoubleClick	$63,635,250	Counsel to Underwriters	February 1998
Proton Energy Systems	$136,850,000	Counsel to Issuer	September 2000
OPNET	$59,800,000	Counsel to Issuer	August 2000
Centene Corporation	$56,350,000	Counsel to Underwriters	December 2001
Sycamore Networks	$284,050,000	Counsel to Issuer	October 1999
Infineon Technologies	$5,884,272,000	Counsel to Underwriters	March 2000
Silknet	$51,750,000	Counsel to Underwriters	May 1999
Network Engines	$127,075,000	Counsel to Issuer	July 2000
The Medicines Company	$110,400,000	Counsel to Issuer	August 2000
Red Hat	$96,600,000	Counsel to Underwriters	August 1999
Bottomline Technologies	$50,830,000	Counsel to Issuer	February 1999
Lycos Europe N.V.	€672,000,000	Counsel to Lycos	March 2000
SkillSoft	$49,910,000	Counsel to Issuer	January 2000
Parthus	$188,370,000	Counsel to Issuer	May 2000
Switchboard	$94,875,000	Counsel to Issuer	March 2000
Aspect Medical Systems	$60,375,000	Counsel to Issuer	January 2000
Exact Software	€88,960,750	Counsel to Issuer	June 1999
atg	$69,000,000	Counsel to Issuer	July 1999
Mykrolis	$105,000,000	Counsel to Underwriters	August 2001
CareerBuilder	$67,275,000	Counsel to Issuer	May 1999
MKS	$104,650,000	Counsel to Issuer	March 1999
MatrixOne	$143,750,000	Counsel to Underwriters	March 2000
Eclipsys Corporation	$72,450,000	Counsel to Issuer	August 1998
SpeechWorks	$109,250,000	Counsel to Underwriters	July 2000
ArrowPoint Communications	$195,500,000	Counsel to Issuer	March 2000

IF YOU'RE GOING PUBLIC >> GO WITH THE IPO LEADER.

DWDM >> SPIDERING DNA COMPUTING BIOCHIPS FUSION PROTEINS WIRELESS LAN INTELLIGENT AGENTS OPTICAL NETWORKING EXTREME ULTRAVIOLET LITHOGRAPHY NEURAL NETWORKS BIOPHARMACEUTICALS PHOTONICS QUANTUM COMPUTING BIOINFORMATICS NANOTECHNOLOGY MEMS PHARMACOGENOMICS PROTEOMICS

The much publicized "global research analyst settlement" is reshaping the ways brokerage firms conduct business, with significant consequences for companies contemplating initial public offerings. Changes are being undertaken not only by the firms subject to the global settlement, but also by most other brokerage firms as industry best practices. Based on our initial experience, we offer the following guidance.

Cultivate independent relationships with analysts.

The global settlement limits interactions between research analysts and investment bankers in order to avoid inappropriate influence by banking personnel over research decisions. The settlement, for example, prohibits an analyst's "participation" in efforts to solicit investment banking business.

- ***Expect to meet with research personnel separately from bankers.*** Analysts will no longer join bankers in "dog and pony shows." Some brokerage firms are banning all joint conference calls and meetings among analysts, bankers and issuers, including early-stage companies. Prior to engaging a brokerage firm for an IPO, you should expect that the firm's analyst will focus on conducting due diligence and discussing your business and industry, but will avoid discussing a potential offering.
- ***Obtain commitment from research management to initiate coverage.*** Research management will now make all company-specific coverage decisions, with little or no input from bankers. You may wish to contact research management directly to request a commitment to initiate coverage, subject to analyst diligence. Although such a commitment is permitted, neither research management nor any individual analyst may undertake to issue a favorable rating for your stock.

Prepare for duplicative due diligence.

Analysts will perform a diligence review in order to screen your financing for their investor clients and to assist their firms' commitment committees. They are likely to conduct their diligence review without the involvement of investment banking and then provide feedback to bankers in the presence of a "chaperone"—typically a member of the brokerage firm's legal or compliance staff. As a result, background presentations and analyst diligence calls may need to be made outside the presence of bankers.

Finalize the managing underwriter group early.

Analysts may no longer "piggyback" on diligence procedures completed by bankers. You should engage all of your co-managers sufficiently early in the process to give their analysts time to complete their diligence efforts without delaying the offering timetable.

Understand analysts' role in preparing and marketing IPOs.

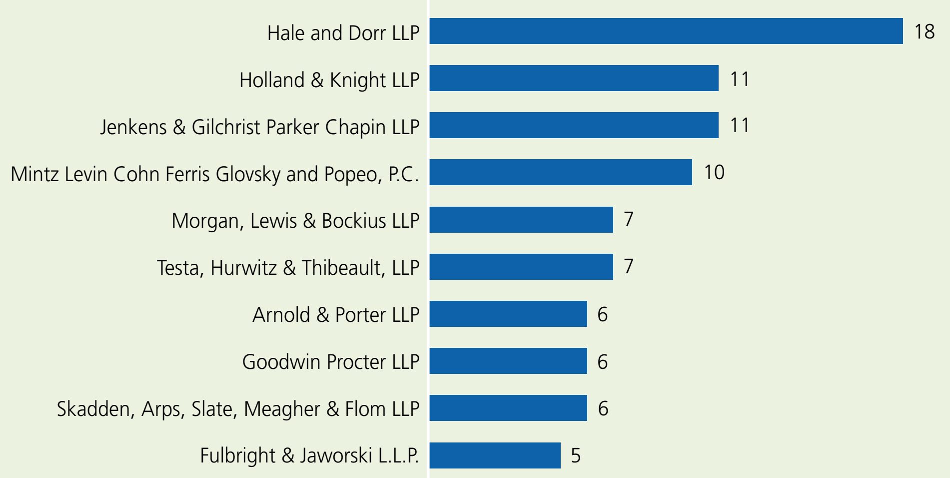
Analysts' ability to participate in the selling of securities has been significantly circumscribed.

- ***Expect less help from analysts in drafting.*** In the past, drafting sessions provided a company with an opportunity to benefit from an analyst's views of the company's industry and business. Under the global settlement, an analyst may assist in "confirming the adequacy" of disclosure, but may not comment on the prospectus in the presence of bankers unless a "chaperone" is present. Uncertainty about this process, as well as general caution about interactions between analysts and bankers, seems to have chilled analyst participation in drafting sessions to date.
- ***Prepare your road show presentation without help from analysts.*** Previously, analysts played a key role in helping companies prepare road show presentations. Now, analysts may not review or comment on draft road show slides or attend road show presentations or "dry runs" of those presentations.
- ***Outperform on the road show.*** The global settlement has eliminated the ability of banking to direct analysts to initiate contacts with prospective investors. Road show presentations therefore are likely to play an even more important role in post-settlement offerings. You should work closely with your bankers to ensure that your road show presentation communicates your key messages and value proposition effectively, and with equity capital markets to ensure the presentation reaches an appropriate investor group.

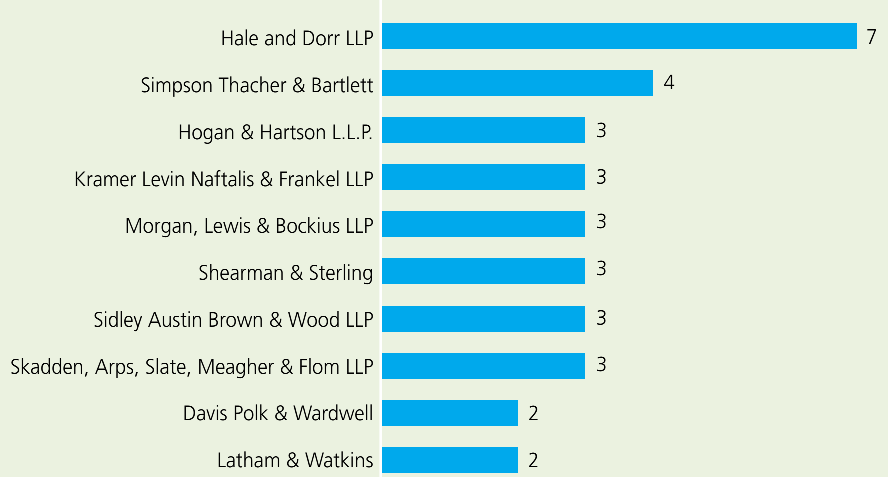
Prepare for the new post-IPO environment.

The global settlement also affects public companies, even when they are not pursuing a financing. Management may no longer be able to meet simultaneously with analysts and bankers, for example, at investor conferences or in social interactions. Because analysts may no longer suggest potential transactions to bankers, a public company will need to regularly update its bankers about the company's business, so that the bankers can help identify market opportunities. ■

Company Counsel in Eastern U.S. PIPEs Financings – 2003



Company Counsel in Eastern U.S. Rule 144A Placements – 2003



The above charts are based on companies located east of the Mississippi River and do not include other law firms tied for the last place shown.

Source: Hale and Dorr analysis of PrivateRaise data

PIPEs Financings

PIPEs, or Private Investments in Public Equity, proved once again in 2003 to be a viable financing tool for many public companies needing to raise additional capital in difficult market conditions.

In 2003, the PIPEs market grew 29% in deal volume, from 1,056 to 1,358 transactions, and 14% in dollar volume, from $16.6 billion to $18.9 billion, over the prior year. Average deal size declined from $16 million in 2002 to $14 million in 2003. Consistent with recent years, over 90% of PIPEs financings (and a majority of PIPEs dollar volume) in 2003 were by companies with market capitalizations under $250 million.

Of the year's PIPEs deals, 63% were common stock, 13% were convertible debt, 13% were convertible preferred stock, 4% were equity lines, 4% were non-convertible debt and 3% were other instruments. Pharmaceutical and biotechnology companies accounted for 19% of all PIPEs deals in 2003, followed by mining, metals and minerals (15%), healthcare (9%), computer (7%) and energy (7%) issuers.

Perhaps the most significant change in PIPEs transactions in 2003 was the movement away from variable-priced or reset-priced PIPEs, with the norm now calling for fixed pricing (close to 90% of all PIPEs transactions in 2003). The movement to fixed pricing has simplified the transaction process, reduced regulatory concerns and produced structuring and timing advantages.

Small- to mid-cap issuers with limited access to the broader public markets should continue to find PIPEs financing a desirable and accessible short-term alternative in 2004.

Rule 144A Placements

Rule 144A placement activity jumped in 2003 as seasoned companies increasingly recognized the faster time-to-market and greater flexibility afforded by these deals. In contrast to the PIPEs and IPO markets, Rule 144A issuers tend to be much larger companies and Rule 144A placements usually generate greater proceeds.

In 2003, the number of Rule 144A placements more than tripled, to 246, from 77 placements in the prior year. Gross proceeds nearly tripled to $72.8 billion in 2003 from $25.3 billion in 2002. Average deal size fell from $329 million in 2002 to $296 million in 2003.

Of the Rule 144A placements in 2003, a stunning 98% involved the issuance of convertible debt securities. Pharmaceutical and biotechnology companies grabbed the largest share of the 144A market in 2003, with 17% of the deals, followed by energy-related (11%), semiconductor and electronics (10%), telecommunications (8%) and computer (7%) companies.

Rule 144A placements should remain active in 2004 as mature companies continue to tap this market, particularly companies that deferred fundraising in recent years due to adverse conditions in the traditional public offering market. ■

New England

New England—particularly Massachusetts—has historically enjoyed one of the highest levels of venture capital investment and technology-related IPOs in the country. As the capital markets grew increasingly receptive to emerging companies in 2003, New England generated four IPOs with gross proceeds of $403 million—three of them in technology or life sciences fields. In comparison, 2002 produced five IPOs with gross proceeds of $5.46 billion—none tech-related.

Reflecting the region's strength as one of the leading biotechnology centers in the country, two emerging pharmaceutical companies, Acusphere and Nitromed, completed IPOs in 2003. The other two New England IPOs were by software provider Open Solutions and private student loan originator First Marblehead Corporation.

The large number of technology and life sciences companies in New England, along with the region's world-renowned universities and research institutions, should continue to provide a fertile environment for new companies and IPO candidates. If market conditions remain conducive, we anticipate a steady flow of IPOs by New England technology and life sciences companies in 2004.

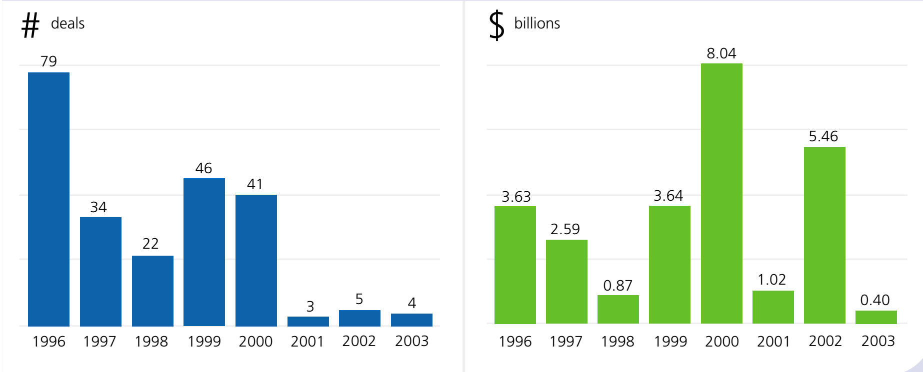
Tri-State

The tri-state region of New York, New Jersey and Pennsylvania historically has drawn on its strengths in the financial services, pharmaceuticals, healthcare and software industries to produce a large number of IPOs.

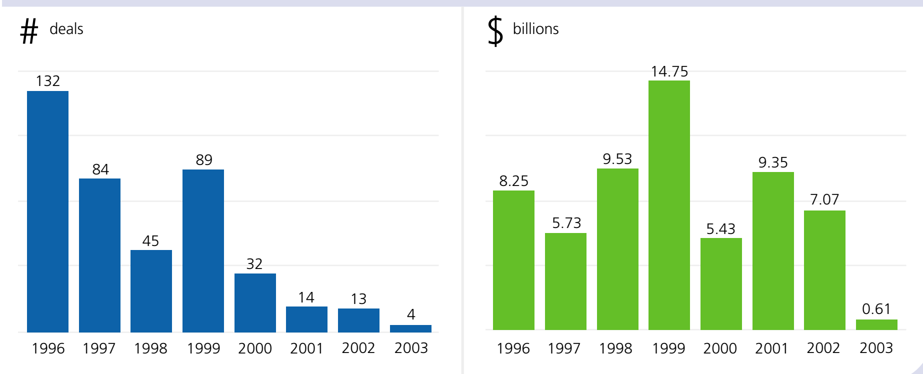
In 2003, companies in the tri-state region produced four IPOs with gross proceeds of $614 million, down from 13 IPOs with gross proceeds of $7.07 billion in 2002. This year's IPOs came from a diverse group of companies engaged in financial services, equipment leasing, alarm monitoring and television broadcasting.

In 2004, we anticipate the tri-state region will see a higher level of IPOs, as offerings by—and spin-offs from—the region's large number of established companies pick up, and increased venture capital activity in the region generates more IPO candidates.

New England IPOs – 1996 to 2003



Tri-State IPOs – 1996 to 2003



Mid-Atlantic

The mid-Atlantic region of Virginia, Maryland, North Carolina, Delaware and the District of Columbia produced four IPOs with gross proceeds of $929 million in 2003, compared to seven IPOs with gross proceeds of $959 million in 2002. While six of the seven mid-Atlantic IPOs in 2002 were by national security, government contracting and defense-related companies, only one 2003 IPO was by a government-related company.

Another strength of the mid-Atlantic region—and particularly the Research Triangle area—is the life sciences and medical devices industry. In 2003, the region produced one life sciences company IPO. The other two IPOs in 2003 were by a commercial finance company and a transportation services company.

In the coming year, we expect the mid-Atlantic region will continue to produce an attractive crop of government-related IPO candidates, as well as selected offerings by the region's growing number of life sciences and software companies.

Non-U.S. Issuers

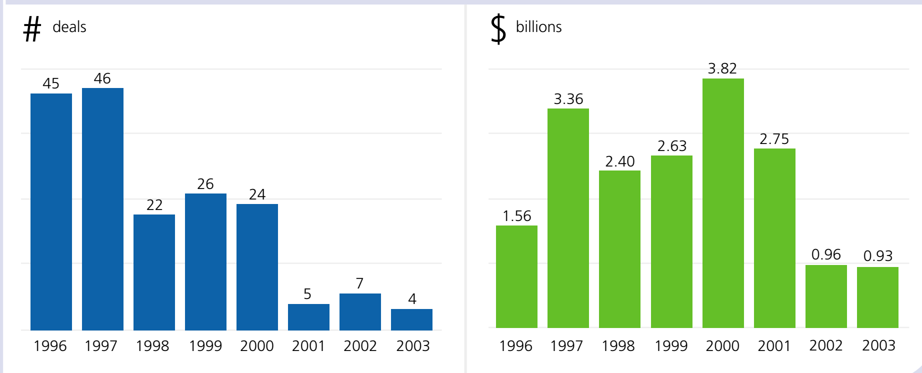
Non-U.S. issuer IPOs in the U.S. in 2003 were up slightly from the prior year despite the heightened disclosure requirements for companies listing on U.S. markets and the weakened dollar. In 2003, there were ten IPOs by non-U.S. issuers, with gross proceeds of $6.06 billion, compared to nine IPOs by non-U.S. issuers in 2002, with gross proceeds of $6.41 billion.

The non-U.S. issuer IPO market in 2003 was dominated by large offerings by companies based in Asia and by companies in the insurance industry, led by the $2.87 billion IPO of China Life Insurance Company.

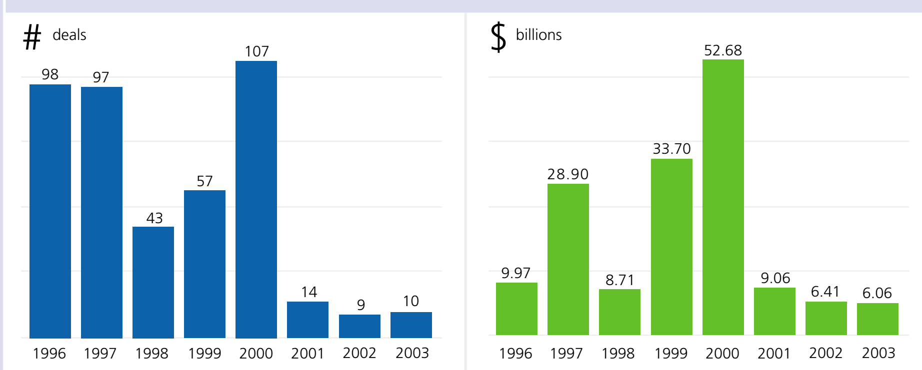
Although many overseas markets still lag the U.S. in stability and liquidity, one notable exception in 2003 was the £79.5 million IPO by Wolfson Microelectronics, a fabless semiconductor company, which was the largest technology IPO on the London Stock Exchange in over three years.

In 2004, we anticipate further IPOs by non-U.S. insurers, denationalized monopolies and large telecommunications providers. With a growing number of Asian companies seeking liquidity, we also expect to see a steady stream of offerings from Asian companies. ■

Mid-Atlantic IPOs – 1996 to 2003



Non-U.S. Issuer IPOs – 1996 to 2003



Let's be honest and admit that many CEOs don't welcome oversight and don't particularly like independent directors, especially those who are noisily independent or contentious. While CEOs welcome the support of their board members, they do not react well to disagreement, skepticism or probing questions. They believe that, as CEOs, they have been charged with running the company, and they are accustomed to hand selecting their board members. Running the company, they submit, is a full-time job that cannot be performed by part-time fiduciaries.

But while it is true that CEOs are charged with managing day-to-day operations, the board is charged with overseeing management of the company. The role of the directors is to provide good corporate governance, which essentially is oversight of the company's management. Directors are fiduciaries, and as such have the high obligation of trustees to assure that management is effective, honest and dedicated to managing the company for the benefit of its shareholders and to enhance shareholder value. The board's principal oversight responsibilities include:

- providing assistance and advice to the CEO,
- selecting, evaluating and compensating the CEO and senior executives, and replacing the CEO when appropriate,
- reviewing, approving and monitoring management's strategic plan and the company's strategic direction, and
- overseeing the company's financial performance and accounting, and reviewing and approving management's financial plans, commitments of significant corporate resources and material transactions.

Executives, directors and shareholders need to keep these principles in mind and not be misled by the myth attributing recent corporate scandals to either the board's failure to manage the company properly or the board's interference with management's purported exclusive right to run the company—neither of which is true. The scandals occurred because executives ran the companies primarily for their own benefit and not that of the company's shareholders, and the directors not only failed to perform their independent oversight responsibility, but repeatedly rewarded managerial ineptitude with exorbitant pay packages.

In fulfilling their responsibilities, fiduciaries must understand that oversight means more than observing and commenting. It involves a relationship in which they serve as informed and challenging advisors, conscientious overseers, insightful critics and thoughtful advocates—whose first question, when asked to consider a significant proposal by management, is "How does this help the shareholders?"

The Five I's

There is no formula that can be applied to create the perfect board. An excellent board needs independent, well-informed, ethical, proactive directors who possess business and financial savvy and the ability to create a boardroom environment in which collegiality, honesty, trust and respect prevail—attributes that I categorize as the "Five I's."

Independence A majority (some say a substantial majority) of the board should be independent, which means no business, financial or family ties with the company. With independence comes the ability and courage to challenge management and fellow directors in an environment that encourages constructive skepticism as well as free and open differences of opinion. A board cannot be effective unless its members have the courage to "rock the boat" and say no to management when it proposes actions that subordinate the interests of shareholders to those of management. But directors must remember that they can disagree without being disagreeable.

Integrity Successful companies insist on integrity even at the risk of restraining entrepreneurship, a concept that often is difficult to sell. The CEO, with the advice and consent of the directors, is responsible for setting the tone at the top and creating a corporate culture that censures extravagance, greed, dishonesty and self-dealing, and extols decency, integrity and ethical behavior.

Informed A director may be independent and possess integrity, but what good is a director if he or she is not informed? Uninformed directors make bad decisions and consume valuable management and board time. Preparation for meetings is essential to the director's oversight responsibilities, including understanding what keeps the CEO awake at night, maintaining a level of business savvy that permits the director to contribute to the development of the company's strategy, and maintaining a level of financial literacy required to evaluate the company's financial performance.

Involved Each director must devote the time required to understand the company's strategy, strengths and limitations. Effective oversight of management requires availability, commitment and dedication of the time needed to discharge the director's fiduciary duties responsibly, which in turn requires that directors limit the number of boards on which they serve.

Initiative A director must be proactive, ask questions, insist on answers, participate in the preparation of agendas for board meetings and be enthusiastic about service on the board. Effective directors are not afraid of being bold.

Excellent corporations stay excellent by regularly challenging themselves. The CEO must create a board environment that encourages skepticism and enables directors to disagree constructively. However, even if the directors achieve the Five I's, boardroom excellence will be absent unless the directors trust, respect and listen to each other. ■

Portions of this article will appear in the second edition of Paul P. Brountas' Boardroom Excellence, *expected to be published in the fall of 2004.*
For more information on Boardroom Excellence *by Paul Brountas, see opposite page.*

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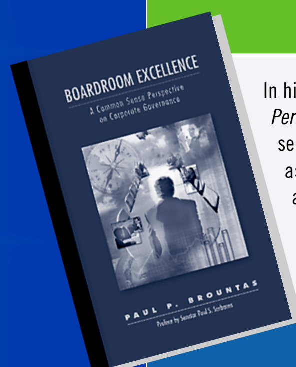

In his book, *Boardroom Excellence: A Common Sense Perspective on Corporate Governance*, Paul P. Brountas, senior counsel to Hale and Dorr, draws on his experience as outside counsel to several hundred corporations and attendance at thousands of board and board committee meetings during his 43-year career at the firm. To request a copy, visit www.haledorr.com or send an email to boardroom.excellence@haledorr.com.

Data Source

Hale and Dorr LLP compiled all data in this report unless otherwise noted. Offerings by REITs, bank conversions and closed-end investment trusts are excluded. Offering proceeds exclude proceeds from exercise of underwriters' over-allotment options, if applicable. The IPO data is collected from various sources, including IPO.com, IPOCentral.com, SEC filings and the Washington Service Bureau. For lead underwriter rankings, IPOs are included under the current name of each investment bank.

Internet Availability

An electronic version of this report, along with a searchable database of the data that appears in this report, can be found at www.ipoleader.com.

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