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## KEY GOVERNANCE CONSIDERATIONS IN INITIAL PUBLIC OFFERINGS

*Companies planning an IPO need to make numerous important governance decisions in light of various regulatory and business considerations. In this article, the authors discuss such considerations in detail in two of the key subjects companies need to address: board and committee composition and shareholder rights and defensive measures. They close by noting that companies need to revisit their decisions on these subjects as their shareholder base changes.*

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While corporate governance has always been an area of great interest to investors, in recent years, focus on governance has undoubtedly intensified. Moreover, over the years, governance of public companies has also become increasingly complex, given the rules of the Securities and Exchange Commission, listing exchanges rules and guidance, and state rules. In addition, there are policies and views of proxy advisory firms, various institutional investors, and other stakeholders that need to be considered when a future public company is making its initial governance decisions as part of its initial public offering process.

Generally speaking, a company has wide latitude to determine the appropriate governance structure to support the execution of a long-term strategy, particularly at IPO. However, there are a number of considerations that a company typically takes into account when considering its governance framework going forward. Key among them are (1) the company's shareholder base; (2) market practices and trends

(including at companies of comparable size and in similar industries and/or with a similar shareholder base); (3) desire to preserve maximum operating and strategic flexibility; (4) SEC, state law, and listing exchange requirements; and (5) investor and proxy advisor expectations.

This article focuses on two of the key governance workstreams in IPOs, including how some of the above-summarized considerations factor into those workstreams — (1) board and committee composition and (2) shareholder rights and defensive measures. More specifically, this article discusses the key points companies should consider when setting up their public company boards, including providing practical examples of the issues companies often tackle in this space. In addition, this article reviews key shareholder rights and defensive measures that a company may want to consider providing and adopting, respectively, pre-IPO in its public company governing documents.

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