

Due Diligence Guidelines (IPO) (Model)

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Sample Due Diligence Request List

THE FOLLOWING GUIDELINES ARE NOT INTENDED AS A UNIVERSAL OR AN EXHAUSTIVE CHECKLIST. THEY ARE NEITHER MINIMUM NOR MAXIMUM RULES APPLICABLE TO ALL SITUATIONS OR SPECIFIC TYPES OF TRANSACTIONS. THEY MUST BE READ IN LIGHT OF EACH PARTICULAR TRANSACTION TAKING INTO ACCOUNT THE FEATURES OF THE PROPOSED TRANSACTION AND THE CIRCUMSTANCES SURROUNDING EACH TRANSACTION.

Corporate Documents

1. Certified copies of the articles or Certificate of Incorporation and Bylaws of the Company and its subsidiaries and affiliates (if any) (collectively, the "Company"), as amended to date and currently in effect, or as proposed to be amended, including any certificates of designation with respect to preferred stock.
2. A summary of the corporate structure of the Company.
3. Minutes of the meetings of the Company's Board of Directors and shareholders (including materials distributed in connection with such meetings) since inception.
4. Minutes of the meetings of any committee(s) of the Company's Board of Directors (including materials distributed in connection with such meetings) since inception.
5. Written consents relating to actions by the Board of Directors, any committee of the Board of Directors and the shareholders of the Company.
6. Stock books, stock ledgers and other records of the Company showing securities of the Company authorized and outstanding, by class and series.
7. Samples of share certificates, option certificates and any other outstanding securities.
8. A current list of all shareholders (indicating ownership by class and series for all outstanding shares), warrant holders and option holders showing name, address, amount held, price paid, date of purchase, name of seller (if other than the Company), exercise price and expiration date and indicating if the shareholders are members of the Board of Directors or employees of the Company.
9. A schedule of all outstanding conversion privileges and other rights to acquire equity securities, including date of issuance, exercise or conversion prices or other relevant terms, and amount exercised and including any certificate of designation of rights, preferences, privileges and restrictions not part of the Certificate (or Articles) of Incorporation or Bylaws or any subscription or stock purchase agreement.
10. A list of all states and other jurisdictions (domestic and foreign) in which the Company does business or is qualified to do business (e.g., in which the Company makes sales or operates a sales office or in which its employees reside and in which the Company contemplates undertaking business, either directly or through other parties).
11. Copies of certificates of authority to do business and status certificates for such states or other jurisdictions.
12. Any licenses relating to the Company's authority to do business in particular jurisdictions, including facilities licenses.

A list of and copies of all voting trusts, irrevocable proxies, preemptive rights, shareholders' agreements,

redemption agreements, buy-sell agreements or other agreements restricting or otherwise affecting voting or transfer of the stock of the Company.

1. A list of any subsidiaries or affiliates of the Company.
2. A legal entity organization chart showing ownership of such entities and any agreements relating to the Company's interest in any such entity.
3. Any shareholder agreements relating to any subsidiary or affiliate of the Company.
4. A list of the names, addresses and citizenship of all officers and directors of the Company by position and compensation since inception.
5. A description of management including age, position, employment history with the Company, previous employment history (major positions held only) and education (university).
6. Copies of all officers' and directors' questionnaires, if any.

Customers and Suppliers

1. Copies of all outstanding agreements with customers and suppliers/service providers ("suppliers"), including any management service, support, consulting or maintenance agreements, involving annual revenues or expenses in excess of \$1,000.
2. A list of, and all documents relating to, any obligation to make a capital expenditure or future payment in excess of [\$5,000].
3. A list of all documents relating to any supply contract or outstanding purchase order in excess of [\$5,000] or requiring more than 30 days notice of cancellation.
4. A list of and copies of all interconnection agreements and leases.
5. A list of all agreements with customers and suppliers under which any rights may be triggered upon any change of control of the Company or upon any merger, or acquisition of 100% of the Company's outstanding stock or all or substantially all of its assets.
6. A list of the Company's top 30 customers since the Company's incorporation (including addresses and telephone numbers, if possible), and a breakdown by revenue per customer.
7. A list of the Company's top 20 suppliers (including addresses and telephone numbers, if possible), and if available, a breakdown by purchases per supplier and indicating any sole-source supplier or limited source supplier.
8. A list of the Company's main competitors (by product and geographical area), their estimated present and future market shares and the advantages/disadvantages by main competitor.
9. Copies of any reports or internal memoranda relating to potential supply or inventory problems.
10. A list of all distribution agreements to which the Company is a party.
11. Any form contract or license typically used with suppliers, distributors or customers in the ordinary course, including form license agreement and service/support/maintenance agreement, all variations or amendments over time to the standard form and the names and other relevant information of the parties using the form.
12. A list of any persons with whom the Company has product or service "tie-in arrangements," including addresses and sales data resulting from those tie-in arrangements since the Company's incorporation.
13. A description of any significant customer relationship terminated since the Company's incorporation.
14. A schedule detailing the number of customer complaints for each of the last five years, including an analysis of such complaints and the appropriate resolution, including annual costs relating thereto.
15. A description of any special relationships between officers and other employees and customers that could affect future sales.
16. A breakdown by geographic region of the Company's revenues since the Company's incorporation.

Material Contracts

1. Any material licensing, franchise distribution, sales, agency or service/product tie-in contracts to which the Company is a party.
2. Any contract (current or proposed) purporting to limit or restrain the Company's business activities or ability to compete in any market.
3. Any contract that gives third parties the right to consent to or approve, assign or cancel the contract, or results in any changes in rights upon any change of control of the Company or upon any merger, or acquisition of 100% of the Company's outstanding stock or all or substantially all of its assets.
4. Any contract that gives third parties the right to receive payments upon any change of control of the Company or upon any merger, or acquisition of 100% of the Company's outstanding stock or all or substantially all of its assets.
5. Forms of all material rental, warranty and service agreements of the Company.
6. All significant documents, including indemnity agreements, relating to any material acquisitions or dispositions by the Company.
7. All documents relating to any other transactions between the Company and any director, officer or owner of more than 5% of the stock of the Company.
8. All documents pertaining to any receivables from or payables to directors, officers or owners of more than 5% of the stock of the Company.
9. All contracts or agreements which obligate the Company to indemnify a third party where the potential obligation of the Company is not insignificant.
10. Copies of all forms of warranties, guarantees, keep-well arrangements and other obligations given or incurred by the Company (or any disclaimer thereof) with respect to their respective products or services.
11. Copies of all agreements entered into by the Company with any competitor.
12. Copies of all agreements whereby the debts of any third parties are condoned or cancelled.
13. Copies of all agreements, contracts, commitments or understandings between the Company, on the one hand, and the stockholders of the Company, the directors and officers of the Company or any of their affiliates, on the other hand.
14. All material agreements between (a) the Company or any of its subsidiaries and (b) any parent of the Company or any subsidiary of a parent of the Company.
15. All agreements relating to the Company's securities to which the Company is a party, including stock option and bonus plans (including any recent amendments or repricing of stock option strike prices), forms of stock option agreements and agreements pursuant to which the Company has agreed to issue securities or to register securities under the Securities Act of 1933.
16. Copies of any tax sharing agreements among the Company and any of its affiliates or subsidiaries.
17. A list of and copies of all documents relating to any and all violations or breaches, or notices thereof, of any agreements, contracts, commitments or understandings of the Company.
18. Any agreement restricting the Company's payment of dividends.
19. Any joint venture, participation, partnership or cooperative agreements, including any development and licensing agreements to which the Company is a party.
20. Any engagement letters or contracts entered into with any financial adviser investment bankers, finders and brokers, particularly with respect to any possible equity/nonequity investment in the Company, any business combination with the Company, or the acquisition of 100% of the Company's outstanding stock or all or substantially all of its assets; list of all advisers retained, fees payable to them and claims for payments.
21. All other documents relating to any acquisition, disposition, reorganization or other extraordinary corporate event of material significance to the Company since inception, including any amendments thereto. Any correspondence relating to post-closing disputes, indemnification claims or purchase price adjustments with respect to such acquisitions, dispositions, reorganizations or other such extraordinary corporate event of material significance to the Company since inception.
22. Any reports or analyses relating to proposed equity/nonequity investments, mergers or acquisitions by

the Company.

23. Any agreements with any officer, director, shareholder or employee and their immediate families, including any indemnification agreements, loan agreements, guarantees and other transactions, whether or not currently outstanding.
24. All employment agreements for executive officers.
25. Any other contracts which in the Company's view are material to its business.

Real and Personal Property

1. A list of real property owned (whether or not currently owned) by the Company, together with (a) location and brief description, (b) description of all encumbrances, including (without limitation) mortgages, deeds of trust and security agreements, and (c) appraisal reports, if any.
2. Documents of title for the Company's material assets.
3. A list of all offices and facilities.
4. A schedule of all deeds and title reports and policies for all real property owned or occupied by the Company.
5. Results of all lien searches.
6. All Uniform Commercial Code financing statements filed with respect to the Company's real or personal property.
7. A schedule of all leases of real property and all leases of any material amount of personal property to which the Company is a party, as lessor, lessee, sublessor or sublessee, including location and brief description, rental payment amounts, expiration dates, termination rights, renewal options and other material terms.
8. Copies of the leases described in item 67 above.
9. All title insurance policies, reports, surveys, appraisals and related title documents for properties owned or leased by the Company.
10. A list of all zoning, building code restrictions, conditional use permits and zoning variances with respect to such properties.
11. A list of any and all real property sold by the Company since inception.
12. Copies of the last appraisals and valuations of the real and personal property owned by the Company.
13. A description of all construction in process, the corresponding permits and construction agreements.
14. An analysis of all repairs and maintenance.
15. All material equipment purchase agreements.

Intellectual Property

1. A list and copies of all patents and applications pending and other patents filings, held or being prosecuted by the Company in the United States or elsewhere, with descriptive titles, numbers and jurisdiction, and copies of all correspondence to or from examining authorities or other parties regarding such patent and patent applications (including prosecution history), whether owned by or licensed to the Company. Identify owner of such information and provide license or other royalty agreements, if applicable.
2. A list and copies of all copyright registration and applications pending, held or being prosecuted by the Company in the United States or elsewhere, with descriptive titles, numbers and jurisdiction, and a list of all copyrightable materials (including software and documentation) material to the Company's business, as to which there is no copyright registration or application therefor pending, in each case, whether owned by or licensed to the Company.
3. A list and copies of all trademarks, trade names, trade secrets, logos, slogans or service marks registered or unregistered, used in connection with the business of the Company, whether owned by

or licensed to the Company, with a description of products or services associated therewith, and numbers, jurisdiction and status of any registration applications pending, if any, and copies of all state and federal registration and recordation documents and certifications pertaining to each (including associated affidavits).

4. Copies of all documents sufficient to provide evidence of current trademark usage such as copies of catalogues, price lists, audiovisual advertisements, sales brochures, Internet web sites, invoices for products sold or royalties due from licensees.
5. Evidence of date of first use and of continuous use of all trade marks and service marks, and if applicable, list the dates of lapse in use of such mark and provide an explanation for such lapse.
6. A list and copies of all domain names registered or unregistered, used in connection with the business of the Company; copies of registrations and applications therefor.
7. Copies of any promotional and marketing material that references each domain name for which information is provided under 81 above.
8. Evidence of date of first use and of continuous use of each domain name for which information is provided under 81 above, and, if applicable, dates of lapse in use of domain name and an explanation for such lapse.
9. A list of all categories of technology (whether or not patented or patentable) that are material to the business of the Company, together with a brief description of how each such technology was developed or acquired.
10. Copies of all agreements pursuant to which the Company has assigned or licensed any technology, intellectual property, mailing list or database rights to, or obtained any such rights from, third parties.
11. Copies of all agreements pursuant to which the Company's products are manufactured or assembled by, or pursuant to which the Company acquires products or components for products from, third parties.
12. All license agreements, sublicenses, confidential disclosure agreements, technology escrow agreements, technology exchange agreements, royalty agreements, settlement agreements, covenants not to sue, consents-to-use, or other agreements relating to patents, trademarks, copyrights, technical assistance, know-how, inventions, trade secrets and similar intellectual property rights to which the Company is a party.
13. Copies of all research and development agreements and consulting agreements, to which the Company is a party.
14. A list of all law firms and agencies (including the contacts there) which handle patent, copyright, trademark or other intellectual property matters for the Company.
15. A list of engineers and other employees who have participated or contributed in a material way to the development of the Company's intellectual property, a brief description of their roles and copies of their resumes or other evidence of previous job history.
16. Copies of the Company's standard form of agreements with employees, independent contractors and consultants regarding confidentiality, nondisclosure, noncompetition, and assignment of inventions, and a list of all employees, independent contractors and consultants who have executed the agreements, and a list of all employees, independent contractors and consultants who have not executed the agreements.
17. Copies of confidentiality, nondisclosure, noncompetition, and assignment of invention agreements, between the Company and employees, between the Company and independent contractors, and between the Company and consultants, the contents of which differ from those set forth in the standard form.
18. Copies of the Company's standard form or other form of confidentiality, nondisclosure/and noncompetition agreements, between the Company and persons or organizations other than employees, independent contractors and consultants, and a list of persons or organizations who have executed the agreements.
19. Copies of any agreement requiring the Company to keep any third party's trade secrets confidential, or vice versa, to the extent not already supplied in response to another item herein.

20. Copies of all electronic data interchange and trading partner agreements and other Internet, World Wide Web, electronic mail and on-line service agreements.
21. All documents, correspondence, memoranda, notes, and other papers relating to the Company's written policies on intellectual property.
22. Description of procedures, if any, that the Company uses to monitor the infringement of intellectual property.
23. Copies of all security agreements pursuant to which a lender or creditor has taken a security interest in specific intellectual property assets or "general intangibles."
24. Uniform Commercial Code filings, or other state and federal filings, that relate in any way to any of the Company's technology or intellectual property.
25. All documents, correspondence, pleadings, memoranda, notes, agreements, covenants not to sue, consents-to-use, and other papers relating to any pending, threatened or settled intellectual property litigation or claim against the Company, or any other assertion, suggestion, or inquiry by a third party that the Company is infringing its intellectual property rights.
26. Flow charts, technical specifications, and other design documents relating to any Company technology or product that is the subject of any pending or threatened litigation, claim, assertion, suggestion or inquiry of the type described in item 100 above.
27. Materials referred to during the process of developing any Company technology or product that is the subject of any pending or threatened litigation, claim, assertion, suggestion or inquiry of the type described in item 100 above.
28. Journal articles, published papers, and textbooks relating to any Company technology or product that is the subject of any pending or threatened litigation, claim, assertion, suggestion or inquiry of the type described in item 100 above.
29. Notes of design meetings relating to any Company technology or product that is the subject of any pending or threatened litigation, claim, assertion, suggestion or inquiry of the type described in item 100 above.
30. All documents, correspondence, memoranda, notes, and other papers relating to any development by the Company that involves the derivation or use of specifications or technical information derived from the products of third parties.
31. All documents, correspondence, memoranda, notes, and other papers analyzing or assessing the validity or scope of any Company copyright, patent or trademark.
32. Copies of all existing material licenses to which the Company is a party, either as a licensor or licensee. Also, include all existing material contracts or leases conveying to the Company intellectual property rights regarding any facility, equipment, hardware, software or other material asset or service used in or relating to the business of the Company.
33. Documents relating to any claims brought by or made against the Company of infringement of any intellectual property rights.
34. A list of material non-patented proprietary processes controlled by the Company and other trade secrets.
35. Any manuals, statements or other materials describing the Company's policy with respect to the transmission of obscene or indecent materials, the exercise of editorial control over postings to its Internet services or the copying or distribution of copyrighted materials.
36. With respect to foreign activities of the Company:
 - A list of foreign intellectual property associates (whether agents or law firms); and
 - A description of the relative importance of the foreign countries in which the Company owns or licenses its intellectual property in terms of revenues and royalties earned.
37. To the extent that any of the documents listed above under this subsection are in a foreign language, a copy and a certified translation into English of the original.

Corporate Financings

1. All agreements relating to current or future debt (including reimbursement) obligations for money, including agreements to acquire any such debt obligation of others or for a leasing of a type required to be capitalized in accordance with FASB No. 13.
2. All documents and agreements evidencing other material financing arrangements of the Company including sale and lease-back arrangements, master lease facilities, capitalized leases and installment purchases.
3. All agreements with respect to obligations or liabilities, as guarantor, surety, co-signer, endorser, co-maker, indemnitor or otherwise in respect of the obligation of any other person.
4. All agreements by which the Company is subject to any obligation to provide funds to or to make investments in any other person (in the form of a loan, capital contribution or otherwise).
5. All material correspondence with and from lenders since the Company's incorporation, including all compliance reports submitted by the Company or its independent public accountants.
6. All documents purporting to create liens, mortgages, security agreements, pledges, charges or other encumbrances on real or personal property in favor of or against the assets of the Company.
7. All agreements (other than those described above) that restrict additional indebtedness or the sale, lease or transfer (by dividend or otherwise) of the assets or capital stock of the Company).
8. Copies of all bank letters or agreements confirming lines of credit.
9. A list of, and all documents related to, any loans, promissory notes or other evidence of liabilities, obligations or payables of the stockholders of the Company, the Company's officers or directors or any affiliates thereof to the Company (including loans for the purchase of stock). The term "affiliate" shall include, without limitation, (i) all officers and directors of the Company, (ii) the stockholders of the Company, (iii) any relative of any such individuals, and (iv) any entities controlled by or under common control with the Company or any such individuals or their relatives.
10. All documents pertaining to any liabilities, obligations or payables of the Company to the directors or officers of the Company, the stockholders of the Company or their affiliates.
11. Recent compliance certificates concerning satisfaction of covenants contained in the Company's obligations for money borrowed or other debt and any other debt covenant compliance calculations if applicable.
12. Copies of all documentation used internally for the last five years to monitor compliance with financial covenants contained in the Company's obligations for money borrowed or other debt.
13. A list of any and all bad debts.
14. A list of any person or entity whose consent to any proposed Company change of control combination, merger, or sale of 100% of the Company's outstanding stock or all or substantially all of its assets will be required and copies of relevant documents.
15. A list of all bank branches at which the Company maintains accounts in relation to the business. Copies of most recent account statements.
16. A list of all bank accounts, including the type of account, the name and address of the bank at which it is located, the balance as of year end, the purpose of the account, the signatories on the account and the available line of credit.
17. A list of the approval authorities required to transfer funds or open/close bank accounts.

Securities Matters

1. All state securities filings and correspondence with state securities regulators, as well as any federal SEC filings (with exhibits), if any, including evidence of qualification or exemption under applicable federal securities regulations and state blue sky laws for issuance or transfer of securities of the Company.
2. All agreements, private placement memoranda, prospectuses or offering circulars relating to sales or attempted sales or other issuances of equity or debt securities of the Company since its incorporation,

including without limitation, all agreements relating to registration rights, and copies of any written proposals and memoranda of any oral proposals for the acquisition of the Company's securities since its incorporation.

3. A description of any currently outstanding antidilution rights (other than those contained in standard clauses regarding adjustment of shares held as a result of stock splits, etc.)
4. All material communications to shareholders since its incorporation.
5. All permits to issue securities since its incorporation, including copies of the applications for all permits, whether or not a permit was issued with respect to such application, and all federal securities filings.
6. All agreements containing preemptive or similar rights or the assigning of such rights.
7. A list of any stop transfer orders/legends.

Insurance

1. A schedule of all policies of insurance or self-insurance arrangements, including property, casualty, professional liability, officers' and directors' liability, key-man life insurance and other insurance policies with coverage limits and other significant terms.
2. A schedule of insurance claims since the Company's incorporation.

Litigation

1. A list and brief description of all material documents relating to all pending or threatened litigation, administrative proceedings, governmental investigations or inquiries, arbitration or claims against or affecting the businesses or operations of the Company, or any of its respective officers or directors including, without limitation, any pending EEOC claims. Description should include name of proceeding, other parties, relief demanded and current status.
2. Any memoranda or correspondence with counsel with respect to pending or threatened litigation or litigation settled or otherwise terminated within the last three years.
3. All letters from attorneys to the Company's independent public accountants or to any regulatory authority since the Company's incorporation regarding litigation in which the Company or any of its respective officers or directors is or may be involved.
4. Copies of all consent decrees, judgments, notices of apparent liability, other decrees or orders, injunctions, settlement agreements and other agreements to which the Company is a party or is bound, requiring or prohibiting any future activities.

Tax Matters

1. Copies of all federal, state, local and foreign income tax returns filed by the Company for the last seven taxable years (or further back as necessary) and copies of any IRS determination letters. List of all open years (federal, state and local) and applicable waivers.
2. Copies of all correspondence, including, without limitation, applications for private letter rulings and opinions of counsel, regarding the tax treatment of any transaction to which the Company is a party.
3. Reports of IRS auditors, state franchise tax auditors, or any other taxing authority and related materials, including claims for refunds, investigations, audits or disputes, for any fiscal year not barred by the applicable statute of limitations.
4. A schedule of all pending tax liabilities.
5. Tax basis in and holding periods of assets.
6. A description of any corporate net operating or capital losses or credits that may be carried forward.
7. A summary of any tax holidays, tax incentive arrangements or other programs in which the Company

- is currently participating or has participated since incorporation.
8. A list of applicable sales, income, franchise, property, excise and capital stock taxes and any other taxes payable by the Company and the status of compliance.
 9. Copies of all payroll returns and IRS Forms 1096 and 1099 filed in the past seven years (or further back as necessary).

Financial Information

1. Most recent projected financial and cash flow statements.
2. A description of all significant accounting policies including revenue recognition, inventory and asset valuation, write-off procedures, intangible assets, foreign currency, hedging, rental arrangements and advance billings, financing transactions, interest, accounting for current and deferred taxation, extraordinary items and other financial statement items not covered in footnotes.
3. A description of any change in accounting policies or procedures since the Company's incorporation.
4. Audited consolidated financial statements and the notes thereto since the Company's incorporation.
5. Interim financial statements for quarters since the last audit for the Company.
6. A description of any off-balance sheet liabilities and financial derivative instruments held or issued by the Company, if any, including a description of the purpose for which such derivatives are held or issued (e.g., trading, hedging, etc.).
7. A description of all contingent liabilities not reflected on the Company's financial statements, monetary reserves established for liability claims and disagreements with the Company's outside auditors concerning the Company's financial reporting during the preceding two years.
8. A summary of inventory by category including a description of location, valuation policies and the roll forward and adequacy of reserves. A description of inventory accounting and control and obsolescence policies.
9. Accounts payable and accounts receivable aging reports since the Company's incorporation
10. A summary of rental inventory including type, vendor/sub-contractor, net book value, age and location.
11. An explanation of Company overhead allocations.
12. Audited financial statements for any enterprises merged with, or acquired by, the Company in the last five years.
13. Current internal budget, operating and financial plans and projections and any reports or papers relating to any long-term budget, capital development, restructuring program or strategic plan, including any plans regarding systems and operations, of the Company.
14. SG&A breakdown by operating division and corporate.
15. Sales, operating income and assets by country.
16. Detail of sales, costs of goods, sales detail, marketing and R&D by product.
17. Detail of capital expenditures.
18. Detail of pro forma balance sheet line items and contingent liabilities.
19. Detail of foreign currency adjustments.
20. Detail of reserves.
21. Impact of recently adopted and proposed FASB rules.

Government Regulation

1. A list and brief description of any significant laws or government regulations relating to industry practices in the business of the Company.
2. A list of all governmental agencies to which the Company reports.
3. A list of all material designations and governmental licenses, authorizations, consents, permits and

approvals required in order for the Company to conduct its business and copies of licenses, authorizations, consents, permits and approvals granted to the Company that are currently in effect or pending renewal.

4. A schedule of contracts with the United States government or agency, any state or local government or agency or any foreign government or any agency or any contractor thereof.
5. Correspondence and notices relating to contracts with any governmental entity (by the Company directly or indirectly or through any prime contractor, subcontractor or vendor) to the extent related to: (a) any alleged violation or omission, (b) any negative determinations of responsibility issued against the Company with respect to any bid, quotation or proposal submitted by the Company, (c) any disallowance or questioning of material costs incurred by the Company, any assessment of penalties or damages of any kind against the Company arising out of any material irregularities, misstatements or omissions relating to any of the Company's contracts, bids, quotations or proposals, past or present, (d) any audit, and (e) any denial of security clearances and permits necessary for the execution of the Company's obligations under any contract, past or present.
6. All reports, notices or correspondence relating to any alleged violation or infringement by the Company of, or otherwise relating to the status of the Company's compliance with, any local, state or federal law of governmental regulations, orders or permits including (a) EEOC; (b) OSHA; (c) antitrust; and (d) intellectual property.
7. Reports filed and significant correspondence with any municipal, state, federal or foreign regulatory government or agency since the Company's incorporation, as such reports and correspondence relate to the Company's operating procedures (as opposed to reports and correspondence which relate solely to the operations of the Company's clients). In connection with this request, all material in the files of the Company regarding possible environmental pollution, including correspondence with all governmental agencies; copies of internal and consultant reports regarding same.
8. A summary of any pending or threatened OSHA, EPA or Department of Labor inquiries or proceedings.
9. A list of any export, import or customs permits or authorizations, certificates, registrations, concessions or exemptions that are required for the Company to conduct its business and copies of all such permits, authorizations, certificates, registrations, concessions or exemptions granted to the Company that are currently in effect or pending renewal.

Employees and Benefit Plans

1. A list of the following plans or arrangements, maintained, sponsored or contributed to by, or on behalf of, the Company:
 - Qualified plans, e.g., pension, profit sharing, stock bonus, ESOP, 401(k), and annuity plans. Specify whether a plan is a multiple employer plan.
 - Multiemployer pension plans.
 - Nonqualified deferred compensation plans, supplemental executive retirement plans (SERPs), excess benefit plans, deferred obligations, rabbi trusts, secular trusts, and annuity arrangements.
 - Stock based plans, e.g., stock options, restricted stock, stock purchase, phantom stock, stock appreciation rights, and performance shares.
 - ERISA welfare plans (including multiemployer welfare plans), e.g., health (including retiree), life, disability, and severance. Specify whether a plan is a multiple employer plan or multiple employer welfare arrangement.
 - Non-ERISA welfare plans, e.g., vacation, sick pay, holiday and other payroll practices.
 - Bonus or incentive plans.
 - Employment and consulting contracts.
 - Severance arrangements (non-ERISA) and salary continuation plans.
 - Change in control/parachute agreements.

Fringe benefit arrangements.

Statutory plans, e.g., VEBA, cafeteria, dependent care, medical reimbursement, etc.

Historic, i.e., any of the above plans or arrangements that were terminated in the last five years; any such plan that was merged into, or whose assets were transferred to, another employer's plan in the last five years; and any plan that has made a partial or full withdrawal from a multiple or multiemployer plan in the last five years.

Seller's Controlled Group (Internal Revenue Code §§414(b) and (c)) - Any defined benefit or multiemployer plans that have been maintained (or withdrawn from) within the last five years by any member of the Controlled Group.

Foreign plans.

2. Copies of, or documents relating to, the following:

All Plans

1. All plans and arrangements listed in Item 183 above (including superseded versions and amendments) and related trusts, if applicable.
2. All summary plan descriptions and summaries of material modifications.
3. All forms 5500 and summary annual reports for the last three years.
4. All relevant insurance contracts and agreements with HMOs and other providers.
5. IRS and other governmental audits (or notices of audits) with regard to any plan.
6. Investment management agreements.
7. All correspondence and documentation with regard to any action, suit, proceeding or claim (other than routine benefit claims) pending or resolved in the last three years against or with regard to any plan or any fiduciary.
8. Any requests under ERISA for documents or information with respect to any plan, indicating whether any such requests were fulfilled on a timely basis.
9. Any obligation to increase benefits in the future.
10. Summary of any oral promises of compensation or benefits made to current and former employees of the business being acquired.

Qualified Plans

1. The most recent determination letters issued by the IRS.
2. Fiduciary bond policies.
3. Funding waiver requests.
4. Notices to employees of failure to satisfy minimum funding requirements.
5. VCP closing agreements, together with submissions.

Qualified Defined Benefit Plans

1. Last three actuarial reports.
2. Notices of Reportable Events.
3. Any notices from PBGC with regard to plan termination by PBGC.

Multiemployer Plans

1. Notices of any claim or demand for complete or partial withdrawal liability.
2. Any notices that (i) a plan is in reorganization, (ii) increased contributions may be required to avoid a reduction in benefits, (iii) an excise tax may be imposed, or (iv) a plan is or may become insolvent.

COBRA

1. All letters and forms used to comply with COBRA and outline of administrative procedures.
2. Any logs or records indicating compliance or noncompliance.
3. Any pending claims.

Other

1. All personnel manuals, employee handbooks, and policy statements.
2. List of employees on disability or leave of absence.

Investment Information

1. Investment agreements.
2. Prohibited transaction excise tax fillings.
3. List of any transactions with parties in interest.
4. List of stock option or other long-term incentive awards or grants, by individual, indicating employee name, plan under which granted, grant date, number of shares granted on each date, price per share on each grant date, number of shares exercised under each plan, date of exercise, and price per share at date of exercise, and number of unexercised shares under each plan.
5. Copies of all stock option or other long-term incentive award agreements.
6. A management organization chart.
7. A list of all current officers, directors and employees of the Company, including name, department, location, annual salary and date of last pay increase, bonuses, incentives, commissions, and other compensation for the current and last three years.
8. Any labor/collective bargaining agreements.
9. Details of material grievances, terminations, union activities, etc.
10. Any indemnification agreements with any employees, officers or directors.
11. A list of any strikes, unusual labor relationships, work stoppages, or employment-related proceedings during the last five years, with a brief description thereof.

Miscellaneous

1. Reports to the Company including appraisals, marketing studies, future plans, credit reports and other types of reports, since its incorporation from:
 - independent public accountants, including all letters from independent public accountants regarding control systems, methods of accounting, etc.;
 - internal auditors;
 - actuaries;
 - marketing consultants;
 - appraisers;
 - management consultants; and
 - other consultants or outside experts hired with respect to operations.
2. Copies of representation letters from management to auditors.
3. Copies of all letters to auditors from outside counsel.
4. Copies of recent sales or marketing literature including all catalogs, product literature and advertising materials (including price lists).
5. Copies of all market research or marketing studies prepared by or for the Company since its incorporation.
6. News releases issued by the Company since its incorporation.
7. A list of parties, if any, whose consent to the transaction contemplated by this list will be required.
8. Copies of any Company policy or procedure regarding payments to or from government officials, giving gifts to, receiving gifts from or providing entertainment for government officials.

THE SUBSECTIONS THAT FOLLOW ARE INTENDED TO PROVIDE ADDITIONAL GUIDANCE AS TO THE TYPE OF INFORMATION THAT MAY BE USEFUL WITH RESPECT TO SOME OF THE KEY AREAS OF DUE DILIGENCE IDENTIFIED ABOVE. THE FOLLOWING GUIDELINES ARE NOT INTENDED AS A UNIVERSAL OR AN EXHAUSTIVE CHECKLIST.

I. Corporate Documents

1. Certificate or Articles of Incorporation and Bylaws of the Company (and all amendments thereto). Review as appropriate for procedural and substantive compliance with corporation statute and corporate law applicable at the time of each corporate action. Depending on the transaction, such review could include the matters noted below.
 - Review to determine the existence of preferences.
 - Review for preemptive rights, rights of first refusal, registration rights, or any other rights relating to the issuance or registration of securities.
 - If the transaction involves the issuance of stock (including convertible securities), are there sufficient authorized shares for the offering, including any conversion rights, taking into account any shares reserved for issuance pursuant to outstanding options, warrants, convertible securities and employee benefit plans?
 - As to any charter amendments and other significant corporate action, review corporate minutes for compliance with corporation law in effect at the time of the amendment.
 - Review the Bylaws for any unusual provisions affecting shareholder rights or restrictions on ownership, transfer or voting of shares.
 - Anti-takeover devices are common and should be noted, and when appropriate, carefully summarized whether in the statute, the charter or Bylaws, or in a shareholder rights plan ("poison pill").
 - Review charter to determine whether the purpose clause is sufficiently broad.
2. Review minutes of meetings of the Company's stockholders and Board of Directors during the preceding five years. To the extent possible, check whether the minutes of all meetings (including committees and subsidiaries) are in the minute books. Review for matters that may require disclosure and for compliance with corporate law applicable at the time of the action, including without limitation, when appropriate for the transaction, the following matters:
 - Check whether the minute book contains appropriately signed copies of the minutes and notices.
 - Confirm that proper notice (or waivers of notice), quorum and the requisite vote on all significant matters was obtained, in accordance with the Bylaws and relevant statute.
 - Review for due authorization of all stock issuances, including options or warrants.
 - Confirm that proper approval was obtained of all transactions with insiders, in accordance with the Bylaws and the relevant state statute.
 - Confirm that officers and directors were duly elected.
 - Confirm the approval and reservation of shares for all stock option, stock purchase and other benefit plans.
 - Review minutes of shareholder meetings showing shareholder approval of those transactions requiring such approval.
 - Confirm that the current transaction was properly authorized.
3. Review minutes of meetings of the Executive Committee and Audit Committee of the Company's Board of Directors during the preceding 5 years and minutes of any special committee of the Board of Directors established in connection with the offering. Review minutes of any other relevant committee. Review for matters requiring disclosure and compliance with corporate law.
4. Determine if there is any state where the Company is not qualified to do business but should be qualified.
5. Review Certificate or Articles of Incorporation and Bylaws of each significant subsidiary of the company (significant subsidiaries will be identified by the lawyer in charge). Review for compliance with applicable corporate law. Determine if there are restrictions on dividends to the Company, particularly if the Company will rely on dividends to pay interest, principal or dividends on the securities being offered.
6. Review minutes of meetings of Board of Directors and any other important committee of the Board of Directors of each significant subsidiary of the Company and of corporate action taken by the parent. Review for compliance with applicable corporate law and matters requiring disclosure.

7. When appropriate, review all Board of Directors resolutions authorizing the issuance of stock and applicable statutory requirements for the issuance of shares to ensure that all issued shares are validly issued, fully paid and nonassessable.

"Validly issued" means generally that there has been due compliance with applicable corporate law; for nonregulated corporations this can be determined by reading the corporate minutes and the corporation law in effect at the time of the action. "Fully paid" means generally that the corporation received the payment for the shares as authorized by the applicable Board of Directors resolution and that the form of payment was permitted by applicable corporate law. If property or services were the form of payment, generally corporation statutes require a valuation by the Board of Directors; future services generally are not adequate consideration. Usually, there is no way to determine from the corporate records that the consideration was actually received by the corporation; this is usually evidenced by an officer's certificate and a review of the corporation's balance sheet to see that the amount of consideration required by the corporation law and the authorizing resolution is reflected in the capital account. Stock which is fully paid is generally "nonassessable" unless a statute permits assessment of the stock of certain types of corporations or for certain types of claims, such as wage claims, which should be noted in the memorandum describing the review.

Determine whether there has been compliance with federal and state securities laws in the issuance and sale of outstanding shares.

In the context of an acquisition transaction, the capital structure should be reviewed to make sure that all classes of capital stock will be properly provided for in the proposed transaction.
8. Determine if there are any states in which a significant subsidiary should be qualified to do business but is not so qualified.
9. Review officers' and directors' questionnaires for the Company's most recent annual filings, and any subsequent questionnaires. Determine if there were any disclosures that should have been made in the annual filings based on results of document review.
10. Review any documents affecting ownership, voting or rights to acquire the Company's stock for required disclosure and significance to transaction and, in an SEC filing, exhibit filing requirements. Such documents include, among others:
 - Warrants, options or other rights to acquire stock;
 - Security holder agreements or voting trust agreements;
 - Registration rights agreements; and
 - Shareholder rights, or poison pill plans. Determine whether rights may have been inadvertently triggered by any corporate transaction.
11. If there are selling stockholders, their ownership and authority to sell must be reviewed. Review for disclosure required by applicable items of registration form.
12. If a directors' and officers' questionnaire is prepared for the transaction (e.g., an SEC registration), review responses for consistency with corporate records.

II. Material Contracts

1. Review material contracts of the Company, particularly, but not limited to, those filed as exhibits (see, e.g., Item 601(b)(10) of Regulation S-K). Briefly describe all contracts involving the Company or any subsidiary that are important for the operation of the Company. Review any contracts with stockholders or executive officers for required disclosure. If an SEC filing, determine whether any material contracts not previously filed with the SEC should be so filed. Check to see whether any exhibits proposed to be incorporated by reference in the registration statement have been amended since the date of original filing.

In examining important contracts, consider whether attention should be called to the following, among

other aspects:

Default or termination provisions.

Duration, restrictions on Company action.

Consent requirements.

Termination provisions (including golden parachutes) in employment contracts.

Ownership of technology in technology license agreements.

Cancellation provisions in major supply and customer contracts. When order backlog is a significant factor in the Company's business, these provisions should be carefully reviewed.

Confidentiality and nondisclosure provisions in any material contract if required to be filed with the SEC and disclosed or if the Firm represents a competitor.

Security and cancellation provisions in government contracts.

Unusual warranty or absence of protective provisions.

Any noteworthy or apparently unusual or ambiguous provisions.

2. Review any agreements documenting transactions between the Company or any subsidiary and its officers, directors or large stockholders. Inquire about any related party transactions during the past three years. Review for compliance with applicable corporate law and required disclosure. Particularly (though not exclusively) for initial public offerings, recent related party transactions should be carefully reviewed for disclosure as well as substantive requirements under blue sky laws (e.g., cheap stock to promoters).
3. Prepare a summary of any loans to officers, directors or employees of the Company or its subsidiaries. Review for compliance with corporate law and required disclosure.

III. Real and Personal Property

1. When appropriate, review title insurance or comparable documents for any significant parcels of real estate owned by the Company. For an acquisition or sale, review applicable consent or notice requirements.
2. Review leases for significant leased real properties, noting particularly term and renewal provisions. Determine whether there are any disputes under any such leases.
3. Inquire whether there are any plans or proposals with respect to any plant or other facility closing or relocation, or any expansion.
4. When appropriate, obtain UCC searches.

IV. Intellectual Property

1. If patents, trademarks or other proprietary information are important to the business, review status. Usually, protections can be confirmed by Company's special counsel.

V. Corporate Financings

1. Review debt agreements to which the Company or any subsidiary is a party, such as trust indentures, term or revolving loan agreements, bank lines of credit, mortgages, significant property or equipment leases, etc., and all guarantees by the company or any subsidiary. Particularly note restrictions on corporate action, such as dividend restrictions, restrictions on incurring additional debt and restrictions on issuing additional capital stock. Also note any unusual consent or default provisions. If subordinated debt securities are being issued, compare new subordination provisions with subordination provisions of other agreements for compatibility.
2. Review compliance certificates delivered to lenders for any defaults or potential defaults.
3. Review any summaries prepared by Company or auditors of compliance with the instruments

described in item 21 above, and any communications regarding defaults, potential defaults or waivers of defaults.

VI. Securities Matters

1. For reporting companies, review all periodic filings (and any documents incorporated by reference) with the SEC under the 1934 Act made by or with respect to the Company or any subsidiary during the preceding five years, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Reports on Form 8-K or Schedule 13D. Review for matters disclosed and, as to all incorporated documents, for compliance as to form. Determine if any matters disclosed should be specifically disclosed in the prospectus. Also determine whether timely filed, which could affect the availability of a short-form registration statement.
2. Review Annual Reports of the Company, proxy statements for meetings of its stockholders, and quarterly or other interim reports to its stockholders during the preceding five years. Review for matters disclosed. Determine if any matters disclosed should be specifically disclosed in the prospectus.
3. Review all filings made by the Company or any subsidiary under the 1933 Act during the preceding five years. Review for matters disclosed. Determine if any matters disclosed should be specifically disclosed in the prospectus.
4. Review current Forms 3 and 4 filed by stockholders, officers and directors for consistency with Company reports and proxy statements.
5. Review correspondence of the Company or any subsidiary with the SEC, any national securities exchange, the National Association of Securities Dealers, or any state securities commission, other than routine transmittals, during the preceding five years. Review for any required disclosure. Determine if there are or were any enforcement or disciplinary actions or any ongoing investigations or suggestions of violations by any of these authorities.
6. If there has been a change in accountants during the past five years, find out why. For reporting companies, check for compliance with SEC disclosure requirements (see, e.g., Item 4 of Form 8-K).
7. Review any disclosure documents used in private placements of securities, industrial development bond financing, or institutional or bank loan applications during the preceding five years. Review for the same matters as are described under item 21 above, and compliance with applicable corporate and securities laws as to the issuance of securities of issuer.
8. Prepare or review a schedule of all securities sold by the Company within the past three years which were not registered under the Securities Act of 1933 for Item 701 of Regulation S-K.
9. Review accuracy of description in Registration Statement of securities being registered and description of any senior or other securities.
10. Determine if there are any corporate statutes affecting key rights of the securities, such as a control share statute limiting voting rights in certain circumstances. If the statute makes the provision discretionary, check the appropriate corporate documents (usually the charter) to determine if the Company has opted in or out of the statutory provision.
11. If the Company has reacquired any of its shares during the past five years, review for compliance with corporate law and procedures and SEC disclosure requirements. Review contemporaneous balance sheet to determine whether funds were available for repurchase.

VII. Insurance

1. Review various kinds of insurance maintained by Company.
If there is material pending litigation, determine extent of insurance coverage and obtain insurance company confirmation.

Review whether significant properties are covered by adequate casualty and extended coverage fire insurance.

If the Company leases property and is obligated to carry fire and casualty insurance, determine whether the Company is in fact providing such coverage.

Review Company's recent history of insurance claims and the deductibles and coverage limits on various policies.

Review directors' and officers' liability insurance policy and relevant limitations and exclusions under such policy. Review the claims history for such policy.

For an acquisition, review notice and assignment requirements.

VIII. Litigation

1. Review all pending, proposed or threatened material litigation and administrative proceedings, other than routine litigation, to which the Company is a party or of which any of their property is the subject.

Describe principal parties, allegations and relief sought. Particular attention should be paid to any governmental proceedings, pending or contemplated, and any environmental proceedings. Also review responses of counsel to most recent audit inquiry letters concerning legal proceedings.

IX. Government Regulation

1. Review all correspondence of the Company during the preceding five years with the following:
Environmental Protection Agency;
Federal Trade Commission;
Department of Labor (OSHA & EEOC);
Internal Revenue Service; and
Any other federal, state or local, or foreign governmental agencies of significance to the Company's business or operations.
2. Review for required disclosure. Determine if there are any ongoing investigations or suggestions of violations by any of these agencies.
3. Review any required regulatory compliance and verify that necessary licenses and permits have been obtained and maintained. Review required filings and reports. For an acquisition, determine whether notice or consent is required.
4. Obtain any documents showing any certification of compliance with, or any deficiency with respect to, regulatory standards (for example, environmental protection standards) by any of the Company's facilities.

X. Employees and Benefit Plans

1. Actuarial reports for qualified defined benefit plans and nonqualified deferred compensation plans should be reviewed by a compensation lawyer to determine each plan's funded status.
2. Potential liabilities for unfunded retiree medical benefits should be examined by a compensation lawyer.
3. Potential PBGC withdrawal liability attributable to participation by the Company and any members of its Controlled Group in any multiemployer pension plan should be examined by a compensation lawyer.
4. Change in control/parachute agreements should be examined by a compensation lawyer to determine any potential liabilities arising as a result of the proposed transaction.

5. Stock based compensation plans should be examined by a compensation lawyer to determine the impact, if any, of the proposed transaction on outstanding stock based awards.
6. All other employee benefit plans and arrangements should be reviewed a compensation lawyer.

XI. Miscellaneous

1. Review auditors' letters or reports to management concerning internal accounting controls and procedures and other matters and management responses, and internal memoranda (particularly internal audit or regulatory compliance memoranda) concerning the Company during the preceding five years. Review for any deficiencies that require correction or disclosure.
2. Review reports of any outside consultants, analysts or others concerning the company. Review for description of business, areas of concern.
3. Review relevant press releases or articles concerning the Company within the past year. If appropriate obtain NEXIS or Equifax search on Company and its principals.

XII. Cross-Border Considerations

Cross-border considerations are increasingly common in the ownership and operation of U.S. corporations. During the course of the corporate examination, lawyers should be alert to aspects of the Company's business that should be reviewed by specialists in the office. Some indications for such a review are listed below.

1. Does the Company have known material foreign ownership?
2. Does the Company own or control any foreign operations or entities?
3. Does the Company or any subsidiary use foreign agents, consultants or representatives?
4. Are imports, exports or foreign operations important to the Company's or any subsidiary's business on a nonconsolidated basis?
5. Does the Company or any subsidiary import from or export to or do business in any of the following countries or regions: Cuba, Angola (UNITA), Iraq, Libya or North Korea?
6. Are there any other indications in the Company's books, records or reports of foreign considerations?
7. Does the transaction, or any prior transaction, require any filing such as under Exon-Florio or the U.S. Commerce Department?

XIII. Other

1. Determine if the Company has any acquisition or disposition plans.
2. Determine if the Company is aware that it is an acquisition target.

II. Material Contracts

1. Review material contracts of the Company, particularly, but not limited to, those filed as exhibits (see, e.g., Item 601(b)(10) of Regulation S-K). Briefly describe all contracts involving the Company or any subsidiary that are important for the operation of the Company. Review any contracts with stockholders or executive officers for required disclosure. If an SEC filing, determine whether any material contracts not previously filed with the SEC should be so filed. Check to see whether any exhibits proposed to be incorporated by reference in the registration statement have been amended since the date of original filing.

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Any noteworthy or apparently unusual or ambiguous provisions.

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1. Review debt agreements to which the Company or any subsidiary is a party, such as trust indentures, term or revolving loan agreements, bank lines of credit, mortgages, significant property or equipment leases, etc., and all guarantees by the company or any subsidiary. Particularly note restrictions on corporate action, such as dividend restrictions, restrictions on incurring additional debt and restrictions on issuing additional capital stock. Also note any unusual consent or default provisions. If subordinated debt securities are being issued, compare new subordination provisions with subordination provisions of other agreements for compatibility.
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2. Review Annual Reports of the Company, proxy statements for meetings of its stockholders, and quarterly or other interim reports to its stockholders during the preceding five years. Review for matters disclosed. Determine if any matters disclosed should be specifically disclosed in the prospectus.
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8. Prepare or review a schedule of all securities sold by the Company within the past three years which were not registered under the Securities Act of 1933 for Item 701 of Regulation S-K.
9. Review accuracy of description in Registration Statement of securities being registered and description of any senior or other securities.
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If the Company leases property and is obligated to carry fire and casualty insurance, determine whether the Company is in fact providing such coverage.

Review Company's recent history of insurance claims and the deductibles and coverage limits on various policies.

Review directors' and officers' liability insurance policy and relevant limitations and exclusions under such policy. Review the claims history for such policy.

For an acquisition, review notice and assignment requirements.

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1. Review all pending, proposed or threatened material litigation and administrative proceedings, other than routine litigation, to which the Company is a party or of which any of their property is the subject.

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Department of Labor (OSHA & EEOC);
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Any other federal, state or local, or foreign governmental agencies of significance to the Company's business or operations.
2. Review for required disclosure. Determine if there are any ongoing investigations or suggestions of violations by any of these agencies.
3. Review any required regulatory compliance and verify that necessary licenses and permits have been obtained and maintained. Review required filings and reports. For an acquisition, determine whether notice or consent is required.
4. Obtain any documents showing any certification of compliance with, or any deficiency with respect to, regulatory standards (for example, environmental protection standards) by any of the Company's facilities.

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1. Does the Company have known material foreign ownership?
2. Does the Company own or control any foreign operations or entities?
3. Does the Company or any subsidiary use foreign agents, consultants or representatives?
4. Are imports, exports or foreign operations important to the Company's or any subsidiary's business on a nonconsolidated basis?
5. Does the Company or any subsidiary import from or export to or do business in any of the following countries or regions: Cuba, Angola (UNITA), Iraq, Libya or North Korea?
6. Are there any other indications in the Company's books, records or reports of foreign considerations?
7. Does the transaction, or any prior transaction, require any filing such as under Exon-Florio or the U.S. Commerce Department?

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