2005 IPO Report

WILMER CUTLER PICKERING HALE AND DORR LLP

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2005 Review

The 2005 US IPO market retreated from 2004 levels—largely due to a decline in fourth-quarter IPOs from 68 in 2004 to 46 in 2005—but still more than doubled the annual deal volume of 2001–2003. Facing mixed economic indicators and continued geopolitical turbulence, the 2005 IPO market failed to maintain the momentum with which it ended 2004—a year in which deal volume increased each quarter.

The year ended with 190 IPOs, with gross proceeds of $31.4 billion, compared to 205 IPOs raising $39.0 billion in 2004. Median offering size increased from $90.7 million in 2004 to $102.6 million in 2005, due to a lower percentage of offerings by smaller technology-related companies.

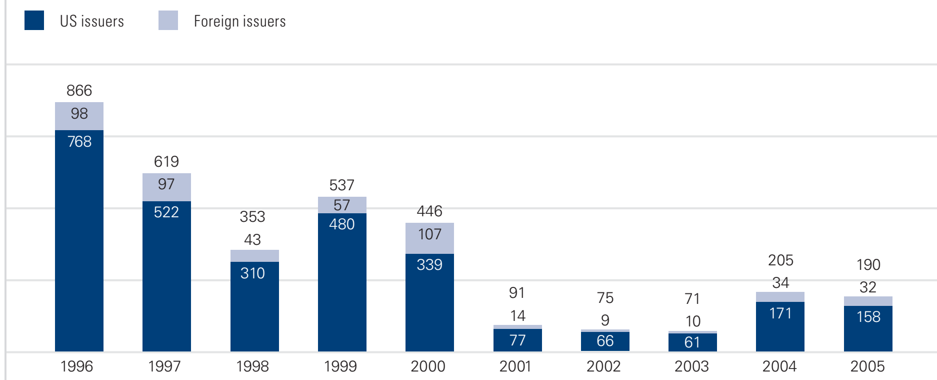
Although disappointing in relation to 2004 tallies, IPO deal volume in 2005 substantially outpaced the dark days of 2001–2003, which produced an average of only 79 IPOs a year.

The number of US issuer IPOs declined 8%, from 171 in 2004 to 158 in 2005, and gross proceeds dropped 14%, from $30.3 billion to $26.2 billion. The number of billion-dollar offerings by US issuers fell from five in 2004 to one in 2005—Huntsman's $1.39 billion IPO—but the size of the median US issuer IPO increased from $85.2 million in 2004 to $99.0 million in 2005.

The number of US IPOs by foreign-based issuers fell from 34 in 2004 to 32 in 2005, with gross proceeds dropping from $8.69 billion to $5.19 billion—the lowest number in at least 10 years. Furthermore, the 2005 US IPO market failed to see a single billion-dollar offering by a foreign-based issuer. The absence of any billion-dollar US IPOs by foreign issuers for the first time in more than a decade raises the question of whether changes in US compliance rules have resulted in other world markets becoming more attractive venues for large foreign-issuer offerings.

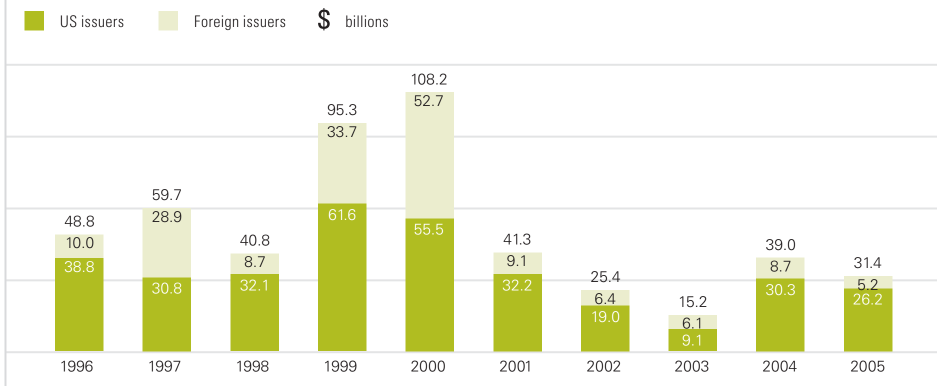
The energy-related industry sector led the 2005 IPO market, with 26 IPOs, or 14% of the total, followed by the consumer products and services sector with 25 IPOs (13%) and the financial services sector with 23 IPOs (12%).

US IPOs – 1996 to 2005



US IPO Dollar Volume – 1996 to 2005

US issuers   Foreign issuers $ billions



Although no technology sector cracked the top three in 2005, tech-related companies accounted for 77 IPOs over the past year (or 41% of the total), down from 109 IPOs in 2004 (53% of the total). Gross proceeds raised by technology-related companies dropped from $17.0 billion in 2004 (44% of the total) to $9.6 billion in 2005 (31% of the total).

Venture-backed IPO activity mirrored the drop in tech-related IPO numbers in 2005, with 41 IPOs by VC-backed companies raising gross proceeds of $2.24 billion—compared to 67 IPOs raising $4.99 billion in 2004. Although VC-backed IPOs declined from 33% of all IPOs in 2004 to 22% in 2005, the deal volume again compared favorably to the 2001–2003 period, when an average of only 21 VC-backed companies completed IPOs each year.

Due in significant part to the reduction in IPOs by tech-related companies, which tend to be smaller and less profitable than other IPO companies, the median

annual revenue of companies going public in 2005 increased to $105.9 million from $85.7 million in 2004, and the percentage of profitable IPO companies increased from 59% to 62%.

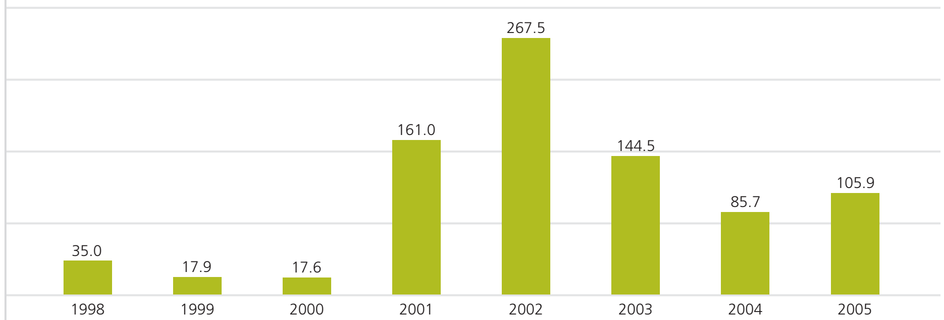
Perhaps nothing tells the boom and bust story of the recent past better than the revenue and profitability profiles of IPO companies. The median annual revenue of companies going public fell by one-half, from $35.0 million in 1998 to an average of $17.8 million in 1999 and 2000, then soared to an average of $168.5 million between 2001 and 2003 as the market became very selective, and declined to an average of $90.9 million in 2004 and 2005 as deal volume enjoyed a modest recovery. Likewise, the percentage of profitable IPO companies dropped from 56% in 1998 to 26% in both 1999 and 2000, before returning to a range of 52%–65% each year since then.

The capital markets ended 2005 about where they began the year, as the Dow declined 0.6% and the Nasdaq eked out a 1.4% gain. The average 2005 IPO again outperformed the market, ending the year 18% above its offering price. About two-thirds of the average year-end gain was attributable to the first-day gain from offer price. Average aftermarket performance was boosted by second quarter IPOs that—facing pricing pressure as the Dow and Nasdaq hit their April lows—were priced more conservatively and ended the year up an average of 38% from their offer prices.

At year-end, 62% of 2005 IPOs were trading at or above their offering price—31 deals were up more than 50% and 11 were up over 100%. The best performing IPO of 2005 was by consumer products company Citi Trends—a retailer of urban fashion apparel—which ended the year 205% above its offering price, followed by performance apparel developer Under Armour, up 195%. Rounding out the top five for the year were railcar manufacturer FreightCar America (up 153%), global electronic payment point-of-sale systems provider VeriFone Holdings (also up 153%), and action sports apparel retailer Zumiez (up 140%). Four of these five IPOs were priced during the second quarter.

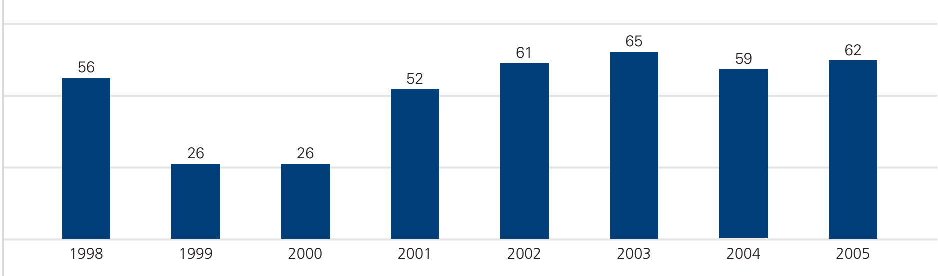
Median Annual Revenue of IPO Companies – 1998 to 2005

$ millions



Percentage of Profitable IPO Companies – 1998 to 2005

%



The top first-day gain of 2005 was by Chinese language Internet search portal Baidu.com, which ended its opening day 354% above its offer price. This notable rise—surpassed by only five other first-day gains during the peak of the dot-com boom—marked the best first-day performance since the first quarter of 2000. Baidu.com, however, could not sustain its share price trajectory and ended the year at just over one-half its first-day closing price.

The best performing IPO sector of 2005 was information services, with three IPOs that gained 77% on average by year-end, led by Baidu.com (up 133%) and WebMD Health (up 66%). The eight IPOs by software companies followed, ending the year up an average of 31%, led by Kenexa (up 76%) and SSA Global Technologies (up 65%). Consumer products and services companies increased an average of 27%, and energy-related companies traded up 20%. The poorest performing sector—and the only sector to decline for the year—was communications, which had 13 IPOs that ended the year down less than 1% on average.

In 2005, the number of IPOs completed by companies based in the eastern United States (east of the Mississippi River) increased to 91 (48% of the total) from 82 in 2004 (40% of the total). Western US–based issuers accounted for 67 IPOs (35% of the total), down from 89 IPOs in 2004 (43% of the total). Foreign issuers accounted for the remaining 32 IPOs (17% of the total). Eastern US IPOs raised $15.3 billion (49% of the total), western US IPOs raised $10.7 billion (34%) and foreign issuer IPOs raised $5.4 billion (17%) of the year's IPO proceeds.

California once again led the IPO state rankings in 2005, with 25 IPOs, although this total was less than half its 2004 number—followed by New York with 16, Massachusetts with 13, Texas with 12 and Illinois with 10. China produced the most foreign issuer IPOs (nine), followed by Greece (five), and Israel and Bermuda (four each).

State Rankings – 2000 to 2005

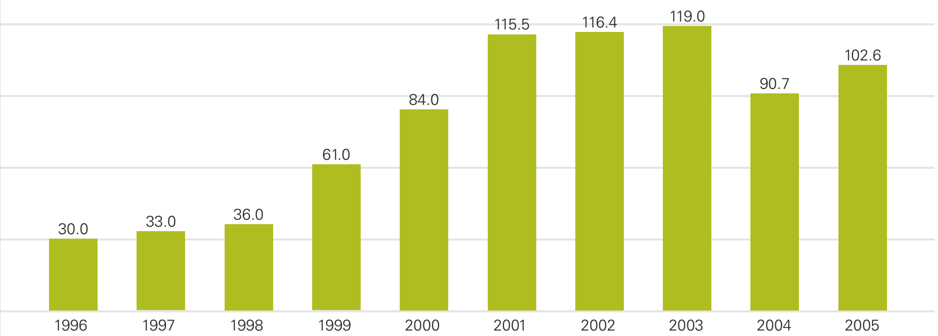
California	268
New York	62
Massachusetts	60
Texas	57
Illinois	37

Foreign Country Rankings – 2000 to 2005

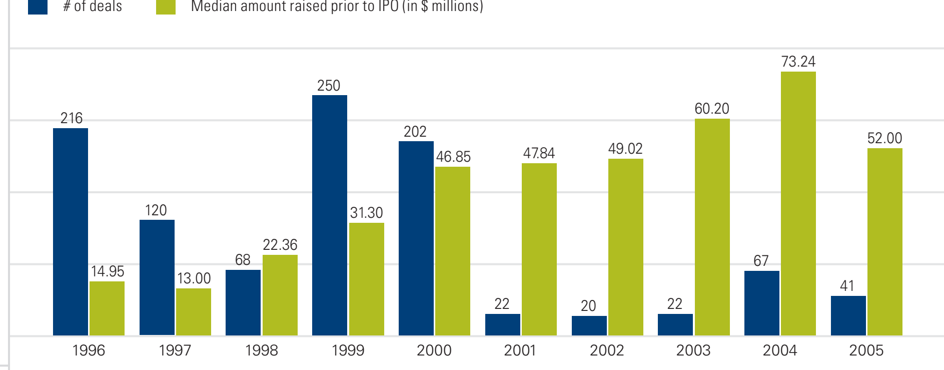
China	33
Israel	25
Bermuda	21
Canada	20
England	11

The percentage of IPO companies listing on the Nasdaq—the preferred listing choice for many venture-backed and technology companies—fell from 68% in 2004 to 63% in 2005. Average IPO offering size for companies listing on the Nasdaq fell slightly, from $95 million in 2004 to $93 million in 2005. Average IPO offering size for companies listing on the NYSE fell from $450 million in 2004 to $340 million in 2005, again reflecting the absence of very large offerings by US and foreign-based issuers.

Median IPO Offering Size – 1996 to 2005



Venture Capital–Backed IPOs – 1996 to 2005



Source: VentureOne

2006 Outlook

The IPO market of the past 15 years has gone through four phases:

- 1991 to 1997 – Reasonably stable market, producing an average of more than 500 IPOs a year
- 1998 to mid-2000 – Go-go market characterized by many unqualified IPO companies and rampant price euphoria (although deal volume was about 25% lower than in the preceding seven years)
- 2001 to mid-2003 – Very selective market, in which deal volume fell to historic lows and IPO candidates were held to much higher standards
- Mid-2003 through 2005 – Solid market recovery, although not approaching the deal volumes that prevailed for most of the 1990s

Viewed through this lens, the IPO market of the late 1990s was as aberrant as the IPO market that immediately followed it.

We expect the 2006 IPO market to produce a steady stream of new

offerings, with a deal volume closer to that of the past two years than to that of the 1990s. A number of factors will influence the 2006 IPO market.

Capital Market Conditions

Stable and robust capital markets are a leading indicator of IPO activity. In 2005, both the Dow and Nasdaq were flat, after enjoying moderate gains (3% and 9%) in 2004 and strong gains (25% and 50%) in 2003. Entering 2006, the market faces a number of concerns and uncertainties—and P/E ratios that are still high by historical standards—and few analysts expect to see more than moderate gains in 2006.

Economic Growth

Economic growth is a key determinant of strength in the capital markets. After the technology-fueled boom sputtered to an end in early 2001, economic recovery was largely driven by strong consumer spending, boosted by low interest rates, tax cuts and increased borrowing against home equity as housing values soared.

Analysts note several reasons economic growth could slow in 2006:

- Interest rates, although still low by historical standards, have increased significantly since hitting a 45-year low in mid-2004.
- Petroleum prices, despite retreating from the spike that followed Hurricane Katrina, were up sharply in the past year.
- A cooling housing market, combined with higher mortgage rates, will probably begin to crimp consumer spending. In 2005, US households spent more than they earned, mostly by borrowing against appreciated home values—an unsustainable trend.
- Inflationary pressures from higher energy and housing price.
- The expense of continuing military conflict in Iraq.

Corporate Governance

Corporate governance reforms in the United States have created new responsibilities for public companies and their directors and officers. These changes have helped improve accountability to stockholders, board oversight of management, board member qualifications and investor confidence—but have also increased the cost of being public, both in terms of potential liability and the expense of compliance.

In the near term, the new corporate governance environment may deter some IPO candidates, steer them to liquidity through acquisitions, or, in the case of foreign issuers, incent them to pursue IPOs in markets outside of the United States—a possibility that may help to explain why many worldwide IPO markets outperformed the US IPO market in 2005. However, in the longer term, we believe that corporate governance changes will be assimilated into IPO planning and not pose a major impediment for most companies.

Nature of IPO Candidates

There is no single profile of a successful IPO company, but we expect that most IPO candidates in 2006 will have:

- Seasoned management
- A superior technology or product position in a large and growing market
- Substantial revenue—at least $50–$75 million annualized
- Strong revenue growth—25% or more annually
- Profitability—historical or, in some cases, imminent
- Potential market capitalization of at least $150–$200 million

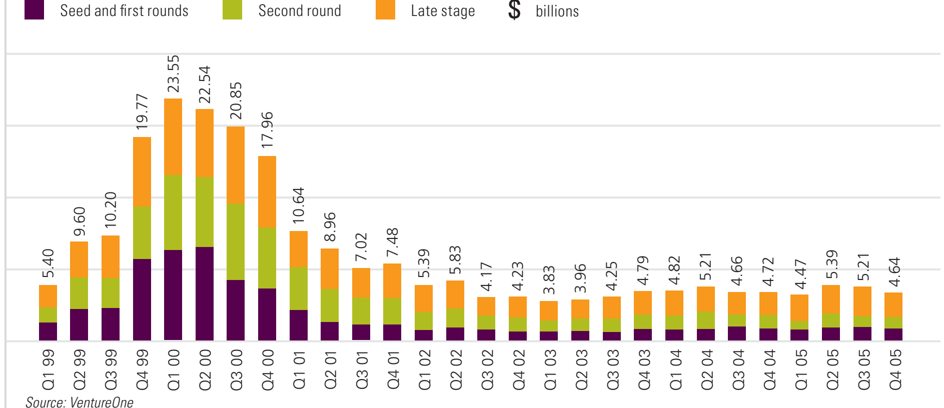
These factors can vary widely based on a company's industry and size. For example, most biotech companies will have much smaller revenue and not be profitable. More mature companies are likely to have greater revenue and market caps but slower growth rates.

Venture Capital Pipeline

According to VentureOne, at the end of 2005 there were 20 VC-backed companies in IPO registration—down from 29 at year-end 2004. Of these 20 VC-backed companies, 13 were engaged in biopharmaceuticals or other life sciences, four were providers of business or consumer services, two were in the semiconductor industry, and one was a provider of computer peripherals.

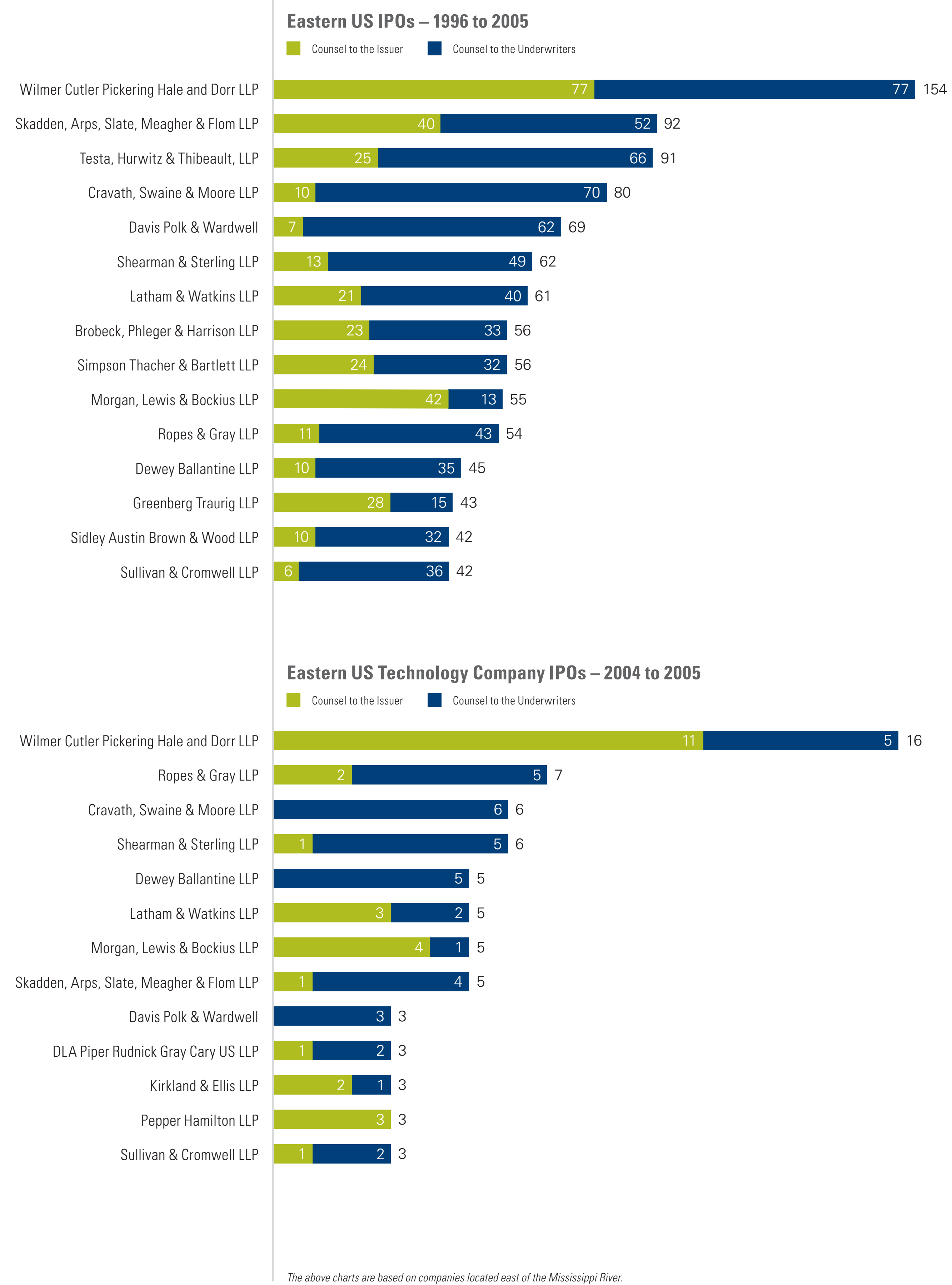
Longer term, the pool of IPO candidates will be affected by current trends in venture capital investing, including the timeline from initial funding to IPO. According to VentureOne, the median time from initial equity funding to an IPO inched down from 5.7 years in 2004—the longest in over 10 years—to 5.6 years in 2005. ■

January 2006

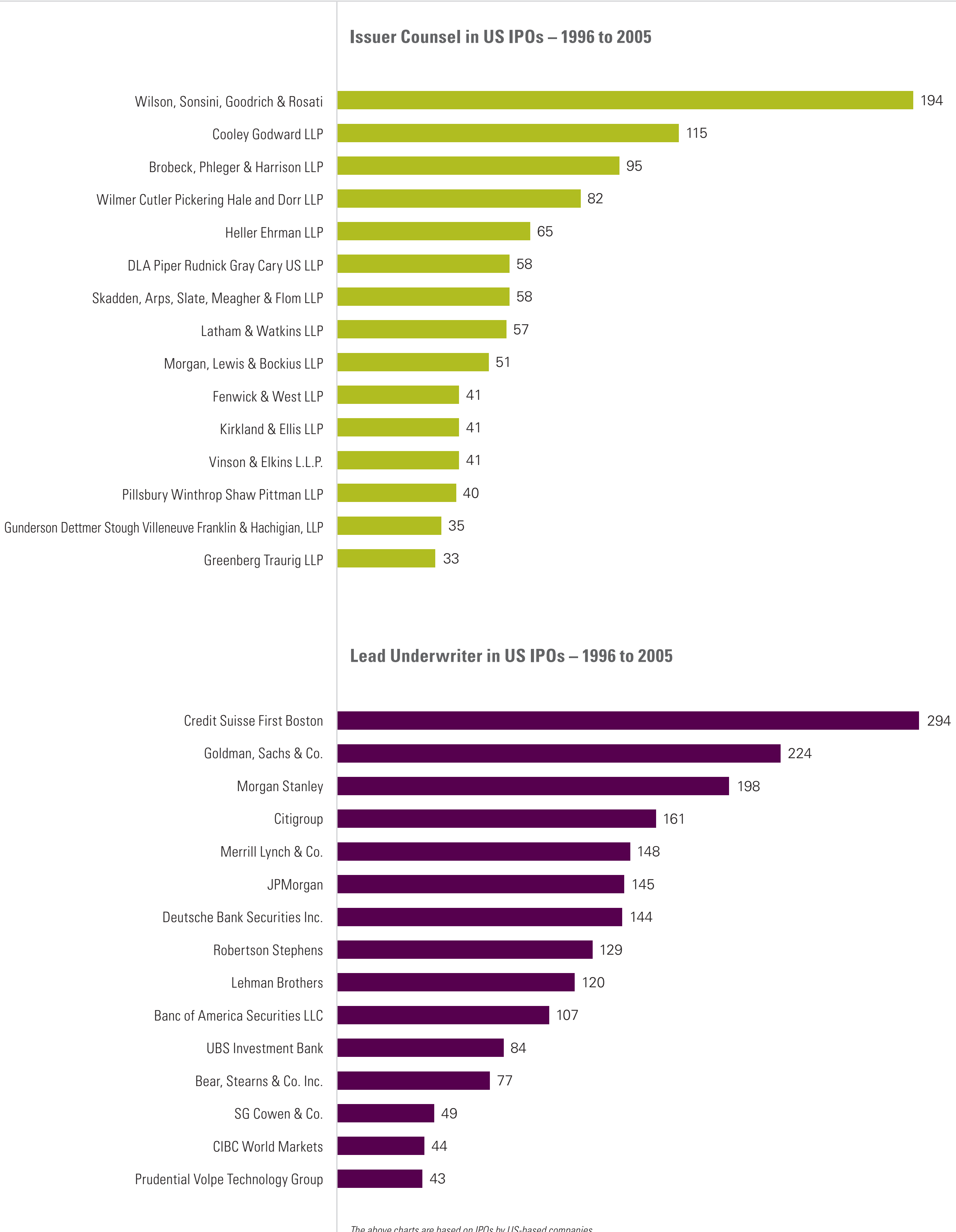


Source: VentureOne

Law Firm and Underwriter Rankings



The above charts are based on companies located east of the Mississippi River.



The above charts are based on IPOs by US-based companies.

California

California, the dominant source of IPOs for at least a decade, produced only 25 IPOs with gross proceeds of $2.89 billion in 2005, a decline of more than 50% from the 54 IPOs and $6.27 billion in gross proceeds of 2004.

While the decrease in California IPO activity is partly attributable to a less receptive market for technology companies in 2005, it also reflects a shift in favor of company sales over public offerings for VC liquidity. The perceived heavy burdens of public company compliance, coupled with uncertainty over whether stocks will hold their post-IPO value long enough for venture capital investors to distribute or dispose of their holdings following customary underwriter lockup periods, have driven many VCs and management teams to instead pursue company sales to existing public companies or private equity investors. We expect this trend to moderate over time as the market becomes more accustomed to the new regulatory regime—and to the extent that M&A valuations become less attractive.

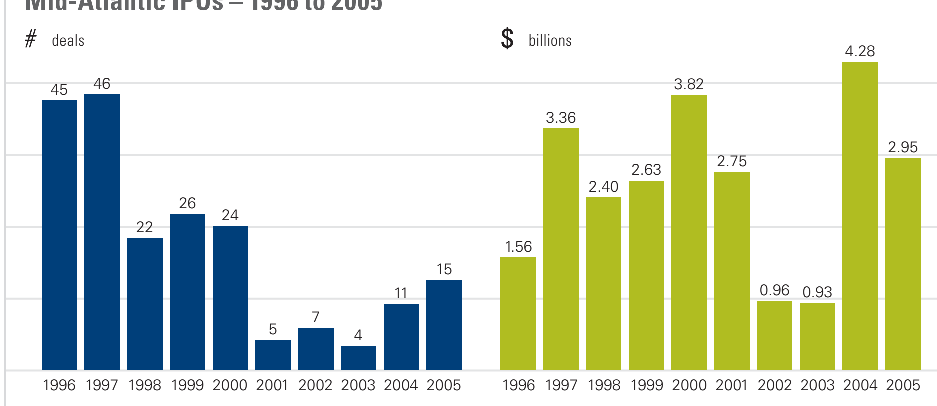
The California IPO market remains dominated by technology-related companies, with 19 tech IPOs accounting for 76% of the total number of offerings in 2005. The average California technology IPO ended the year 26% above its offering price, compared to the national average of 17%. Non-tech IPOs in California performed similarly well, ending the year up 24%.

For 2006, we expect the IPO outlook for California companies to remain uncertain, as M&A activity continues to be the focus for exit opportunities. However, venture capital investment in California, and particularly in Silicon Valley, should continue to lead the nation by a wide margin, yielding many strong IPO candidates that will be poised to take advantage of improved IPO conditions. If market conditions and investor interest improve in 2006, we anticipate an upturn in the number of IPOs by technology, life sciences and consumer retail companies from California.

California IPOs – 1996 to 2005

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
# deals	180	106	66	169	131	25	15	18	54	25
$ billions	6.84	4.51	3.42	17.57	12.90	2.15	1.56	1.37	6.27	2.89

Mid-Atlantic IPOs – 1996 to 2005



Mid-Atlantic

The mid-Atlantic region of Virginia, Maryland, North Carolina, Delaware and the District of Columbia produced 15 IPOs with gross proceeds of $2.95 billion in 2005, compared to 11 IPOs with gross proceeds of $4.28 billion in 2004 and a mere four IPOs with gross proceeds of $929 million in 2003. Setting aside one $2.83 billion IPO in 2004, the region's gross proceeds more than doubled in 2005.

North Carolina led the region with six IPOs in 2005—the state's highest number since 1997—followed by Maryland with four IPOs and Virginia with three. There were seven technology-related IPOs in the mid-Atlantic region in 2005, up from five in 2004.

In 2006, we expect IPO candidates to emerge from the region's high concentration of government-related information services and defense companies. We also anticipate offerings by software and wireless companies, as well as life sciences and medical devices companies—particularly from the Research Triangle area.

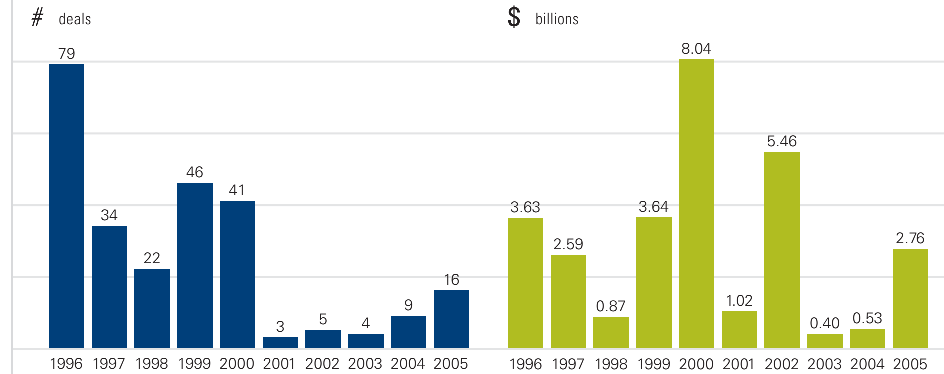
New England

New England saw continued growth in IPO activity, with 16 IPOs in 2005—up from nine IPOs in 2004 (and four in 2003). At $2.76 billion, gross proceeds were more than five times higher than the 2004 total of $532 million. New England's share of the national IPO market doubled from 5% in 2004 to 10% in 2005.

New England IPO activity remains largely concentrated in Massachusetts, which produced 13 of the region's 16 offerings. New England also continues to see one of the highest regional concentrations of technology-related IPOs. In 2005, technology-related companies produced 12 New England IPOs (75% of the region's total)—10 in Massachusetts—six of which were generated by biopharmaceutical or medical devices companies.

The average New England technology IPO ended the year up 25% from its offer price—compared to the national average of 17% for tech IPOs—but the average non-tech IPO in the region declined 10%, compared to an average gain of 20% for all non-tech IPOs nationwide. The top performing New England IPO of 2005 was VistaPrint (up 90% from its offer price), followed by Cynosure and iRobot (both up 39%).

Continued strong levels of venture capital investment 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 in 2006, we anticipate a steady flow of IPOs from technology and life sciences companies based in New England—and Massachusetts in particular.



Tri-State

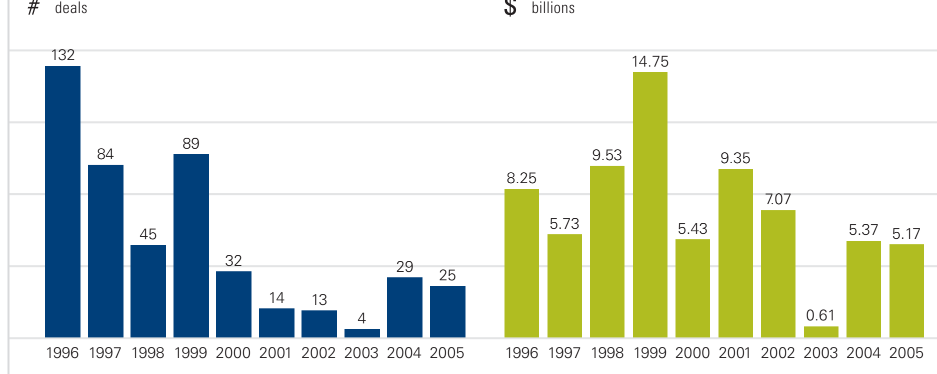
The tri-state region of New York, New Jersey and Pennsylvania generated 25 IPOs for gross proceeds of $5.17 billion in 2005. Although down modestly from the 29 IPOs and $5.37 billion in gross proceeds in 2004, the region's IPO activity in 2005 remained well above the levels of 2001–2003 and rivaled its IPO performance (in deals and dollars) of 2000.

The percentage of tri-state IPOs by non-tech companies increased to 76% in 2005—up from 66% in 2004—led by six financial services companies, including the ill-fated Refco (the year's worst performing IPO, which ended the year down 98% from its offer price).

Despite its comparatively small number of technology company IPOs, the region produced the best performing biotechnology company IPO of the year, with Adams Respiratory Therapeutics ending the year 139% above its offer price.

We expect that the tri-state region's VC-backed companies—including technology and life sciences companies—as well as spinoffs from the region's established companies, will continue to produce a steady flow of IPOs in 2006. ■

Tri-State IPOs – 1996 to 2005



Initial Public Offerings

Initial Public Offering of Common Stock
$138,220,000
Counsel to Issuer
October 2005

Initial Public Offering of Common Stock
$68,000,000
Counsel to Underwriters
November 2005

Initial Public Offering of Common Stock
$55,200,000
Counsel to Issuer
August 2005

Initial Public Offering of Ordinary Shares
£12,000,000
Counsel to Issuer
October 2005

Initial Public Offering of Common Stock
$113,850,000
Counsel to Underwriters
June 2005

Initial Public Offering of Common Stock
$63,250,000
Counsel to Issuer
November 2005

Initial Public Offering of Common Stock
$40,000,000
Counsel to Issuer
February 2005

Initial Public Offering of Common Stock
$118,680,000
Counsel to Underwriters
November 2005

CYNOSURE

Initial Public Offering of Common Stock
$86,250,000
Counsel to Issuer
December 2005

Other Selected Public Offerings

Public Offering of Common Stock
$204,000,000
Counsel to Issuer
November 2005

Public Offering of Common Stock
$429,275,000
Counsel to Underwriters
October 2005

Public Offering of Common Stock
$89,113,500
Counsel to Underwriters
December 2005

Public Offering of Common Stock
$53,437,500
Counsel to Issuer
October 2005

Public Offerings of Medium-Term Notes
$11,032,000,000
Counsel to Underwriters and Agents
Various Dates 2005

Public Offering of Common Stock
$48,300,000
Counsel to Issuer
March 2005

Rule 144A Placement of Senior Subordinated Convertible Notes due 2035
$270,000,000
Counsel to Issuer
February 2005

Public Offerings of Common Stock
$126,322,500
Counsel to Underwriters
April, June and September 2005

LIN Television Corporation

Rule 144A Placements of Senior Subordinated Notes
$365,000,000
Counsel to Issuer
January and September 2005

CBRE
CB RICHARD ELLIS

Public Offering of Common Stock
$319,200,000
Counsel to Selling Stockholder
November 2005

PS BUSINESS PARKS

Public Offering of Preferred Stock
$82,500,000
Counsel to Underwriters
May 2005

Public Offering of Common Stock
$29,000,000
Counsel to Issuer
December 2005

Public Offering of Floating Rate Notes
$250,000,000
Counsel to Underwriters
May 2005

Public Offering of Common Stock
$49,335,000
Counsel to Underwriters
October 2005

Rule 144A Placement of 1.50% Convertible Notes due 2012
$200,000,000
Counsel to Issuer
January 2005

Rule 144A Placement of 5% Senior Notes due 2015
$250,000,000
Counsel to Issuer
May 2005

Public Offering of Common Stock
$70,840,000
Counsel to Issuer
July 2005

Public Offering of Common Stock
$192,722,000
Counsel to Issuer
October 2005

Public Offering of Common Stock
$225,789,000
Counsel to Issuer
January 2005

Public Offering of Common Stock
$130,434,000
Counsel to Issuer
July 2005

Spinoff of TreeHouse Foods
$600,000,000
(spinoff valuation)
Counsel to Dean Foods
June 2005

Public Offering of Common Stock
$84,318,000
Counsel to Underwriters
February 2005

Public Offering of 5.5% Convertible Notes due 2012
€46,000,000
Counsel to Issuer
January 2005

Completing an IPO and having publicly traded stock is a major milestone for any company. However, it does not necessarily mean that all future equity capital will be raised through follow-on public offerings. Two popular financing transactions for public companies—PIPEs and Rule 144A placements—involve private placements. Both will play an important role in the capital markets in 2006, although the prevalence of Rule 144A placements will likely decline due to new SEC rules that became effective on December 1, 2005.

PIPEs Financings

PIPEs, or Private Investments in Public Equity, proved once again in 2005 to be a popular financing tool for many public companies. Deal volume was essentially unchanged from 2004's record level, but dollar volume soared 38% and the average PIPEs deal in 2005 was larger and had less favorable investor pricing than in 2004.

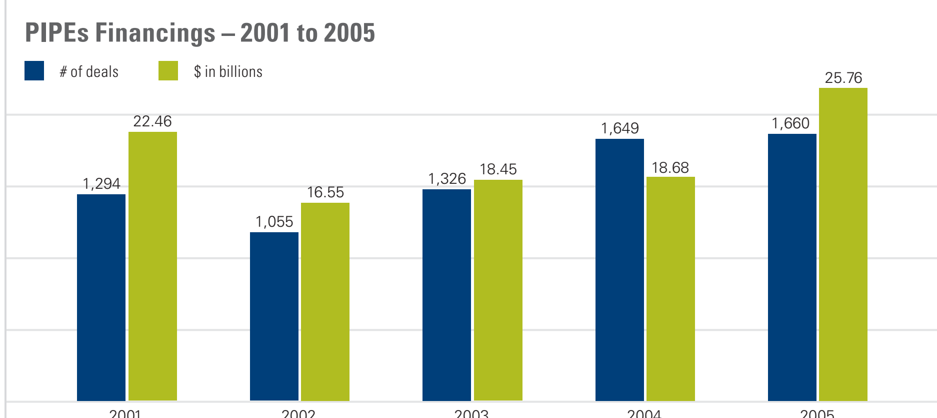
The number of PIPEs deals edged up from 1,649 in 2004 to 1,660 in 2005. Dollar volume jumped from $18.7 billion to a record $25.8 billion. Average deal size, after declining the prior three years, increased from $11.3 million in 2004 to $15.5 million in 2005, but still trailed the record $17.4 million in 2001.

Consistent with recent years, companies with market capitalizations under $250 million were responsible for 91% of all PIPEs financings in 2005, while companies with market caps of less than $100 million accounted for 76%, and companies with market caps below $50 million accounted for 58% of all PIPEs.

Biotechnology and pharmaceutical companies led the PIPEs market again in 2005, generating 13% of all deals—compared to 14% in 2004—with an average deal size of $15.8 million. The largest eastern US biopharmaceutical company PIPEs deals of the year were by Alnylam Pharmaceuticals ($58.5 million) and Critical Therapeutics ($54.5 million).

Three other sectors each accounted for at least 5% of the PIPEs market in 2005: energy (12% of market with $19.7 million

PIPEs Financings – 2001 to 2005



Source: PrivateRaise

Largest PIPEs Financings by Eastern US Biopharmaceutical Companies – 2003 to 2005

Issuer	Proceeds	Issuer Counsel
2005		
Alnylam Pharmaceuticals, Inc.	$58,526,000	Wilmer Cutler Pickering Hale and Dorr LLP
Critical Therapeutics, Inc.	$54,500,000	Wilmer Cutler Pickering Hale and Dorr LLP
DrugMax, Inc.	$45,221,000	Sichenzia Ross Friedman Ference LLP and Shumaker, Loop & Kendrick, LLP
Inhibitex Inc.	$41,250,000	Dechert LLP
Auxilium Pharmaceuticals Inc.	$40,400,000	Morgan, Lewis & Bockius LLP
2004		
Neurogen Corporation	$100,000,000	Milbank, Tweed, Hadley & McCloy LLP
Idenix Pharmaceuticals, Inc.	$75,600,000	Wilmer Cutler Pickering Hale and Dorr LLP
Discovery Laboratories, Inc.	$75,000,000	Dickstein Shapiro Morin & Oshinsky, LLP
ViroPharma Incorporated	$62,500,000	Pepper Hamilton LLP
Inhibitex Inc.	$50,000,000	Swidler, Berlin, Shereff, Friedman, LLP
2003		
Penwest Pharmacueticals Co.	$52,663,000	Wilmer Cutler Pickering Hale and Dorr LLP
Advanced Viral Research Corp.	$50,000,000	Kirkpatrick & Lockhart Nicholson Graham LLP
Regeneron Pharmaceuticals, Inc.	$48,000,000	Skadden, Arps, Slate, Meagher & Flom LLP
Regeneron Pharmaceuticals, Inc.	$45,000,000	Skadden, Arps, Slate, Meagher & Flom LLP
Nabi Biopharmaceuticals	$33,462,000	Nutter, McClennen & Fish LLP

Based on companies located east of the Mississippi River
Source: PrivateRaise

average deal size); mining, metals and minerals (12% and $9.3 million); and medical devices (6% and $8.0 million).

Of the year's PIPEs deals, 53% were common stock (average deal size of $15.1 million), 23% were convertible debt ($11.1 million average), 13% were convertible preferred stock ($20.5 million average), 6% were equity lines ($21.9 million average), 3% were non-convertible debt ($19.2 million average) and 2% were other instruments. This breakdown reflects a continued shift from common stock deals to convertible deals since 2003, as investors seek a greater level of protection in uncertain markets.

Fixed-price deals continued to dominate the PIPEs market in 2005, representing 85% of all deals. However, reflecting the choppiness in general market conditions for much of the past two years—in contrast with the broad market advances enjoyed in 2003, when the percentage of deals with variable pricing was only 5%—PIPEs deals with variable pricing increased again from 11% in 2004 to 12% in 2005. The average discount from market in fixed-price common stock deals fell from 14% in 2004 to 8% in 2005.

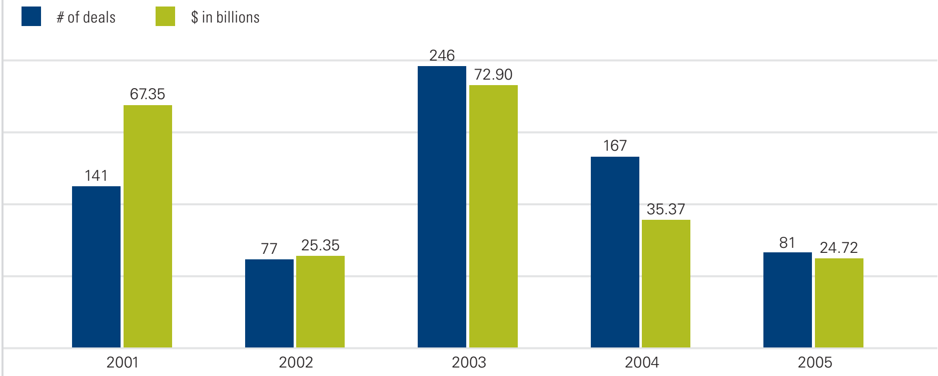
Warrant terms also moved in favor of PIPEs issuers in 2005. The percentage of deals with warrants fell from 59% in 2004 to 55% in 2005, and the average exercise premium increased from 12% to 22%. Partly due to the increased exercise premiums, the average warrant coverage (aggregate warrant exercise price as a percentage of deal size) climbed from 58% in 2004 to 65% in 2005.

As the PIPEs market matures and continues to become part of the financing mainstream in 2006, issuers—particularly small- and mid-cap issuers with limited access to the broader public markets—should find PIPEs financing a desirable and accessible alternative.

Rule 144A Placements

Rule 144A placements of equity securities and convertible debt securities declined sharply for the second consecutive year in 2005. Following the record level of

Rule 144A Equity Placements – 2001 to 2005



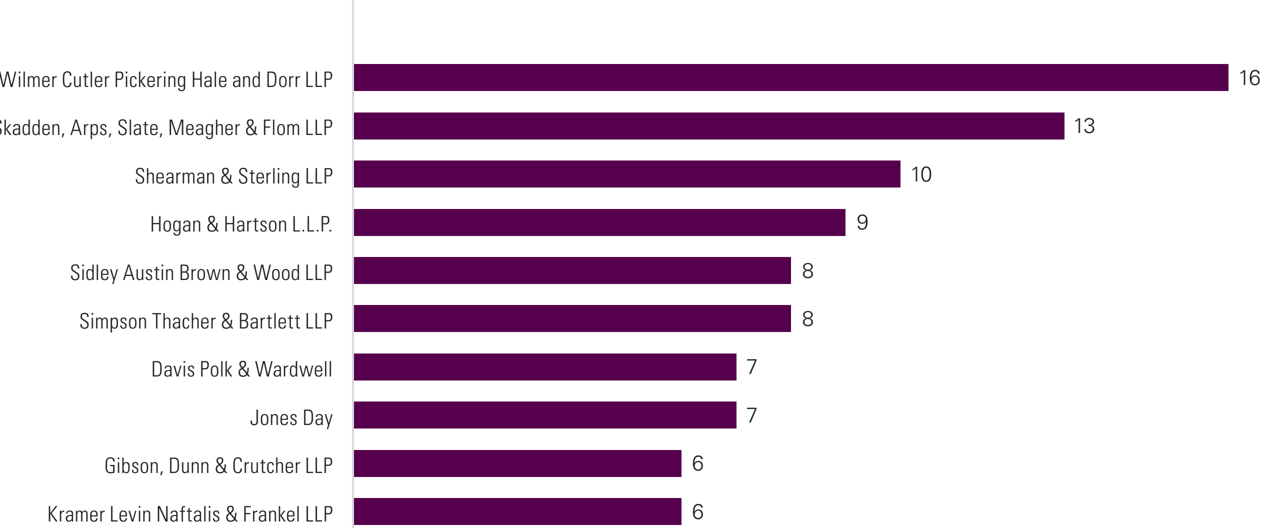
Includes placements of convertible notes and debentures
Source: PrivateRaise

Largest Rule 144A Placements by Eastern Technology Companies – 2003 to 2005

Issuer	Proceeds	Issuer Counsel
2005		
IVAX Corporation	$350,000,000	Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
SafeNet, Inc.	$250,000,000	Venable LLP
Human Genome Sciences, Inc.	$230,000,000	DLA Piper Rudnick Gray Cary US LLP
AtheroGenics, Inc.	$200,000,000	Wilmer Cutler Pickering Hale and Dorr LLP
Alexion Pharmaceuticals, Inc.	$150,000,000	Fulbright & Jaworski L.L.P.
2004		
Red Hat, Inc.	$600,000,000	Wilmer Cutler Pickering Hale and Dorr LLP
ImClone Systems Incorporated	$600,000,000	Davis Polk & Wardwell
Sepracor Inc.	$500,000,000	Wilmer Cutler Pickering Hale and Dorr LLP
IVAX Corporation	$400,000,000	Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
IVAX Corporation	$333,000,000	Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
2003		
Bristol-Myers Squibb Company	$1,200,000,000	Cravath, Swaine & Moore LLP
Wyeth	$1,020,000,000	Simpson, Thacher & Bartlett
Sepracor Inc.	$750,000,000	Wilmer Cutler Pickering Hale and Dorr LLP
Genzyme Corporation	$690,000,000	Not identified
MedImmune, Inc.	$500,000,000	Dewey Ballantine LLP

Based on companies located east of the Mississippi River and listed in the following PrivateRaise industry groupings: biotech, computers, pharmaceuticals, semiconductors and software
Source: PrivateRaise

Company Counsel in Eastern US Rule 144A Equity Placements – 2001 to 2005



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

Rule 144A equity placements in 2003, many issuers sat on the sidelines in 2005 or tapped the traditional public offering market—or deferred non-critical financings until new SEC rules (discussed below) went into effect.

The number of Rule 144A equity placements declined by more than one-half, from 167 in 2004 to 81 in 2005. Gross proceeds fell by about one-third, from $35.4 billion in 2004 to $24.7 billion in 2005. This decline is even starker when compared to the record level of Rule 144A activity in 2003, when 246 placements raised $72.9 billion. Average deal size jumped to $305.1 million in 2005 from $211.8 million in 2004, compared to $296.4 million in 2003.

In contrast to issuers in the PIPEs and IPO markets, Rule 144A issuers tend to be much larger and more mature companies. Only 7% of Rule 144A equity placements in 2005 were completed by companies with market capitalizations under $250 million, compared to 91% of PIPEs transactions. On average, companies completing IPOs in 2005 had an initial market capitalization of approximately $350 million.

Biotechnology and pharmaceutical companies grabbed the largest share of the Rule 144A equity market again in 2005, representing 17% of all deals—compared to 14% in 2004—with an average deal size of $184.2 million. The energy sector matched the deal volume in the biotechnology and pharmaceutical industry, with 14 deals, and had an average deal size of $295.2 million. Semiconductor companies had a 5% market share and $555.0 million average deal size. No other sector accounted for more than 5%.

Overall, technology companies completed 43% of all Rule 144A equity placements in 2005. Unlike 2004, when three eastern US technology companies completed Rule 144A equity placements raising more than $500 million—led by the $600 million placements of both Red Hat and ImClone, and followed by Sepracor's $500 million placement—the largest such deal in 2005 was IVAX's $350 million placement.

In 2005, 90% of all Rule 144A equity placements involved the issuance of convertible debt securities, compared to 94% in 2004 and 98% in 2003. In 2005, convertible preferred stock deals represented 9% of the Rule 144A market—marking the third consecutive yearly increase in such deals, which were largely nonexistent in 2001 and 2002.

As discussed on page 17 of this report, new SEC rules that became effective on December 1, 2005, permit "well-known seasoned issuers" (WKSIs) to have automatically effective shelf registration statements. As a result, WKSIs can now time registered public offerings at will. To qualify as a WKSI, a company must be S-3 or F-3 eligible and either have a public float of at least $700 million or have issued at least $1 billion of debt securities in registered transactions in the past three years. Many past participants in the Rule 144A market qualify as WKSIs—companies with market capitalizations in excess of $1 billion accounted for 54% of all Rule 144A equity placements in 2005, and the percentage ranged from 42% to 80% in the prior four years.

Seasoned companies have long recognized the faster time-to-market and greater flexibility afforded by Rule 144A placements. WKSIs can now enjoy these same advantages with registered public offerings, thereby avoiding the expense and effort of resale registration following a Rule 144A placement. As a result, we expect to see a shift from Rule 144A placements to registered public offerings in future years. ■

When a company seeks to go public, the SEC routinely scrutinizes the company's pre-IPO grants of options and other compensatory equity awards to assess whether they were properly valued. A company that underestimated the fair value of its common stock in accounting for stock and option grants—commonly referred to as having issued "cheap stock"—is required to recognize compensation expense.

In the past, the SEC typically allowed a company to estimate the fair value of its stock by using a rule-of-thumb discount from the IPO estimated price range. Starting last year, however, the SEC has adopted a new approach to cheap stock which, when coupled with new tax rules governing deferred compensation, makes cheap stock issues more complicated for pre-IPO companies.

The Practice Aid

In 2005, the SEC modified its practice for reviewing cheap stock issues, and began to apply the recommendations contained in an AICPA Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, initially issued in mid-2004. The Practice Aid identifies three acceptable valuation methodologies—market-based, income-based (such as discounted cash flow) and asset-based—and establishes a hierarchy of valuation methodologies:

- The preferred method is a valuation at the time of issuance by an unrelated valuation specialist.
- If a contemporaneous valuation is not possible, the Practice Aid recommends a retrospective valuation by an unrelated valuation specialist.
- The final, and least favored, alternative is a valuation established by a so-called "related-party valuation specialist," such as the IPO company's board of directors.

The Practice Aid goes into significant detail as to best practices for valuation of equity-based compensation by private companies, and the SEC requires relatively extensive prospectus disclosure of the process by which IPO companies complied with the Practice Aid.

To date, the best practices contained in the Practice Aid have been implemented primarily in the context of IPOs and applied to the 12-month period prior to the initial filing of a company's registration statement. Thus, application of the Practice Aid to pre-IPO grants should now be part of IPO planning.

In the future, private companies may begin to apply the Practice Aid earlier in their life cycle as a result of:

- GAAP – in connection with all compensatory equity grants, regardless of whether an IPO is pending; or
- Section 409A – the new deferred compensation tax provisions.

Section 409A

New Section 409A of the Internal Revenue Code, which imposes a 20% penalty tax on non-exempt deferred compensation arrangements, also applies to stock options with exercise prices below the fair market value of the underlying stock. The IRS has provided the following guidance for determining fair market value:

- For stock options granted before January 1, 2005, a "good faith attempt" to establish a fair market value exercise price for stock options (that is, the same standard historically used for incentive stock option purposes) is sufficient.
- For stock options granted after January 1, 2005, the more exacting standard of "any reasonable valuation method" must be used.

Proposed IRS regulations provide that the fair market value of private company stock must be determined by the reasonable and consistent application of a reasonable valuation method that considers all relevant facts and circumstances. A valuation performed by an independent third party no more than 12 months before the option grant date will be presumed to result in a reasonable valuation. Otherwise, the following factors should be considered:

- the value of tangible and intangible assets;
- the present value of future cash flows;
- the market value of stock or other equity interests in similar companies;
- control premiums and discounts for lack of marketability; and
- whether the valuation is consistent with valuations used for other corporate purposes.

Recommendations for Pre-IPO Companies

- The safest approach is to have an independent third-party valuation of the company's stock contemporaneous with option grants. For practical reasons, this may require a company to limit the number of times that options are granted each year.
- At a minimum, the board should undertake a rigorous assessment of the qualitative and quantitative facts and circumstances related to the value of the company's stock in order to establish the fair market value. This analysis should consider the applicability of the methods contemplated by the Practice Aid, as well as the Section 409A factors listed above, and should be fully documented in corporate records, including board minutes.
- If recurring third-party valuations would be prohibitively expensive, the board might engage a third party to value the company's stock as of a specific date and to provide the methodology used to determine that value. The board could then use that methodology each time it subsequently grants stock options. The methodology will need to be updated periodically as the company matures. ■

IPO companies can now take advantage of new SEC rules that significantly reform the manner in which they communicate with investors during the IPO process. These new rules, which took effect on December 1, 2005:

- clarify and liberalize the types of communications that may be made by issuers both before and during an IPO;
- permit issuers to "deliver" final prospectuses via electronic filings with the SEC; and
- modify the timing standards applicable in determining liability for materially false or misleading statements.

The SEC also implemented rules that significantly change the registration, communications and offering processes for companies that are already public.

Pre-filing Communications

Section 5 of the Securities Act generally prohibits "offers" until a registration statement is on file with the SEC, in order to make the filed prospectus the primary source of investors' information about a registered securities offering.

Historically, the term "offer" was construed liberally to include any type of public communication by a company—including press releases, media interviews and website postings—that could have the effect of promoting the company to prospective investors or otherwise conditioning the market prior to the company's IPO. As a result, in order to avoid impermissible "gun-jumping," a company planning an IPO had to cautiously monitor the release or publication of any public communications throughout an undefined period preceding the initial filing of its registration statement. If an issuer violated the gun-jumping rules, it could have its IPO delayed for a "cooling off" period and could be required, for a period of one year following the date of the violation, to repurchase the IPO shares at the IPO price.

The SEC's recent reforms establish two new safe harbors that clarify and liberalize the requirements governing pre-filing communications.

Communications Made More than 30 Days before Filing

New Rule 163A establishes a broad exemption from the gun-jumping restrictions for communications that are made more than 30 days prior to the filing of a registration statement. This 30-day safe harbor will apply to a communication if:

- the communication does not reference a securities offering that is or will be the subject of a registration statement;
- the communication is made by or on behalf of the issuer; and
- the issuer takes reasonable steps within its control to prevent the communicated information from being further distributed or published beginning 30 days before the filing of the registration statement.

Although an interview with the press more than 30 days before filing would be protected, an issuer may not rely on Rule 163A to exempt media publications after the safe harbor period has ended (that is, after, or within 30 days of, filing). An IPO issuer therefore should take a cautious approach to pre-offering press opportunities, since the issuer typically will not be able to control the content and timing of the resulting publications. In contrast, exempt communications need not be removed from the issuer's website as part of the IPO process, although the communications should be dated clearly, should be designated as "archived" or "historical" information, and should not otherwise be referred to as "offering materials" or the like. Issuers also should note that underwriters and other offering participants are not considered to be agents of the issuer for purposes of Rule 163A and therefore cannot take advantage of this safe harbor.

Factual Business Communications

New Rule 169 helps address the need for IPO issuers to continue to disseminate regularly released, ordinary course information prior to or during an IPO. This safe harbor will apply to a communication if it:

- consists of "factual business information," which is defined as (a) factual information about the issuer, its business or financial developments or other aspects of its business, and (b) advertisements of, or other information about, the issuer's products or services;
- is of a type regularly released by the issuer in the ordinary course of business;
- does not include information about the IPO or information released as part of the issuer's offering activities; and
- is intended for use by persons (such as customers or suppliers) other than potential investors, although the fact that these persons may also be potential investors will not impair the availability of this safe harbor.

Those employees who historically have been responsible for providing the issuer's factual business information should continue to do so during the IPO. Issuers should note that this safe harbor will not protect information released before or during the IPO at an investor conference. In addition, the safe harbor does not cover forward-looking information, and IPO issuers therefore should scrutinize carefully press releases and other communications that include information about future plans and objectives.

Post-filing Communications

The SEC reforms also provide important guidance by which IPO issuers can communicate by so-called "free writing prospectuses" and live and electronic roadshows after the initial filing of a registration statement.

Factual Business Communications

Following the filing of its IPO registration statement, an issuer can continue to disseminate factual business communications under the Rule 169 safe harbor, as described above.

Limited Notices of Offering

Historically, Rule 134 provided issuers with a safe harbor under which they could, at any time after filing a registration statement, disseminate narrowly prescribed types of information in order to inform potential investors how to obtain a copy of a preliminary or final prospectus. Under the SEC reforms, the information permitted in a Rule 134 notice has been significantly expanded to permit:

- increased information about an issuer and its business, including contact information for the issuer;
- additional factual information about the offering, including more information about the underwriters, the IPO timetable and other IPO marketing events;
- information about procedures for opening accounts and for submitting indications of interest and conditional offers to buy the offered common stock; and
- information relating to procedures for directed share programs and other processes by which officers, directors and employees may participate in the IPO.

In addition, the amendments of Rule 134 eliminate some prior requirements, including the need to reference state securities laws in the SEC-mandated legend. A Rule 134 notice for an IPO must continue to exclude price and price-related information until a bona fide price range has been disclosed in the IPO registration statement.

Free Writing Prospectuses

New rules permit issuers to make offers of securities by written communications, including electronic communications, in addition to a preliminary or final prospectus. These written communications are called "free writing prospectuses." A free writing prospectus is, subject to specified exceptions, a written communication that constitutes an offer to sell or a solicitation of an offer to buy securities subject to a registration statement. A free writing prospectus can take any form and is not required to meet the informational requirements otherwise applicable to prospectuses.

New Rule 433 requires that a free writing prospectus:

- in most instances, be filed with the SEC;
- in certain instances, be accompanied or preceded by the most recent prospectus;
- not be materially misleading;
- not contain information that conflicts with the prospectus;
- contain a legend regarding the prospectus; and
- be retained for at least three years.

Communications covered by other safe harbor provisions, such as limited notices under Rule 134 and factual business communications under Rule 169, are not considered free writing prospectuses. Written communications made after the effectiveness of the registration statement that are accompanied or preceded by a prospectus are also not considered free writing prospectuses.

Roadshows

Roadshows are a critical component of any IPO. IPO issuers typically conduct a series of live one-on-one and group meetings with portfolio managers and institutional investors just before the offering is priced. In recent years, electronic roadshows, which are transmitted over the Internet or a private network, frequently have been used to expand the roadshow audience. Adhering to a number of specified mechanical processes delineated in SEC advisory letters, service providers such as Net Roadshow and Activate have provided an additional channel through which issuers have marketed to investors who could not, or preferred not to, attend live roadshow presentations. The SEC reforms clarify the ground rules for live roadshows and permit the use of electronic roadshows without many of the confusing conditions articulated in the earlier SEC advisory letters.

Live Roadshows. As a basic rule, in-person, live roadshows, including roadshows that are transmitted graphically in real time to "overflow rooms" or to another city, will be considered oral communications (as opposed to written communications) and, as such, will not constitute free writing prospectuses. This relaxed approach emanates from the SEC's viewpoint that real-time communications to a live audience, including communications transmitted by a graphic means, are less permanent than those that appear on a printed page or originate in a graphic form. In an effort to clarify what communications are considered "oral" communications and to address the use of emerging technologies, the SEC has adopted new definitions:

- A "written" communication is any communication that is written, printed, broadcast on television or radio, or is

I Want to Be a WKSI

The SEC's recent reform of the provisions of the Securities Act governing public communications and information delivery apply to all registered securities offerings, not just IPOs. In addition, the SEC reforms include sweeping changes to registration procedures for companies that are already public.

The most beneficial of these changes are available only to a new category of issuers, referred to as "well-known seasoned issuers" or WKSIs ("wick-sees"). A WKSI generally is an SEC reporting company that satisfies the requirements of Form S-3 or F-3 (including being current and timely in all Exchange Act reporting obligations for the past year) and that, as of a date within 60 days of the eligibility determination, either has:

- a common equity market capitalization of at least $700 million (excluding equity held by affiliates); or
- issued at least $1 billion aggregate amount of non-convertible securities, other than common equity, in registered primary offerings for cash during the preceding three years.

The SEC reforms permit WKSIs to:

- file "automatic shelf registration statements" that become effective immediately upon filing, without review and comment by the SEC;
- have considerable flexibility in structuring takedowns—the base prospectus for a WKSI's offering need not specify the plan of distribution, the description of the securities to be offered, the names of any selling stockholders or the allocation between securities being sold by the company and by selling stockholders;
- make oral and written offers even before a registration statement is filed; and
- pay filing fees on a "pay-as-you-go" basis at the time of each takedown from an automatic shelf registration statement.

a graphic communication. The term does not encompass indirect oral communications, such as telephone calls, or direct oral communications, such as live, real-time communications to a live audience. However, if an oral communication is recorded for rebroadcast or transmission, such as a "blast" voicemail message, it is considered a written communication.

- "Graphic" communications, which are a subset of written communications, consist of all forms of electronic media, such as audiotapes, videotapes, facsimiles, CD-ROMs, emails, websites and other forms of computer data compilation. Postings on websites, including electronic roadshows, are considered graphic communications.
- Slides and visual aids that are transmitted simultaneously with a roadshow, but are not available separately, are deemed part of the roadshow and treated in the same manner as the roadshow itself. Therefore, if the roadshow is live and not a written communication, the accompanying visual aids will likewise not be considered to be written communications and will not be subject to rules governing free writing prospectuses. If, however, visual aids are provided separately or in a separate file designed to be available to be copied or downloaded separately, they will be treated as a written communication and typically will constitute a free writing prospectus.

Electronic Roadshows. Under new Rule 433, electronic roadshows are considered written communications and, therefore, free writing prospectuses. An issuer that elects to use an electronic roadshow in connection with its IPO must either:

- file the text of the roadshow with the SEC under Rule 433; or
- post a bona fide version of the electronic roadshow on its website and an active hyperlink to a version of the preliminary prospectus that includes a price range.

A bona fide version of an electronic roadshow is a version that (a) is a written communication that was transmitted by graphic means, (b) contains a presentation by management, and (c) if the issuer is using or conducting more than one roadshow that is a written communication, includes discussion of the same general areas of information regarding the issuer, management and the securities being offered as the other "written" roadshows. To be bona fide, the version need not be identical to the others or address all of the same subjects, and need not provide an opportunity for questions and answers even if the other roadshows provide such an opportunity.

Electronic Delivery of Final Prospectuses

The SEC reforms adopt a new "access equals delivery" option under which final (but not preliminary) prospectuses may be delivered electronically through SEC filing on EDGAR, rather than by physical delivery to each purchaser.

New Rule 172 eliminates the obligation to (a) provide written confirmations of sales of securities and notices of allocation to investors without being preceded or accompanied by a final prospectus, and (b) have a prospectus precede or accompany the carrying or delivery of a security in an IPO, if:

- the IPO registration statement is effective and not subject to a stop order;
- neither the issuer nor any underwriter or participating dealer is the subject of a pending cease-and-desist proceeding in connection with the IPO; and
- the issuer has filed the final prospectus with the SEC or will make a good faith effort to file the prospectus within the time required under Rule 424 (typically two business days after the pricing of the IPO) and, in the event the issuer fails to timely file the final prospectus, files the prospectus as soon as practicable thereafter.

New Rule 173 provides that in a transaction involving a sale by the issuer or an underwriter, or a sale in which the final prospectus delivery requirements apply, each underwriter or dealer participating in a registered offering must provide to each purchaser to which it sells, not later than two business days after the completion of the sale, a copy of the final prospectus or, in lieu of the final prospectus, a notice providing that the sale was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of Rule 172. Purchasers are permitted, however, to request a copy of the final prospectus.

Liability Timing Standards

Under the Securities Act, purchasers in an IPO have private rights of action for materially false or misleading statements in prospectuses and oral communications. In its recent reforms, the SEC has attempted to address a timing discrepancy that results when both the investor's commitment to invest and the investor's purchase of common stock occur before the final prospectus has been delivered.

New Rule 159 codifies the SEC's position that, for purposes of assessing whether the information available to the investor reflects a material misstatement or omission under the liability provisions of the Securities Act, only information conveyed to an investor prior to or at the time of the contract of sale, including a commitment pursuant to an oral contract, shall be taken into account. Information conveyed to an investor after the time of sale is to be disregarded in determining such liability, unless a new contract of sale is established after the investor is conveyed the additional information. Therefore, information included in the final prospectus that corrects a material misstatement or omission in the preliminary prospectus will not be taken into account for purposes of such liability if an investor has become committed to purchase the securities prior to the time the information is conveyed to the investor.

It is likely that, over the next few months, IPO participants (including issuers, underwriters, their respective counsel, and the issuers' independent accountants) will be working toward a standard methodology for addressing and allocating liability in light of the changes effected by Rule 159. Until a market standard has been reached, however, IPO issuers should address the Rule 159 issues early in the IPO process, in order to avoid any undesirable delays or problems at the time of pricing. ■

2005 was another record year for AIM (formerly known as the Alternative Investment Market), the junior market of the London Stock Exchange. Prior criticisms of the market—for its lack of liquidity, insufficient number of companies and lack of credibility—are for the most part no longer justified. Originally intended to be a stepping-stone onto the main market of the London Stock Exchange, AIM has been selected by a number of mature, mid-cap companies as the appropriate market for their IPOs.

2005: A Banner Year for AIM

As of December 31, 2005, there were 1,399 companies listed on AIM. Of the 220 non-UK companies listed, 25 were US companies.

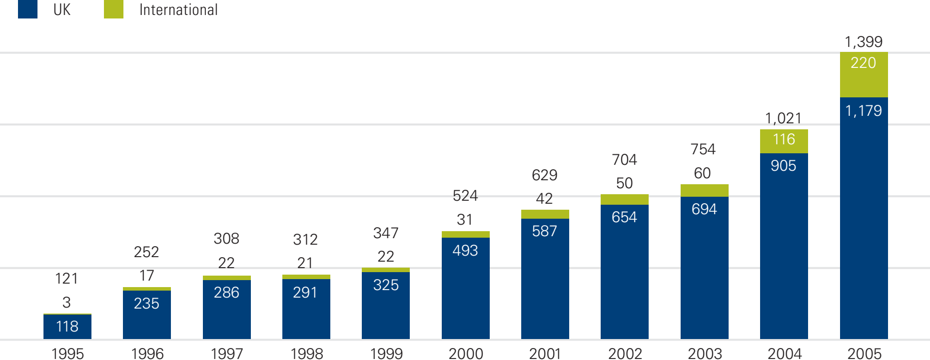
In 2005, 519 companies joined AIM, 335 as a result of IPOs that raised a total of £5.63 billion. Of the 335 IPOs on AIM during the year, 76 (or 23% of the total) were by companies incorporated outside of the United Kingdom—an increase of 90% from the prior year. IPOs by non-UK companies raised £2.1 billion on AIM, and four of the 10 largest IPOs were by non-UK companies.

Over the past two years, AIM's trading volume has surged, providing important liquidity and enhancing the appeal of AIM. The number of trades more than doubled from 2003 to 2004 and increased another 34%, to more than 2.2 million transactions, in 2005. When combined with an 11% increase in the number of shares traded in 2005, and higher price levels, total transaction value on AIM soared from £18.1 billion in 2004 to £42.2 billion in 2005.

Reaction to Sarbanes-Oxley?

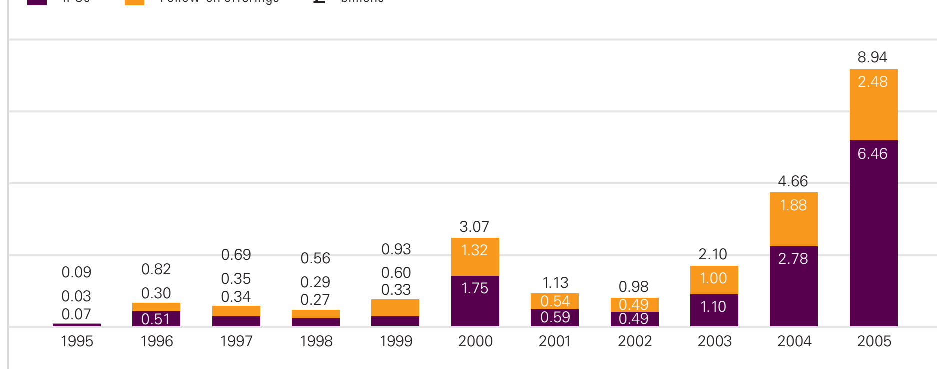
Non-US companies that may have previously listed on Nasdaq now routinely consider AIM as a potential market for an IPO. The demands and costs of compliance with Sarbanes-Oxley and other US securities laws, particularly for small- and medium-sized companies, make listing on AIM an attractive alternative.

Number of Listed Companies at Year-End – 1995 to 2005



Source: AIM Market Statistics, December 2005; London Stock Exchange plc

Gross Proceeds Raised – 1995 to 2005



Source: AIM Market Statistics, December 2005; London Stock Exchange plc

In comparison to US securities laws and regulations, AIM has a lightly regulated reporting and corporate governance regime, which can reduce the expense and time needed to effect an IPO and ensure ongoing compliance. AIM is also attractive to companies that are seeking to go public at a much earlier stage than those considering an IPO on Nasdaq.

Potential for US Companies?

Obstacles remain, however, for US companies seeking to list on AIM. A US company that conducts an IPO on AIM is still subject to US securities laws, since the SEC considers US securities rules and regulations to have "extraterritorial reach" in a variety of circumstances, including:

Transfer Restrictions. The restrictions on sales and resales of a US company's shares on AIM vary depending upon whether the shares were issued prior to or at the time of the IPO on AIM.

US companies listing on AIM typically have two different pools of shares:

- The shares issued by a US company prior to an IPO on AIM are typically

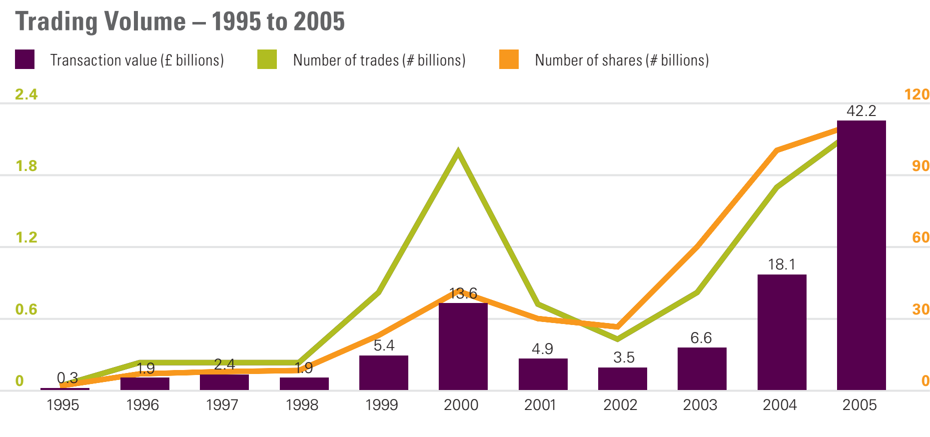
issued pursuant to an exemption from registration with the SEC. When issued, these shares are restricted securities and not freely tradeable. Following the IPO, such shares may remain subject to resale restrictions and share certificate legend requirements, as prescribed by the exemption under which the shares were initially issued.

- The shares issued by a US company in an IPO on AIM will be exempt from registration with the SEC. However, to ensure that such shares do not re-enter the United States through resales, the share certificates must be marked with legends that describe the transfer restrictions during the one-year compliance period.

Trades of shares listed on AIM are typically made through the CREST electronic settlement system (similar to that of the Depository Trust Company in the United States). However, to address the transfer restriction issues created by these distinct pools of shares, the shares of US companies must trade in certificated form and therefore cannot be placed into CREST as long as the transfer restrictions exist. Further, to ensure compliance with US securities laws within the one-year compliance period, US companies listed on AIM are required to obtain transaction-by-transaction representations from each purchaser prior to authorizing a sale. These requirements are believed to hinder the liquidity of US companies listed on AIM.

Inadvertent Reporting Company Status. Prior to listing on AIM, a US company should consider the impact of inadvertently becoming a US reporting company. If a US company listed on AIM (and not listed in the United States) has 500 or more shareholders worldwide and its total assets exceed $10 million, then it will be required to register with the SEC. Once a company registers with the SEC, it must file periodic reports like any other US public company.

US companies seeking to list on AIM need to evaluate, with the assistance of their advisors, the commercial impact these regulatory obligations may have on the marketing of an IPO and on



Source: AIM Market Statistics, December 2005; London Stock Exchange plc

the future liquidity of the company's shares following an IPO on AIM.

IPO and Regulation Lite?

Companies seeking a listing on AIM must appoint a sponsor, called a "Nominated Adviser" or "Nomad," to assess the suitability of the company for listing. Because AIM is a self-regulated market, Nomads have a duty to review companies before approving their applications for admission to AIM. Each company listed on AIM is required to retain the services of a Nomad (and a broker) throughout the duration of its listing.

To list on AIM, a company is not required to have a minimum market capitalization, a trading record or a minimum number of shares in public hands. Typically, companies seeking an IPO on AIM prepare an admission document (similar to a prospectus) that includes information regarding the company and its directors and financial position. The admission process for AIM is often streamlined because most IPOs on AIM occur by way of a "placing" (effectively a private placement and not a full public offering), avoiding the approval process of the United Kingdom's securities regulators.

Once listed on AIM, a company's ongoing reporting and corporate governance requirements are not particularly onerous when compared with Nasdaq and the main market of the London Stock Exchange. Among other things, a company listed on AIM is only obligated to report on a semi-annual basis.

Can AIM Compete with Nasdaq?

As a further incentive to attract more companies, AIM has introduced a "fast track" listing procedure for overseas companies already trading on Nasdaq and other selected worldwide markets. It has yet to be seen whether this procedure will result in many US public companies listing on AIM, either by way of a dual listing (on Nasdaq and AIM) or a complete migration (by way of a dual listing followed by Nasdaq delisting). Since US public companies may still be subject to significant continuing US compliance requirements following a Nasdaq delisting, it is unlikely that there will be a flood of US public companies migrating exclusively to AIM.

Through the collapse of other junior markets in Europe, the widening of its potential investor base and its increased liquidity, AIM has become the primary market in Europe for growth companies, and has positioned itself as a potential alternative for companies that would previously have considered Nasdaq as a natural home.

If AIM is to establish itself as a true competitor to Nasdaq for growth companies, it faces the challenge over the coming years of ensuring that it remains attractive in light of the increasing pressure on the European Union to impose stricter regulation and disclosure requirements on its markets. Whether or not this happens, more and more US high-growth companies are now looking to AIM as an alternative to Nasdaq. ■

Want to know more about the latest in the venture capital and M&A markets?

See our *2005 Venture Capital Report* for an in-depth analysis of the US and European venture capital markets and the outlook for 2006. The report features industry and regional breakdowns, practical advice on option grant valuations under new IRS rules on deferred compensation, an overview of trends in VC deal terms, a review of venture capital fundraising activity, and a look ahead to the evolution of more robust accounting and financial controls for VC funds.

Our *2005 M&A Report* offers a detailed review of the global M&A market and discusses the outlook for 2006. Other highlights include advice on special considerations in California M&A transactions, new guidance on Delaware deal protection provisions, a survey of key terms in sales of VC-backed companies, and practical guidance on avoiding antitrust violations in pre-merger integration planning.

To request a copy of the *2005 Venture Capital Report* or the *2005 M&A Report*, or to obtain additional copies of the *2005 IPO Report*, please contact the WilmerHale Marketing and Business Development Department at marketing@wilmerhale.com or call +1 617 526 5600. An electronic copy of this report can be found at www.ipoleader.com.

Data Sources

WilmerHale 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. IPO data is collected from SEC filings. For lead underwriter rankings, IPOs are included under the current name of each investment bank. For law firm rankings, IPOs are included under the current name of each law firm. Venture capital data is sourced from VentureOne. PIPEs data is sourced from PrivateRaise and The PIPEs Report. Rule 144A data is sourced from PrivateRaise.

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