

Webcast: Raising Capital in the Current Environment VII: Going Private and Going Dark

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The current environment is leading many public companies to reconsider the costs and benefits of remaining listed on a US securities exchange and continuing to file reports with the SEC. During 2020, many public companies have experienced declines in revenues and market capitalization, and their compliance costs have increased as a percentage of revenues. These companies may consider "going dark," which refers to the process of delisting a public company's shares from a national securities exchange and suspending or terminating the company's public reporting obligations. Going dark does not result in a change in the capital structure but does require a highly technical compliance process under applicable SEC and stock exchange rules. For similar reasons, large shareholders of some public companies may consider a "going private" transaction, which generally involves the cash-out of all or a substantial portion of a company's public shares so that the company becomes eligible to delist and terminate its reporting obligations. Going private transactions can take many forms and may involve a merger, tender offer or reverse split of the company's shares. These transactions require extensive board consideration, fairness opinions, SEC filings and possibly a shareholder vote.

In this presentation, we will discuss the procedures involved in the going dark process and going private transactions, including SEC requirements, stock exchange requirements, board governance considerations and timelines. We will also explore the common issues that must be managed in these transactions, including conflicts of interest, fiduciary duties, solvency, M&A strategy, financing arrangements and access to capital markets.

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PANELISTS:

Boris Dolgonos is a partner in the New York office of Gibson, Dunn and Crutcher and a member of the Capital Markets and Securities Regulation and Corporate Governance Practice Groups. Mr. Dolgonos has more than 20 years of experience advising issuers and underwriters in a wide range of equity and debt financing transactions, including initial public offerings, high yield and investment-grade debt offerings, leveraged buyouts, cross-border securities offerings, and private placements. He also regularly advises U.S. and non-U.S. companies on corporate governance, securities laws, stock exchange rules and regulations, and periodic reporting responsibilities.

Tull Florey is a partner in the Houston office of Gibson, Dunn & Crutcher and a member of the firm's Mergers & Acquisitions, Capital Markets, Oil & Gas and Securities Regulation and Corporate Governance practice groups. He has an extensive corporate and securities law practice, emphasizing transactional and governance matters. His practice focuses on mergers and acquisitions and securities offerings for companies in the energy industry. He has particular experience with clients engaged in oilfield service, oil and gas exploration

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and production, oilfield equipment manufacturing, midstream and seismic activities. He also assists clients on an ongoing basis with general corporate concerns, including Exchange Act reporting, corporate governance and Section 16 matters. Mr. Florey has been widely recognized, including *Chambers USA*, *The Legal 500 U.S.*, *The Best Lawyers in America*®, and Texas Super Lawyer.

Courtney C. Haseley is of counsel in Gibson, Dunn & Crutcher's Washington, D.C. office, where she is a member of the firm's Securities Regulation and Corporate Governance Practice Group. Ms. Haseley focuses her practice on governance matters and securities regulatory issues. Prior to joining Gibson Dunn, Ms. Haseley served as Special Counsel in the Division of Corporation Finance's Office of Chief Counsel at the U.S. Securities and Exchange Commission, where she provided interpretive advice on a variety of matters under the Securities Act, Exchange Act, Trust Indenture Act, and associated rules and forms. Ms. Haseley also co-managed the 2019 and 2017 Shareholder Proposal Task Force. Before joining the SEC, Ms. Haseley was a corporate associate at two leading international law firms, advising clients on securities transactions, public offerings, private placements, mergers and acquisitions and governance matters.

Hillary H. Holmes is a partner in the Houston office of Gibson, Dunn & Crutcher, Co-Chair of the firm's Capital Markets practice group, and a member of the firm's Securities Regulation and Corporate Governance, Energy, M&A and Private Equity practice groups. Ms. Holmes advises companies in all sectors of the energy industry on long-term and strategic capital planning, disclosure and reporting obligations under U.S. federal securities laws and corporate governance issues. She has deep experience representing all parties in a wide array of equity and debt capital markets transactions, as well as going dark processes and going private transactions. Among other recognitions, Ms. Holmes is *Chambers* Band 1 ranked for Capital Markets Central U.S. and ranked for Energy Transactional Nationwide and Corporate/M&A Texas. Ms. Holmes also regularly advises boards of directors, special committees and financial advisors in M&A transactions and situations involving complex issues and conflicts of interest.

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