Form 21

Closing Checklist

CLOSING CHECKLIST

for

PIPE Transaction

of Common Stock of

[Company], a [Delaware] Corporation

Closing: [Month] \_\_, 20\_

|  |  |
| --- | --- |
|  | Definitions |
| CC | [Company Counsel] |
| Company | [Company] |
| Exchange | [Securities Exchange] |
| PAC | [Placement Agent Counsel] |
| Placement Agent | [Placement Agent] |
| Purchasers | Those entities who have executed Purchase Agreements |
| Transfer Agent | [Transfer Agent] |

Closing Checklist

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| No. | Document/Action | Responsible Party | Internal Responsibility | Signatories | Status | Notes |
| 1. Preliminary Matters |  |
| 1.1 | Engagement Letter | Company; Placement Agent |  | Company; Placement Agent |  |  |
| 1.2 | Due Diligence | Placement Agent; PAC |  | N/A |  |  |
| 1.3 | Confirm Adequate Number of Shares Available Under Charter | CC |  | N/A |  | [Confirmed. The charter authorizes \_\_\_\_\_\_\_\_ shares of common stock and there are less than \_\_\_\_\_\_\_\_ shares outstanding.] |
| 1.4 | Confirm No Restrictions on Granting Registration Rights and No Piggyback Rights | CC |  | N/A |  |  |
| 1.5 | Confirm No Stockholder Approval Required for Issuance of Shares | CC, PAC |  | N/A |  | [Confirmed. Under 20% of voting power will be issued in common stock.] |
| 1.6 | Confirm Issuance of Shares Does Not Constitute a Change of Control under Exchange Rules | CC, PAC |  | N/A |  | [Exchange defines change of control as an investor acquiring 20% or more of the voting power of the issuer.] |
| 1.7 | Confirm No Preemptive Rights | CC, PAC |  | N/A |  |  |
| 1.8 | Confirm No Consents Required | CC, PAC |  | N/A |  |  |
| 1.9 | Consider Impact on Rights Plan (if any) and whether Amendment required for any Large Purchases | CC |  | N/A |  | [Trigger is \_\_% ownership.] |
| 1.10 | Potential Investors may need to sign Confidentiality Agreements | CC, PAC |  | Company, Potential Purchaser |  |  |
| 1.11 | Consider Reg FD Implications | CC, PAC |  | N/A |  |  |
| 1.12 | Consider Rule 135c Press Release | CC, PAC |  | N/A |  |  |
| 1.13 | Understand Reg. M Limitations on Placement Agent’s market-making activities; timing of filing of Reg M notice | PAC |  | N/A |  |  |
| 1.14 | Confirm no tax issues | CC |  | N/A |  |  |
| 1.15 | Determine whether there will be a placement agent agreement with Placement Agent | CC |  | N/A |  |  |
| 1.16 | Send Exchange Listing Notification Form; Accompanying Cover Letter and the following Supplemental Documents to Exchange: | CC/Company |  | Company |  | Required to be filed at least [15] days prior to the issuance of the Common Stock. |
|  | (a) Form 8-K |  |  |  |  |  |
|  | (b) Board Resolution authorizing the private placement |  |  |  |  |  |
|  | (c) Opinion of counsel |  |  |  |  |  |
|  | (d) Purchase Agreements |  |  |  |  |  |
| 2. Definitive Agreements |  |
| 2.1 | Private Placement Memorandum or Company Investor Presentations | CC/PAC |  |  |  |  |
| 2.2 | Form of Purchase Agreements | CC/PAC |  | Company, Purchasers |  |  |
| 2.3 | Draft of Resale Registration Statement on Form [S-3] | CC/PAC |  |  |  | Confirm Form [S-3] eligibility. |
| 2.4 | Legal Opinion of Company Counsel | CC |  | CC |  |  |
|  | (a) Back-up Officer’s Certificate | CC |  | Company |  |  |
|  | (b) Back-up Memo | CC |  | CC |  |  |
| 3. Pre-Signing Matters |  |
| 3.1 | “Big Boy” Letters | PAC |  | Purchasers |  |  |
| 3.2 | Minutes of the Board of Directors Meeting and resolutions approving and/or ratifying: | CC |  |  |  |  |
|  | (a) Pricing Committee | CC |  | Board of Directors of the Company |  |  |
|  | (b) Issuance of Shares in a placement | CC |  |  |  |  |
|  | (c) Exchange Listing | CC |  |  |  |  |
|  | (d) Engagement of Placement Agent | CC |  |  |  |  |
|  | (e) Resale registration statement | CC |  |  |  |  |
| 3.3 | Pricing Committee Resolutions approving: | CC |  |  |  |  |
|  | (a) Final Purchase Agreement | CC |  | Pricing Committee |  |  |
|  | (b) Issuance of Shares (number of shares and price) | CC |  | Pricing Committee |  |  |
| 3.4 | Draft closing documents | PAC/CC |  |  |  |  |
|  | (a) Secretary’s Certificate |  |  |  |  |  |
|  | (b) Officer’s Certificate |  |  |  |  |  |
|  | (c) Transfer Agent Certificate |  |  |  |  |  |
|  | (d) Cross Receipt |  |  |  |  |  |
|  | (e) Placement Agent’s Receipt |  |  |  |  |  |
| 3.5 | Send Transfer Agent instructions and supporting documentation to prepare stock certificates | Company |  |  |  |  |
| 3.6 | Proofread draft stock certificates sent by Transfer Agent | PAC/CC |  |  |  |  |
| 3.7 | Lock-up Agreements | PAC/CC |  | Company Officers/ Directors |  |  |
| 3.8 | Provide Company wire instructions to PAC for distribution to Purchasers | CC/Company |  |  |  |  |
| 3.9 | Good standing certificates | CC |  |  |  |  |
|  | (a) Company [(Delaware)] |  |  |  |  |  |
|  | (b) Subsidiaries |  |  |  |  |  |
|  | (c) Company (foreign jurisdictions) |  |  |  |  |  |
|  | (d) Subsidiaries (foreign jurisdictions) |  |  |  |  |  |
| 4. Closing |  |
| 4.1 | Execute Purchase Agreements | Company |  | Company, Purchasers |  |  |
| 4.2 | Deliver Stock Certificates to Purchasers | Transfer Agent |  | Company |  |  |
| 4.3 | Wire Purchase Price | Purchasers |  | N/A |  |  |
| 4.4 | Deliver Secretary’s and Officer’s Certificates | CC |  | Company |  |  |
| 4.5 | Deliver Transfer Agent’s Certificate | CC |  | Transfer Agent |  |  |
| 4.6 | Deliver Legal Opinion | CC |  | CC |  |  |
| 4.7 | Execute Cross Receipt | CC/PAC |  | Company/Placement Agent |  |  |
| 4.8 | Execute Placement Agent’s Receipt | PAC |  | Placement Agent |  |  |
| 4.9 | Issue Press Release | Company |  |  |  | To be released no later than 9:00 a.m. Eastern Standard Time, on the first business day after the Closing Date. |
| 5. Post-Closing Matters |  |
| 5.1 | File Form S-3 within [5] days of closing | Company |  | Board of Directors of the Company |  |  |
| 5.2 | Respond to SEC Comments, if any | CC/Company |  |  |  |  |
| 5.3 | Request Acceleration of Effectiveness | CC |  | Company |  |  |
| 5.4 | File any Supplemental/Final Documents required to be filed with Exchange Listing Notification Form: |  |  |  |  |  |
|  | (a) Form 8-K | CC/Company |  | N/A |  |  |
|  | (b) Board Resolution authorizing the private placement | CC/Company |  | N/A |  |  |
|  | (c) Opinion of Counsel | CC/Company |  | N/A |  |  |
|  | (d) Purchase Agreement | CC/Company |  | N/A |  |  |
| 5.5 | File Form D (if Rule 506(b) relied upon) within 15 days of Closing | CC/Company |  | Company |  | To be filed within 15 days following the Closing Date. |
| 5.6 | File Current Report on Form 8-K | CC |  |  |  | To be filed within 4 business days following the Closing Date. |