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# 2008 IPO Survey

**Please contact:**

Richard Mahony  
Tel 212-515-1900  
Fax 212-515-1909  
rmahony@gavinanderson.com

## Gavin Anderson's yearly survey of leading IPO attorneys

Gavin Anderson & Co.  
220 East 42nd Street  
New York, NY 10017

[gavinanderson.com](http://gavinanderson.com)

Gavin Anderson conducted its 2008 annual survey of leading legal advisors to companies going public in the U.S. in a starkly different market environment than in 2007. Reflecting the sharp deterioration in market conditions, the number of transactions in the first half of 2008 fell to 36 from the 133 in 2007's first half. But a few large deals, notably Visa Inc., resulted in total proceeds of about US\$27 billion in the first half of 2008, in line with the year-earlier half's US\$28 billion.

This year's findings are based on one-on-one telephone interviews during May and June with 57 leading IPO attorneys who advised on transactions with an aggregate value of US\$17.4 billion in 2007, or roughly a third of last year's total issuance.

### Highlights of its findings:

- 93% of the respondents believe that new equity issuance will be "much stronger" to "slightly stronger" in 2009. The most frequently cited factors holding back the current IPO market include "lack of liquidity," "investor fear" and "low valuations."
- Chinese companies continue to be seen as the dominant country of origin for global IPOs in the months ahead, receiving 44% of mentions. India was the second most mentioned country for likely new issuers, with 17% of mentions.
- Alternative energy led in the mentions of most likely industry sectors for IPOs in the coming months, with 28% of the total. Second was Biotech / Healthcare (22%), followed by technology (20%) and traditional energy companies (19%).
- Almost half the respondents expect SPACs (Special Purpose Acquisition Companies) to remain a significant source of new issuance.
- Compensation Discussion & Analysis emerged for the first time as a significantly challenging section of SEC's Form S-1 filing, cited by a fifth of respondents in this year's survey. At the same time, the percentage of respondents citing the preparation of financial statements as the chief S-1 challenge fell to 43% this year from 73.6% in 2007.

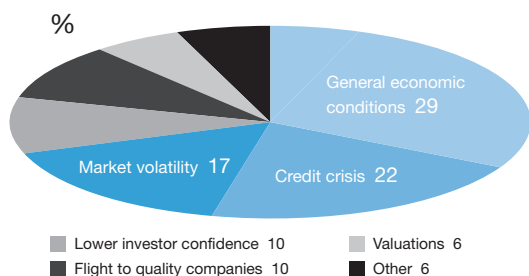
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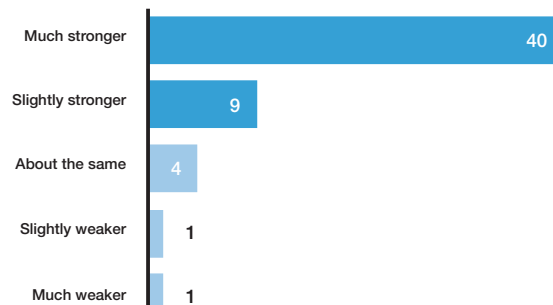
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"Under the SEC's new requirements, companies must address executive compensation in a detailed manner, providing a more complete picture and greater transparency," noted Michael Kaplan of Davis Polk & Wardwell.

**Reasons for current weakness**



**Outlook for IPO Market in 2009**



**Market Conditions**

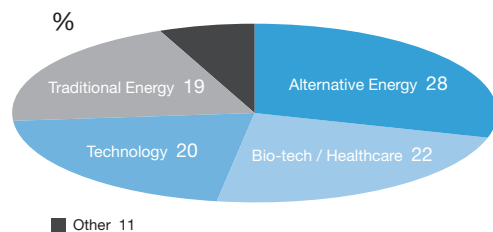
When asked to compare current IPO conditions with those at the same time last year, 73% of the attorneys said the markets were "much weaker" in the first half of 2008. General economic conditions, credit crisis and market volatility were the most common reasons cited for the current lack-luster IPO market. But 49 out of 57 lawyers surveyed anticipate the 2009 IPO market to be slightly stronger to much stronger.

**Trends to Watch: Alternative Energy, China and More SPACs**

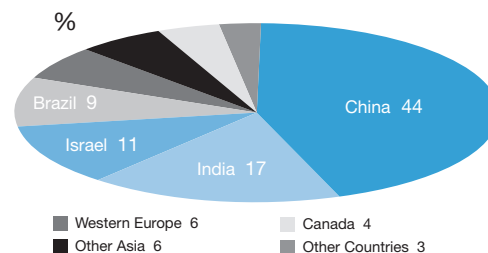
The differences between 2008 and 2007 were underscored when attorneys were asked to name the sectors they expect to produce the most IPO candidates in the months ahead. In Gavin Anderson's 2007 survey, financial services received 57% of the total mentions in this category. In this year's survey, financial services received no mentions, a statement of continued concern about the continuing impact of the credit crisis on banks and asset managers. Leadership this year went to Alternative Energy, with a 28% share of mentions, down from 37% of mentions last year. Expectations also run high for Bio-Tech / Health Care, with 28% of the mentions versus 15% in 2007.

"People are very receptive to SPACs, and the economics of these structures are attractive to certain investors, like hedge funds," noted Richard Aftanas of Skadden Arps.

**Mostly likely sectors to see IPO activity**



**Most likely countries of origin for IPOs**



Emerging markets continued to be seen as the primary source of new foreign listing on U.S. markets, with China leading the way with 44% of mentions. India came in second with 17%. Israel and Brazil – two countries not cited in the 2007 survey – surfaced in this year's survey as likely sources of IPOs for U.S. markets. Neither country was mentioned in 2007's survey.

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Issuance of SPACs (Special Purpose Acquisition Companies) hit the wall in the first half of 2008, with a single company coming to market in the difficult second quarter. Only ten SPACs came to market in the entire first half (only counting issues of \$50 million or more), compared to 24 in the fourth quarter of 2007 alone. About a dozen SPACs were forced to liquidate in the half after running into problems with their acquisition strategy.

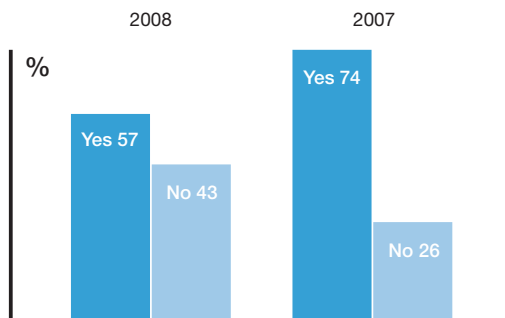
Despite the first half turmoil, more than 53% of the attorneys interviewed responded “yes” when asked if they expect SPACs to continue to play a significant role in IPO issuance in 2008 and into 2009. Survey participants noted that the vehicles appeal to individual investors who see them as providing access to private equity and a low-risk bet on emerging companies. The fees available to sponsors are also seen as likely to encourage further issuance.

**Regulatory Concerns Ease**

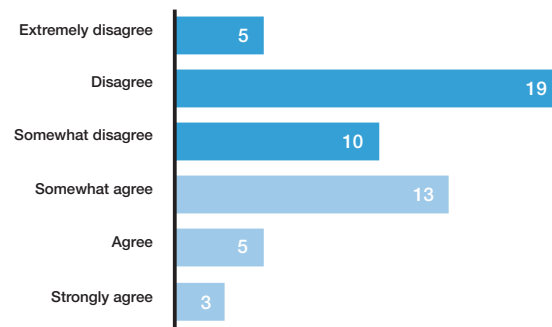
Last year’s survey was dominated by concerns that increased regulation had put U.S. markets at a decided disadvantage in competing for IPOs globally. This year, those concerns appear to have eased somewhat. Asked whether, “absent any changes in regulatory environment, the U.S. share of global IPOs will decrease,” 57% of respondents said “yes,” down sharply from the 74% responding affirmatively in 2007.

*“There is likely to be a continuing, if gradual, evolution toward the harmonization of financial reporting standards, motivated on the SEC’s side by its objective of maintaining the preeminence of the U.S. capital markets,”* said attorney Jonathan Kravetz at Mintz Levin.

**Reduced Concern: US IPO share likely to decrease?**



**Split View: US firms look increasingly to IPO and list abroad?**



Similarly, views on whether U.S. companies will be increasingly looking abroad to IPO and list their shares were similarly divided. Of the 57 lawyers responding, 39 either disagreed, somewhat disagreed or extremely disagreed with that statement.

One factor influencing these views was the U.S. acceptance of International Financial Reporting Standards (IFRS) for non-U.S. issuers. When asked: “How do you think the SEC’s recent decision to allow foreign issuers to provide financial statements under IFRS rather than GAAP will impact the volume of US IPOs from foreign issuers,” 73% of those surveyed thought it would increase volume while 25% did not expect the change to have an impact.

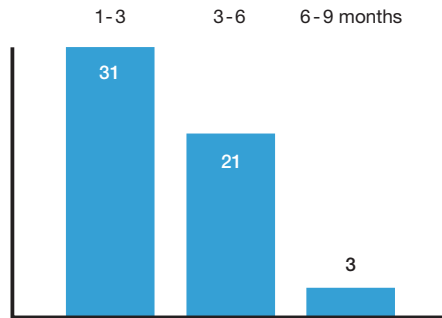
When asked: “Do you foresee any other loosening of regulatory standards to encourage foreign companies going public on US exchanges,” the lawyers surveyed were split, with 43% responding “yes,” 55% saying “no,” and the rest declining to comment. Of the lawyers who expected additional relaxation of U.S.

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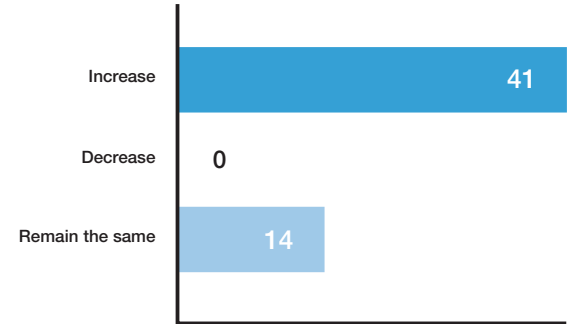
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regulation, 10 cited possible changes in Sarbanes Oxley related to foreign issuers, particularly Section 404. Also cited was the SEC's recent proposal to permit more liberal disclosure of oil and gas and other mineral reserves, bringing it more in line with international standards, which could have a significant impact on traditional energy company IPOs.

Time needed for S-1 approval

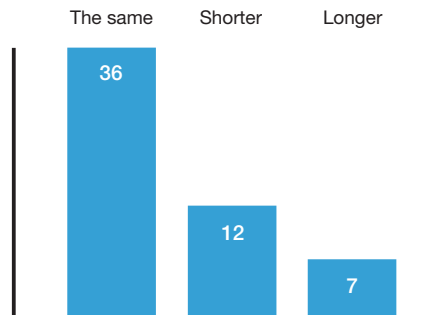


Impact of IFRS on future IPO issuance in US?

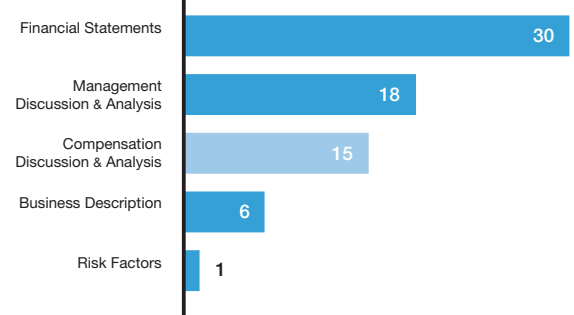


In advising clients, these leading attorneys continued to list the preparation of financial statements as the most daunting aspect of completing Form S-1 for the SEC, followed by the detailed section titled Management Discussion & Analysis. For the first time, attorneys also cited the section on Compensation Discussion & Analysis as requiring significant attention, reflecting the SEC's more stringent scrutiny of these disclosures.

Change in S-1 approval times?



Most challenging aspects of Form S - 1 preparation?



About 31 of the 57 attorneys surveyed reported that they typically advise clients that SEC approval of the S-1 will take up to three months. Twenty-one of the attorneys interviewed said they had been counseling clients to expect the SEC to take three to six months to review and approve documents. Most of the attorneys said the time needed for approval was about the same as in 2007.

**About Gavin Anderson & Company**

For the past 25 years, Gavin Anderson & Company has advised clients on financial, corporate and public affairs communications, often in critical situations. We are a leading worldwide advisor on IPOs and other capital raising and strategic transactions. Through our unique global presence in North America, Europe, the Middle East and Asia, we give our clients superior insight, judgment and execution.