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The Woes of IPOs from the Government Shutdown

By David Fang, J.D. Candidate 2021 | January 31, 2019

The recent government shutdown has significantly affected the initial public offering (IPO) timelines of startups hoping to go public in 2019. Due to the shutdown, law firms and investment banks ventured into the unfamiliar territory of trying to complete an IPO without a fully functioning SEC. Among the companies affected include tech startups Airbnb, Uber, Lyft, and Pinterest. Normally, the SEC employs 4,436 workers, but during the shutdown, only 285 were working. Furthermore, with the recent stock market volatility due to factors like the U.S. trade war with China and fears of an upcoming economic downturn, companies are eager to go public as soon as possible while valuations are still high.

Despite the inability of the SEC to sign-off on pre-IPO documents, companies have opted to bypass the SEC's approval. Under the Securities Act of 1933, an IPO registration statement can become automatically effective, without SEC input, 20 calendar days after filing with the SEC. Biopharmaceutical company Gossamer Bio, leveraged this loophole and commenced its IPO on January 24th, offering 14.375 million shares at $16 per share. This approach, however, is not without both market risk, as companies need to price their stock 20 days before listing, and legal risk, with potential future litigation pointing to the irregular IPO circumstances.

Although the government shutdown has temporarily ended, the damage may have already been done. Over the last two years, on average, it took tech companies seven exchanges with the SEC over 144 days from first engagement to IPO. Therefore, with a long IPO process, a record breaking government shutdown, and an unpredictable Trump administration, companies may strategically favor private financing or M&A over raising capital from the public markets. This combined with an IPO market that is quickly cooling down may further delay startups from becoming publicly traded companies.