

V. *Gone in a Snap: Snap Inc.'s IPO*

Snap Inc. (Snap or Company), the parent company of Snapchat, announced its much-anticipated Initial Public Offering (IPO) on Thursday, February 2, 2017⁴²⁷ and eventually went public on March 2, 2017.⁴²⁸ The Company had secretly filed for its IPO with the Securities and Exchange Commission (SEC) on November 8, 2016.⁴²⁹ Three fraternity brothers at Stanford University, Evan Spiegel, Bobby Murphy, and Reggie Brown, founded Snapchat, the mobile chat application (app) in 2011.⁴³⁰ Spiegel wrote in his blog on the Company site that the founders wanted a “place to share awkward selfies and funny photos with [their] friends.”⁴³¹ Snap has developed from solely a mobile app to send awkward “selfies” to an advertising and news platform, with a new camera hardware innovation called Spectacles that allows the user to take photos and record videos directly from a pair of eyeglasses.⁴³²

Leading up to the IPO, the Company attempted to attract investors with its user metrics, increased revenue, and visionary CEO Evan Spiegel.⁴³³ However, some commentators thought Snap faced some obstacles when it came to appealing to investors both before and after the IPO.⁴³⁴ Specifically, a former employee, Anthony Pompliano,

⁴²⁷ Portia Crowe, *Snap Files for its IPO, Revealing Surging Sales Growth and Huge Losses*, BUS. INSIDER (Feb. 2, 2017), <http://www.businessinsider.com/snap-to-list-on-nyse-report-2017-1> [<http://perma.cc/7G8F-44TA>]; Brian Deagon, *Will Snapchat IPO Set Stage For Stampede of Unicorns?*, INV. BUS. DAILY (Jan. 6, 2017), <http://www.investors.com/news/technology/will-snapchat-ipo-set-stage-for-stampede-of-unicorns/> [<http://perma.cc/G4Q7-9EUL>].

⁴²⁸ Anita Balakrishnan, *Snap Closes Up 44% After Rollicking IPO*, CNBC (Mar. 2, 2017), <http://www.cnbc.com/2017/03/02/snapchat-snap-open-trading-price-stock-ipo-first-day.html> [<http://perma.cc/3552-KZN8>].

⁴²⁹ Rishabh Jain, *Snapchat IPO—Snap Inc. Quietly Filed For IPO On Election Day: Report*, INT’L BUS. TIMES (Nov. 16, 2016), <http://www.ibtimes.com/snapchat-ipo-snap-inc-quietly-filed-ipo-election-day-report-2446756> [<http://perma.cc/D5M4-8VPX>].

⁴³⁰ Paresh Dave, *Snapchat: From an Idea at Stanford to a Planned IPO*, L.A. TIMES (Jan. 24, 2017), <http://timelines.latimes.com/snapchat-stanford-ipo/> [<http://perma.cc/5EQF-JHJQ>].

⁴³¹ Evan Spiegel, *Let’s chat.*, SNAP INC. (May 9, 2012), <https://www.snap.com/en-US/news/post/lets-chat/> [<http://perma.cc/F6CP-N7ZE>].

⁴³² Crowe, *supra* note 1.

⁴³³ *Id.*

⁴³⁴ See Tom Taulli, *3 Risks That Could Crater the Snapchat IPO*, INVESTOR-

sued Snap on January 4, 2017 for alleged misrepresentations about Snap's user growth used to attract these investors.⁴³⁵ If Snap is actually inflating user metrics in order to attract investors and skewing revenue estimations, these actions could "potentially scare off investors."⁴³⁶ Just ask Facebook, Inc., a company that only closed \$0.23 higher than its opening price due to many preferred investors pulling out of the deal and other funds shorting the stock after Facebook amended its revenue projections shortly before the IPO.⁴³⁷

This article details the potential problems that Snap's IPO faced and the future difficulties that Snap faces in light of its position in the tech world and the recent lawsuit filed against the company. Section A introduces Snap's IPO with a background of the Company, the Company filings with the SEC, and commentary revolving around the IPO. Then, Section B explores Pompliano's lawsuit against the Company for alleged misrepresentations. Section C analyzes the potential consequences of the lawsuit on the IPO, the aftermath of the IPO, and concerns about the Company among investors both before and after the IPO.

PLACE (Jan. 12, 2017), <http://investorplace.com/2017/01/snapchat-ipo-could-crater/2/#.WJyqjxiZMb1> [<http://perma.cc/PWU3-69UC>] ("While all this is certainly impressive, this does not mean that the Snapchat IPO will be a guaranteed winner. As the past few years have shown, there are lots of risks with new-fangled companies."); Frank Chaparro, *Young Investors Are Piling Into Snapchat But They're Overlooking a Huge Issue*, BUS. INSIDER (Apr. 19, 2017), <http://www.businessinsider.com/investing-in-snapchat-shareholder-right-stock-2017-4> [<http://perma.cc/3U6X-46J2>] ("Investing in Snapchat is something that no one responsible should ever do. Snapchat is the equivalent of driving drunk.").

⁴³⁵ Complaint at ¶¶ 1–3, *Pompliano v. Snap, Inc.*, No. BC645641, 2017 WL 67113 (Cal. Super. Jan. 4, 2017).

⁴³⁶ Abigail Tracy, *Snapchat Just Got Sued at a Very Unfortunate Time*, VANITY FAIR: HIVE (Jan. 6, 2017, 11:43 AM), <http://www.vanityfair.com/news/2017/01/snapchat-lawsuit> [<http://perma.cc/7Z7W-BS5K>].

⁴³⁷ Khadeeja Safdar, *Facebook One Year Later: What Really Happened in the Biggest IPO Flop Ever*, THE ATLANTIC (May 20, 2013), <https://www.theatlantic.com/business/archive/2013/05/facebook-one-year-later-what-really-happened-in-the-biggest-ipo-flop-ever/275987/> [<http://perma.cc/K2CQ-PKBF>].

A. Background of Snap's IPO

1. History of Snap

Snapchat began in a dorm room at Stanford University between three friends looking to “help people capture their natural selves and share the full spectrum of their emotions.”⁴³⁸ Evan Spiegel, Bobby Murphy, and Reggie Brown first launched Picaboo, an app where the user could send photos that would disappear after ten seconds, on the Apple App Store.⁴³⁹ Two of the original founders, Evan Spiegel and Bobby Murphy, re-launched the app under the name “Snapchat” in 2011 due to naming conflicts with Picaboo.⁴⁴⁰ After rapidly spreading throughout high schools, Snapchat attracted seed money from Lightspeed Venture Partners in May 2012⁴⁴¹ and later spread to Android smart phones in October 2012.⁴⁴² Shortly thereafter, Spiegel turned down a \$3 billion offer from Facebook to buy Snapchat in 2013.⁴⁴³ Spiegel then took leave from Stanford to devote all his time to Snapchat along with his co-founder Murphy.⁴⁴⁴

Since the original introduction of the mobile app, Snapchat has undergone a number of improvements including: (1) the “Stories” feature added in 2013 that allows users to display videos to all their followers for twenty-four hour periods; (2) the Snapcash feature added in 2014 that enables users to send money directly through the app; (3) the addition of lenses to the screen; and (4) Discover, a “hub for news, media” added in 2015.⁴⁴⁵ All of these improvements and the app’s projected growth have led to large private investments in only a

⁴³⁸ Dave, *supra* note 4.

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ See *Snap Inc.*, CRUNCHBASE, <https://www.crunchbase.com/organization/snapchat#/entity> [<http://perma.cc/MSD9-2NDZ>]; Dave, *supra* note 4.

⁴⁴² Dave, *supra* note 4.

⁴⁴³ Serena Saitto, *Snapchat is Raising Money From Alibaba at a \$15 Billion Valuation*, BLOOMBERG (Mar. 11, 2015), <https://www.bloomberg.com/news/articles/2015-03-11/alibaba-said-to-plan-snapchat-funding-at-15-billion-valuation> [<http://perma.cc/AW3V-CSMK>].

⁴⁴⁴ Jenna Wortham, *A Growing App Lets You See It, Then You Don't*, N.Y. TIMES (Feb. 8, 2013), <http://www.nytimes.com/2013/02/09/technology/snapchat-a-growing-app-lets-you-see-it-then-you-dont.html> [<http://perma.cc/277Z-4BF5>].

⁴⁴⁵ Dave, *supra* note 4.

few years.⁴⁴⁶ In order to appeal to public investors and prepare for the IPO, Snapchat changed its name to Snap Inc. and began rebranding the company as a “camera company” by introducing its new Spectacles hardware.⁴⁴⁷ Spiegel thought the name was “more fitting” because the Company is more than just a social media app.⁴⁴⁸

2. Snap’s Confidential Filing

Smaller companies with an expectation of future growth utilize IPOs to raise capital.⁴⁴⁹ Up until Snap’s IPO, the Company had only raised money through private investments.⁴⁵⁰ Snap has received a total of nine rounds of private funding, equaling approximately \$2.65 billion,⁴⁵¹ with the most recent private funding in May 2016 totaling \$1.8 billion.⁴⁵² Snap confidentially filed for its IPO with the SEC on November 8, 2016.⁴⁵³ At that point, before the details about the “size or the timing” of the IPO were released, Bloomberg determined that the Company was looking “to raise as much as \$4 billion at a valuation of about \$25 billion to \$35 billion” from its IPO.⁴⁵⁴ This original valuation quickly fell to \$22.5 billion after the Company began releasing more information about its financials, but eventually rose back to \$25 billion the day before the IPO.⁴⁵⁵

Snap had the ability to file for its IPO secretly under the Jumpstart Our Business Startups Act (JOBS Act), which allows

⁴⁴⁶ *Snap Inc.*, *supra* note 15.

⁴⁴⁷ *See* Crowe, *supra* note 1.

⁴⁴⁸ Biz Carson, *Snapchat is Now Called Snap Inc. and Will Sell Its Spectacles for \$129*, BUS. INSIDER (Sept. 23, 2016), <http://www.businessinsider.com/snapchat-rebrands-as-snap-inc-spectacles-will-cost-129-2016-9> [<http://perma.cc/GS6F-B9RN>].

⁴⁴⁹ CHARLES S. TAPIERO, ENGINEERING RISK AND FINANCE 46 (2013) (e-book).

⁴⁵⁰ *Cf.* *Snap Inc.*, *supra* note 15.

⁴⁵¹ One June 2015 investment is of an “undisclosed amount.” *Id.*

⁴⁵² *Id.*

⁴⁵³ Jain, *supra* note 3.

⁴⁵⁴ Alex Barinka & Sarah Frier, *Snapchat Files Confidentially for IPO*, BLOOMBERG (Nov. 15, 2016), <https://www.bloomberg.com/news/articles/2016-11-15/snapchat-said-to-file-confidentially-for-initial-public-offering> [<http://perma.cc/4UC3-64ZN>].

⁴⁵⁵ David Trainer, *Snap IPO Looks A Lot More Like Twitter Than Facebook*, FORBES (Mar. 1, 2017), <https://www.forbes.com/sites/greatspeculations/2017/03/01/snap-looking-a-lot-more-like-twitter-than-facebook-before-ipo/#1c7c241770b3> [<http://perma.cc/HCU5-WYFE>].

“emerging growth companies” to file privately.⁴⁵⁶ The term “emerging growth companies” refers to an issuer of stock that produces less than \$1 billion in annual gross revenue.⁴⁵⁷ The JOBS Act “facilitate[s] access to the capital markets” by “lessening regulatory burdens of traditional IPOs.”⁴⁵⁸ The JOBS Act specifically allows smaller companies to discuss company details and address any problems with the SEC out of the “public eye” before publicly filing.⁴⁵⁹ However, eventually, the SEC requires these emerging growth companies to register publicly with the SEC at least fifteen days before a planned roadshow.⁴⁶⁰

3. Snap’s S-1 Registration and Prospectus Filings

Snap filed the much-anticipated registration (i.e., its S-1 filing) with the SEC on February 2, 2017 for its IPO.⁴⁶¹ Among many other details, the filing describes Snap’s annual sales in 2015 and 2016 and the number of active daily users of Snapchat.⁴⁶² Snap claims annual

⁴⁵⁶ Jumpstart Our Business Startups Act of 2012, § 106(e), 15 U.S.C. § 77f(e) (1) (2012). Emerging growth companies benefit from filing privately with the SEC before public registration by allowing the “companies to keep sensitive financial information away from rivals before an I.P.O.” and allowing the companies to “test the waters” and make necessary revisions for the SEC before actually deciding to proceed with the IPO. David Gelles & Michael J. De la Merced, *The New Normal for Tech Companies and Others: The Stealth I.P.O.*, N.Y. TIMES: DEALBOOK (Feb. 9, 2014, 8:58 PM), <https://dealbook.nytimes.com/2014/02/09/the-new-normal-for-tech-companies-and-others-the-stealth-i-p-o/> [<http://perma.cc/VPW2-23DT>].

⁴⁵⁷ § 77b(a)(19).

⁴⁵⁸ ELGA A. GOODMAN ET AL., NEW JERSEY PRACTICE BUSINESS LAW DESKBOOK, § 30:3 (2016–2017 ed. 2016). The JOBS Act also makes IPOs more accessible to emerging companies by allowing “increased communication with qualified institutional buyers” during the process. Anna T Pinedo & James R Tanenbaum, *Welcome to America Again*, 31 INT’L FIN. L. REV. 56, 56 (2012).

⁴⁵⁹ Barinka & Frier, *supra* note 28.

⁴⁶⁰ § 77f(e)(1) (2012). A roadshow refers to an issuing company’s management making presentations to potential investors on the new securities being offered by the issuer. 17 C.F.R. § 230.433(h)(4) (2016).

⁴⁶¹ Snap Inc., Registration Statement (Form S-1) (Feb. 2, 2017) [hereinafter Registration], <https://www.sec.gov/Archives/edgar/data/1564408/000119312517029199/d270216ds1.htm> [<http://perma.cc/R3BR-GNU7>].

⁴⁶² *Id.* at 10–12.

revenue of \$404.48 million in 2016, an increase from the \$58.66 million in 2015, and approximately 158 million daily active users in 2016.⁴⁶³ Snap's average revenue per user for the three-month period ending December 31, 2016 was \$1.05 per user.⁴⁶⁴ Even though Snap disclosed large annual revenue, the Company is still burdened by growing losses—specifically, \$372.89 million in 2015 and \$514.64 million in 2016.⁴⁶⁵

Snap's filing also illustrates the different classes of its stock—Class A common stock are not entitled to voting rights, but “Class B common stock are entitled to one vote per share” while “Class C common stock are entitled to ten votes per share.”⁴⁶⁶ The two founders, Spiegel and Murphy, are the only individuals that own Class C stock.⁴⁶⁷ On March 3, 2017, the Company filed its prospectus with the SEC, which indicated the Company was offering 145 million shares of Class A common stock during the IPO at \$17 per share.⁴⁶⁸ This announcement came after much uncertainty circulated around the price of this Class A common stock. The Company originally expected to offer the shares at a price between \$14 and \$16 per share.⁴⁶⁹ However, as of February 24, 2017, demand for the stock was above \$10 billion, ultimately resulting in at least a \$6.8 billion oversubscription of the stock.⁴⁷⁰ This

⁴⁶³ *Id.* at 10, 12.

⁴⁶⁴ *Id.* at 4.

⁴⁶⁵ *Id.* at 10; *see* 15 U.S.C. § 77g(a)(2)(A) (2012) (requiring that “Emerging Growth Companies” only produce two years of financial statements on their registration documents).

⁴⁶⁶ *Id.* at 4.

⁴⁶⁷ *Id.*

⁴⁶⁸ Snap Inc., Prospectus (Form 424B4) 8 (Mar. 3, 2017) [hereinafter Prospectus], <https://www.sec.gov/Archives/edgar/data/1564408/000119312517068848/d270216d424b4.htm> [<http://perma.cc/7XNP-JLNV>].

⁴⁶⁹ Snap Inc., Amendment No. 2 to Registration Statement (Form S-1) Cover Page (Feb. 16, 2017) [hereinafter Second Amendment], <https://www.sec.gov/Archives/edgar/data/1564408/000119312517045870/d270216ds1a.htm> [<http://perma.cc/QAN9-LTKV>]; Snap Inc., Amendment No. 3 to Registration Statement (Form S-1) Cover Page (Feb. 27, 2017) [hereinafter Third Amendment], <https://www.sec.gov/Archives/edgar/data/1564408/000119312517056992/d270216ds1a.htm> [<http://perma.cc/U3LE-HTFT>].

⁴⁷⁰ Rachael Levy, *Snap's IPO is Oversubscribed by \$7 Billion*, BUS. INSIDER (Feb. 24, 2017), <http://www.businessinsider.com/theres-more-than-10-billion-in-demand-for-snaps-hot-ipo-2017-2> [<http://perma.cc/GG2R-RUV9>].

oversubscription meant that Snap was “three times covered” for the IPO and was expected to raise the price of the offering,⁴⁷¹ which the Company did in its prospectus to \$17 per share.⁴⁷²

Snap estimated that upon completion of the IPO, the Company would have a total of 661,834,416 outstanding shares of Class A common stock.⁴⁷³ The Company further expected that 50 million shares of Class A common stock purchased by certain investors would be subject to lock-up agreements for one year after the date of the prospectus.⁴⁷⁴ Further, underwriters reserved up to 7 percent of the Class A common stock at the offering price to sell to certain investors.⁴⁷⁵ Overall, Snap estimated that it would raise approximately \$2.4 billion from the sale of this Class A common stock.⁴⁷⁶

Despite the skepticism surrounding this investment, the actual IPO fared better than the prospectus estimated.⁴⁷⁷ The Company’s stock opened at \$24 per share, which was an increase of 41.2 percent from the stock’s offering at \$17 per share.⁴⁷⁸ Throughout the day, approximately 200 million shares were exchanged and the price per share rose to \$26.05 at one point.⁴⁷⁹ This higher-than-expected opening price at \$24 per share gave the Company a \$33 billion market capitalization.⁴⁸⁰

Still, shortly after the IPO, some investors believed this stock was over-valued by approximately 50 percent.⁴⁸¹ Since this initial stock soar, the Company’s shares declined by 10 percent on March 6 and by 9.8 percent on March 7 eventually closing below its opening price on March 9.⁴⁸² On March 20, 2017, Snap received its first “buy”

⁴⁷¹ *Id.*

⁴⁷² Prospectus, *supra* note 42, at 8.

⁴⁷³ *Id.*

⁴⁷⁴ *Id.* at 43.

⁴⁷⁵ *Id.* at 179.

⁴⁷⁶ *Id.* at 8.

⁴⁷⁷ Balakrishnan, *supra* note 2.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ See Lewis Krauskopf, *Snap’s Stock Price Hard to Justify: Barron’s*, REUTERS (Mar. 6, 2017), <http://www.reuters.com/article/us-snap-barrons-idUSKBN16C0V0> [<http://perma.cc/TW2A-FZTE>].

⁴⁸² Fred Imbert, *Another Big Chunk of Snapchat’s Share Price Just Disappeared; Stock Closes 9.8% Lower*, CNBC (Mar. 7, 2017), <http://www.cnbc.com/2017/03/07/snaps-stock-falls-again-as-ipo-excitement-fades.html>

rating as stock prices rose.⁴⁸³ However, the stock fell again by 6.8 percent on March 28, 2017 to close at \$22.21 per share after Facebook introduced new “Snapchat-copycat features” such as posting photos directly to the app with one tap and the addition of filters.⁴⁸⁴ Many investors remain skeptical about the Company’s potential and remain unimpressed.⁴⁸⁵

Before the release of Snap’s registration with the SEC, U.S. exchanges, such as Nasdaq and the New York Stock Exchange (NYSE) (collectively, the Exchanges), looked to attract Snap and convince the startup to debut its shares on one of their platforms.⁴⁸⁶ Nasdaq “hired a helicopter to film Manhattan’s skyline” using Snap’s new hardware, Spectacles, while NYSE tweeted a video using the same hardware and hung a large Snapchat logo outside of the NYSE building.⁴⁸⁷ After the Exchanges courted the growing tech company, Snap eventually made the decision to list on the NYSE under the ticker, SNAP.⁴⁸⁸

[<http://perma.cc/A2MA-AUE6>].

⁴⁸³ Berkeley Lovelace, Jr., *Snapchat Snags its First ‘Buy’ Rating; Shares Rise*, CNBC (Mar. 20, 2017), <http://www.cnbc.com/2017/03/20/wall-street-grants-snapchat-its-first-buy-rating-shares-rise.html> [<http://perma.cc/S3GT-NVKW>].

⁴⁸⁴ Associated Press, *Facebook Adds More Snapchat-Like Features, And Snap Stock Falls*, L.A. TIMES (Mar. 28, 2017), <http://www.latimes.com/business/technology/la-fi-tn-facebook-snapchat-20170328-story.html> [<http://perma.cc/S8XQ-6PPL>].

⁴⁸⁵ Cf. Chris Tyler, *Snap Inc (SNAP) Stock is Finally Falling Apart*, INVESTORPLACE (Apr. 24, 2017), <http://investorplace.com/2017/04/snap-inc-snap-stock-is-finally-falling-apart/view-all/#.WP-aYVLMwb0> [<http://perma.cc/R4MS-6SJC>] (“Millennials, analysts and advertisers have been giving Snap Inc (NYSE:SNAP) some love, but investors aren’t buying it – and neither should you.”).

⁴⁸⁶ See Lauren Hirsch et al., *U.S. Exchanges Rent Helicopter, Drape Banner in Pursuit of Snapchat IPO*, REUTERS (Jan. 19, 2017), <http://www.reuters.com/article/us-snapchat-ipo-exchanges-idUSKBN1530KO> [<http://perma.cc/C85S-J72A>] (“Experts say the contest is less about the fees exchanges generate from such listings than it is about bragging rights.”).

⁴⁸⁷ *Id.*

⁴⁸⁸ Registration, *supra* note 35; Hayley Tsukayama, *Snapchat Files for Its Initial Public Offering: Here Are the 10 Most Interesting Things We’ve Learned So Far*, WASH. POST (Feb. 3, 2017), https://www.washingtonpost.com/news/the-switch/wp/2017/02/03/snapchat-files-for-its-initial-public-offering-here-are-the-10-most-interesting-things-weve-learned-so-far/?utm_term=.82c832897987 [<http://perma.cc/W9KD-RJXY>].

Before the announcement of Snap's IPO, the amount of IPOs was down in 2016 with fewer than 100 offerings.⁴⁸⁹ Typically, the market would see about 50 to 100 percent more IPOs in a year than it did in 2016.⁴⁹⁰ Some commentators go further, proclaiming "2016 proved to be the slowest IPO year since the Great Recession."⁴⁹¹ However, some are optimistic about that number of IPOs increasing in 2017.⁴⁹² Snap's IPO may pave the way and start the upward trend for other "unicorns"⁴⁹³ to go public in 2017 such as Pinterest and Spotify.⁴⁹⁴ Others are a bit more skeptical, stating that the market will not suddenly see a "slew of tech IPOs" since many unicorns can still raise sufficient private funding and these public companies must follow-up the IPO with "solid performances."⁴⁹⁵ Either way, Snap's

⁴⁸⁹ Portia Crowe, *JPMorgan's Head IPO Banker on What to Expect in 2017*, BUS. INSIDER (Feb. 13, 2017), <http://www.businessinsider.com/jpmorgan-liz-myers-on-ipos-in-2017-2017-2> [<http://perma.cc/4R46-P2KC>].

⁴⁹⁰ *Id.*

⁴⁹¹ Brian Deagon, *Will Snapchat IPO Set Stage For Stampede of Unicorns?*, INV. BUS. DAILY (Jan. 6, 2017), <http://www.investors.com/news/technology/will-snapchat-ipo-set-stage-for-stampede-of-unicorns/> [<http://perma.cc/DQ92-NMP6>].

⁴⁹² See, e.g., Crowe, *supra* note 63 ("JPMorgan's head of global equity capital markets, Liz Myers, can name a bunch of reasons 2017 could see a strong rebound in initial-public-offering activity around the world."); Deagon, *supra* note 65 ("If the postelection rally continues, more companies likely will take the plunge, and more are likely to have successful IPOs.").

⁴⁹³ Deagon, *supra* note 65 ("Snapchat is among the biggest unicorns, a name given to privately held companies valued at \$1 billion or more.").

⁴⁹⁴ *Id.*; see Balakrishnan, *supra* note 2 ("The . . . company, which serves augmented reality and cinematic advertisements to its young adult audience, could be a bellwether as other start-up giants, such as Airbnb and Uber, mull a public offering."); Therese Poletti, *Tech IPOs Are Back Even as Investors Unload Snap*, MARKETWATCH (Mar. 20, 2017), <http://www.marketwatch.com/story/tech-ipos-are-back-even-as-investors-unload-snap-2017-03-17> [<http://perma.cc/3LJQ-UEGZ>] ("The successful first trading day on Friday of MuleSoft Inc., following on the heels of Snap Inc.'s massive initial public offering earlier this month, has returned momentum to the U.S. tech IPO market.").

⁴⁹⁵ See, e.g., Tom Zanki, *4 Takeaways From Snap's Blockbuster IPO*, LAW360 (Mar. 2, 2017, 7:52 PM), <https://www.law360.com/articles/897456/4-takeaways-from-snap-s-blockbuster-ipo> [<http://perma.cc/JY6G-MDQF>] ("Alex Castelli, partner at accounting firm CohnReznick and co-leader of its national liquidity and capital formation advisory group, said Snap's strong showing 'creates a lot of positives for the market,' but he does not expect that 'we are

IPO proved that “investors are hungry” for a piece of technology companies.⁴⁹⁶

B. Pending Lawsuit Against Snap

1. Background of Former Employee

Former Snap employee, Anthony Pompliano, filed a Complaint against Snap on January 4, 2017 that may have impacted Snap investors before the IPO and could impact future investors.⁴⁹⁷ Pompliano previously worked at Facebook “where he led the Growth & Engagement initiatives for Facebook Pages.”⁴⁹⁸ According to Pompliano, Snap “aggressively” recruited him away from Facebook by convincing him that Snap wanted to implement a growth strategy at the Company and that they wanted him to lead an approximately forty-person “growth team.”⁴⁹⁹ However, according to Pompliano, after joining Snap on August 31, 2015, the Company was at a very different stage than he expected.⁵⁰⁰

The Complaint alleges that Snap hired Pompliano to gain access to Facebook’s confidential information, encouraging Pompliano to break his confidentiality agreement with Facebook.⁵⁰¹ Further, the Complaint alleges that Snap “fraudulently induced” Pompliano to leave Facebook by providing him with false user and growth metrics.⁵⁰² The Complaint even goes so far as to allege that Snap executives viewed Pompliano as an “impediment” to the upcoming IPO because Pompliano “refused to turn a turn [sic] a blind eye to Snapchat’s misrepresentations” that the Company was presenting to investors.⁵⁰³ Snap then fired Pompliano after three weeks of employment with

suddenly going to see a slew of tech IPOs.”).

⁴⁹⁶ *Id.*

⁴⁹⁷ See generally Complaint, *supra* note 9; Cara Mannion, *Snapchat Lying to Investors to Boost IPO, Ex-Worker Says*, LAW360 (Jan. 5, 2017, 5:33 PM), <https://www.law360.com/articles/877688/snapchat-lying-to-investors-to-boost-ipo-ex-worker-says> [http://perma.cc/RP2M-6FBP].

⁴⁹⁸ Complaint, *supra* note 9, at ¶ 23.

⁴⁹⁹ *Id.* at ¶¶ 32, 35.

⁵⁰⁰ See *id.* at ¶ 39 (“Behind the curtain was a very different company than the mature organization committed to building a growth team that he was sold by Snapchat’s senior executives during the recruiting process.”).

⁵⁰¹ *Id.* at ¶ 7.

⁵⁰² *Id.* at ¶ 3.

⁵⁰³ *Id.* at ¶ 6.

allegedly no negative comments in his employee file.⁵⁰⁴ However, Snap claimed that Pompliano was fired for being “incompetent.”⁵⁰⁵ Pompliano previously initiated an arbitration proceeding against Snap seeking punitive damages and lost wages.⁵⁰⁶ Then, he filed the present Complaint asking for an injunction that prevents Snap from spreading misrepresentations about Pompliano and harming his reputation until arbitration is complete.⁵⁰⁷ Snap has since denied the bases of the claim, stating the allegations are “false from top to bottom.”⁵⁰⁸

2. Alleged User Metrics Misrepresentations

Pompliano claims he was “terminated because he refused to participate in a scheme to deceive the public and artificially inflate Snapchat’s valuation in anticipation of its IPO.”⁵⁰⁹ Specifically, the Complaint alleges that Snap misrepresented Snap’s growth to Pompliano during his employment interviews and to investors “in an effort to inflate Snapchat’s valuation” right before the IPO.⁵¹⁰ Snap reported in June 2016 that 150 million people used the mobile app daily, but Pompliano claims that Snap does not have the growth and engagement team in place to determine such data.⁵¹¹ Specifically, Pompliano states that Snap told advertisers and investors that the app reached 100 million daily active users in 2015, but the real number was closer to 95 million.⁵¹² Additionally, Snap’s statistic regarding the amount of people who begin setting up their Snapchat user accounts and actually complete registration is overstated by more than 47 percent.⁵¹³ Further, Snap’s stated user engagement rate is “unusually

⁵⁰⁴ *Id.* at ¶ 8.

⁵⁰⁵ *Id.* at ¶ 71.

⁵⁰⁶ *Id.* at ¶ 10.

⁵⁰⁷ *See id.* at ¶ 11.

⁵⁰⁸ Paresh Dave, *Snapchat Maker Strikes Back at Ex-Worker Who Alleged Fraud*, L.A. TIMES (Jan. 19, 2017), <http://www.latimes.com/business/technology/la-fi-tn-snapchat-lawsuit-20170118-story.html> [<http://perma.cc/CDZ4-9HA7>].

⁵⁰⁹ Complaint, *supra* note 9, at ¶ 71.

⁵¹⁰ *Id.* at ¶ 1.

⁵¹¹ *Id.* at ¶ 27; Mannion, *supra* note 71.

⁵¹² Jen Wiczner, *What the Snapchat Lawsuit Means for Snap Stock Investors*, FORTUNE (Apr. 13, 2017), <http://fortune.com/2017/04/13/snapchat-snap-stock-lawsuit-anthony-pompliano/> [<http://perma.cc/8YZJ-YD3S>].

⁵¹³ *See id.*

high,” and that rate allegedly “could actually be just average.”⁵¹⁴ Investors use these statistics in valuing a company, which may have prompted Snap’s high valuation before the IPO.⁵¹⁵

Key Performance Indicators (KPIs), such as the statistics mentioned in Pompliano’s Complaint, are extremely important for showing off company success to investors.⁵¹⁶ KPIs include: “Daily Active Users [DAU]; Monthly Active Users [MAU]; [and] User Retention Rate.”⁵¹⁷ The MAU count is “the most important number in tech” because it helps investors determine the popularity of the product as well as the value of the company.⁵¹⁸ Companies such as Facebook, Instagram, and Twitter use MAU to gauge their user metrics, while Snap only uses DAU.⁵¹⁹ Trying to appeal to potential investors, Snap revealed in its filing that it has approximately 158 million DAUs.⁵²⁰ Snap defines the DAU as a user registered with Snapchat that opens the app at least one time per day.⁵²¹ A Snap spokeswoman stated “monthly figures ‘are no longer relevant.’”⁵²² However, since Snap’s filings to the SEC do not include its MAU, Snap investors may be concerned with how to properly evaluate the Company and treat this non-disclosure.⁵²³

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ Complaint, *supra* note 9, at ¶ 25 (“KPIs are used to measure an app’s growth, rate of user retention, depth of user engagement, and to help create strategies for improving such core metrics, which is critical to success.”).

⁵¹⁷ *Id.* at ¶ 24.

⁵¹⁸ Justin Kerby, *Here’s How Many People Are on Facebook, Instagram, Twitter and Other Big Social Networks*, ADWEEK (Apr. 4, 2016), <http://www.adweek.com/digital/heres-how-many-people-are-on-facebook-instagram-twitter-other-big-social-networks/> [<http://perma.cc/FX94-AW93>].

⁵¹⁹ *Id.*

⁵²⁰ Registration, *supra* note 35, at 10, 12; *see* Prospectus, *supra* note 42, at 63.

⁵²¹ Registration, *supra* note 35, at 21.

⁵²² Lindsay Bennett, *Snapchat Reveals Australian Daily Users For First Time*, ADNEWS (Nov. 25, 2016), <http://www.adnews.com.au/news/snapchat-reveals-australian-daily-users-for-first-time> [<http://perma.cc/6SUX-WYNP>].

⁵²³ *See* Richard Teitelbaum, *Snapchat Parent’s IPO Filing Omits Monthly Data*, WALL ST. J. (Feb. 8, 2017), <https://www.wsj.com/articles/snapchat-parents-ipo-filing-omits-monthly-data-1486580926> [<http://perma.cc/Y4DM-L7S3>] (“However, the filing doesn’t include monthly active user figures, which some technology investors say are key to determining whether the app is likely to continue registering new users. The omission of these figures raises a warning flag for some investors.”).

Snap claims that the company uses internal analytics to supply these user metrics, while in the past the company relied on third-party providers.⁵²⁴ Snap's third-party provider, used by Snap before June 2015, defined a DAU as a user of Snapchat that received a notification from the app or opened the app at least once a day.⁵²⁵ Now, however, Snap only counts a DAU as a user that opens the app and then only counts that user once a day.⁵²⁶ Compared to the new method of determining user metrics, Snap estimates that the old third-party provider metrics were inflated by 4.8 percent.⁵²⁷

Pompliano alleges that Snap was involved in an "institutional pandemic" of misrepresenting user and growth metrics in order to inflate the Company's valuation before its IPO.⁵²⁸ Pompliano went on to allege that Spiegel never really cared about user engagement metrics in the past until Spiegel realized the IPO would place Snap under scrutiny of public investors.⁵²⁹ Snap does not deny that the user metrics were inflated under the previous calculations used by third-party providers, but Snap argues that the inflations are not as drastic as Pompliano claims.⁵³⁰

C. The IPO and Its Aftermath

1. Impact of Misrepresentations in Lawsuit

The alleged misrepresentations in Pompliano's lawsuit could have impacted investors right before the IPO and could potentially affect future investors.⁵³¹ Investors may have used the statistics that

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ Complaint, *supra* note 9, at ¶¶ 1, 2.

⁵²⁹ See *id.* at ¶¶ 27, 29 ("Snapchat, however, never invested in building a user growth and engagement team to employ such sophisticated data analytics methods, because Snapchat CEO Evan Spiegel simply did not care about user engagement metrics.").

⁵³⁰ Wiczner, *supra* note 86.

⁵³¹ Hilary Kramer, *3 Reasons to Stay Away From the Snapchat IPO*, INVESTORPLACE (Feb. 2, 2017), <http://investorplace.com/ipo-playbook/3-reasons-to-stay-away-from-the-snapchat-ipo/#.WKTC9xiZMb0> [<http://perma.cc/Q27A-QMKC>] ("At the very least, this could add some psychological baggage for investors already skeptical about tech IPOs . . ."); Mannion, *supra* note 71.

Pompliano alleges are overstated to value the Company.⁵³² Sections 11 and 12 of the Securities Act of 1933 impose liability on any issuer of security for a “material misrepresentation” in its prospectus,⁵³³ thus giving rise to potential civil suits.⁵³⁴

Facebook’s IPO “flop” demonstrates that Snap could face potential suits from investors.⁵³⁵ Facebook had amended its prospectus last minute to reflect the ongoing challenges that the tech company faced in mobile ads,⁵³⁶ and in calls to several investors, portrayed that this challenge could ultimately cut annual revenue by 3–3.5 percent.⁵³⁷ While Facebook was not required to disclose these projected numbers at the time in its IPO registration or amend the prospectus,⁵³⁸ once Facebook’s stock opened on May 18, 2012 at \$38 per share, the price did not pop up as expected, but instead hovered around the \$38 price and eventually closed at \$38.23.⁵³⁹ Facebook’s stock price finally moved above the IPO price a year later⁵⁴⁰ and is now trading at around \$146 per share.⁵⁴¹ After Facebook’s IPO incident, the tech giant faced class actions and other lawsuits against the directors and officers alleging

⁵³² See Wieczner, *supra* note 86.

⁵³³ 15 U.S.C. § 77k(a) (2012) (imposing civil liability for a registration statement that “contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading”); § 77l(a)(2) (imposing civil liability on any person who misleads investors “by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading”).

⁵³⁴ See *In re Facebook, Inc. Sec. & Derivative Litig.*, 986 F. Supp. 2d 487, 504–05 (S.D.N.Y. 2013).

⁵³⁵ *Id.* at 491–93; Safdar, *supra* note 11.

⁵³⁶ Safdar, *supra* note 11.

⁵³⁷ *Id.*

⁵³⁸ *Id.*

⁵³⁹ *Id.*; see Julianne Pepitone, *Facebook Trading Sets Record IPO Volume*, CNN MONEY (May 18, 2012), <http://money.cnn.com/2012/05/18/technology/facebook-ipo-trading/> [<http://perma.cc/F2AR-YGBS>].

⁵⁴⁰ Maureen Farrell & Corrie Driebusch, *Snap’s IPO Roadshow Message: We’re the Next Facebook, Not the Next Twitter*, WALL ST. J. (Dec. 29, 2016), <https://www.wsj.com/articles/snaps-ipo-roadshow-message-were-the-next-facebook-not-the-next-twitter-1483007406?mg=id-wsj> [<http://perma.cc/7BYQ-SPNE>].

⁵⁴¹ *Facebook, Inc. Class A Common Stock Quote & Summary Data*, NASDAQ, <http://www.nasdaq.com/symbol/fb> [<http://perma.cc/S5NK-XFFC>].

that they violated securities laws and breached their fiduciary duties.⁵⁴² Furthermore, the SEC “probed” Facebook for any wrongdoing by the company during its IPO.⁵⁴³ The SEC dropped investigations in May 2014 after the SEC reached a \$10 million settlement with Nasdaq for Nasdaq’s role in computer glitches during the IPO.⁵⁴⁴ Further, in 2016, Facebook apologized to advertisers and investors for miscalculating a user metric regarding the average duration of a video watched.⁵⁴⁵ This error may have affected advertisers’ Facebook spending budgets and perhaps benefited video companies such as YouTube and Snapchat.⁵⁴⁶

The misrepresentations alleged in Pompliano’s lawsuit could similarly cause Snap to incur legal fees and other settlement costs after its IPO.⁵⁴⁷ During Snap’s roadshow, when meeting with investors, the Company hoped to pitch Spiegel as a “visionary” who could grow the Company to the same rank as Facebook, where the shares are trading at a great deal higher than the offering price, in contrast with Twitter, where the shares are trading at approximately 36 percent below the offer price.⁵⁴⁸ Despite Snap’s efforts to differentiate itself from Twitter, after the IPO many investors still put the stock on par with Twitter due to Snap’s business model and user metrics.⁵⁴⁹ Also, during the roadshow, Snap was expected to emphasize the Company’s growth and user metrics in order to attract investors,⁵⁵⁰ which are the same numbers that Pompliano alleges are misleading and false, opening the

⁵⁴² *In re Facebook, Inc. Sec. & Derivative Litig.*, 986 F. Supp. 2d 487, 492 (S.D.N.Y. 2013) (denying Facebook’s motion to dismiss of a class action claim alleging that Facebook broke securities’ regulations); Ed Beeson, *Facebook Says SEC Won’t Bring Enforcement Action Over IPO*, LAW360 (July 25, 2014, 3:53 PM), <https://www.law360.com/articles/561224/facebook-says-sec-won-t-bring-enforcement-action-over-ipo> [http://perma.cc/AN4B-9ZT8].

⁵⁴³ Beeson, *supra* note 116.

⁵⁴⁴ *Id.*

⁵⁴⁵ John Herrman & Sapna Maheshwari, *Facebook Apologizes for Overstating Video Metrics*, N.Y. TIMES (Sept. 23, 2016), https://www.nytimes.com/2016/09/24/business/media/facebook-apologizes-for-overstating-video-metrics.html?_r=1 [http://perma.cc/DBW6-GLJQ].

⁵⁴⁶ *Id.*

⁵⁴⁷ Kramer, *supra* note 105; see Beeson, *supra* note 116.

⁵⁴⁸ Farrell & Driebusch, *supra* note 114.

⁵⁴⁹ See, e.g., Trainer, *supra* note 29; Balakrishnan, *supra* note 2.

⁵⁵⁰ Farrell & Driebusch, *supra* note 114.

door for potential future litigation against Snap.⁵⁵¹ Snap's original S-1 filing acknowledges that the "inaccuracies" and "inherent challenges in measurement" in its user metrics could damage its reputation,⁵⁵² but the Company still stands behind the statements, claiming that any discrepancies in the statistics are minor.⁵⁵³ Further, the Company stated that a "universal industry standard" does not exist when calculating these metrics and that these metrics were intended for internal use only.⁵⁵⁴

2. Other Investor Concerns

Investors were very concerned about the potential of Snap's IPO.⁵⁵⁵ Some investors were "cautious going into the IPO" due to the high cost and uncertainty of Snap's fate.⁵⁵⁶ Some investors are still concerned about the long-term prospects of the Company and consider Snap a "risky investment."⁵⁵⁷ Particularly, some investors are concerned about the increased competition with Snap after Instagram, owned by Facebook, released "Instagram Stories," a similar concept to "Snapchat Stories."⁵⁵⁸ With the release of this new, competitive

⁵⁵¹ Complaint, *supra* note 9; Kramer, *supra* note 105.

⁵⁵² Registration, *supra* note 35, at 6.

⁵⁵³ See Wieczner, *supra* note 86 ("Put aside for the moment that this musty, two-year-old allegation about a minor metrics deviation hardly measures up to Pompliano's gasping rhetoric about Snap being built on a house of cards,' Snap's lawyers wrote in a legal filing when they unsealed the complaint.").

⁵⁵⁴ *Id.*; see Michelle Castillo, *Snap CEO Evan Spiegel Allegedly Shrugged Off Claims That The Company Was Giving False Data to Investors*, CNBC (Apr. 12, 2017), <http://www.cnn.com/2017/04/12/snap-lawsuit-ceo-evan-spiegel-said-misreported-metrics-no-big-deal.html> [<http://perma.cc/ECR9-ZWFL>].

⁵⁵⁵ See, e.g., Farrell & Driebusch, *supra* note 114 ("But the story isn't necessarily an easy sell, bankers and investors say. In the expected pricing range, Snap would be valued at a far higher multiple of market capitalization to advertising revenue than other social-media companies, including Facebook and Twitter."); Taulli, *supra* note 8 (listing three major concerns that investors have before the IPO).

⁵⁵⁶ See, e.g., Farrell & Driebusch, *supra* note 114 ("I'm probably going to be cautious going into the IPO. We do own Facebook and Google, so the question is, 'is there a place at the table for Snap, or is it going to go the way of Twitter?' Because we don't want that.").

⁵⁵⁷ Trainer, *supra* note 29.

⁵⁵⁸ See Josh Constine, *Instagram Stories is Stealing Snapchat's Users*, TECHCRUNCH (Jan. 30, 2017), <https://techcrunch.com/2017/01/30/attack-of-the->

feature on Instagram, Facebook stock rose 13 percent.⁵⁵⁹ Facebook has also released “Messenger Day” on its own messenger app, which boasts the same “story” concept⁵⁶⁰ and photo filters and animations on its direct Facebook mobile app.⁵⁶¹ Since November 2016, the “average unique viewers” for each Snapchat Story has declined about 40 percent while Instagram Stories daily users reached 150 million, which could be detrimental to Snap’s future because the Company relies on Story views to attract advertisement revenue.⁵⁶² Snap’s filing emphasizes the fact that Snap generates “substantially all” of its revenue from advertising, so the failure to attract or maintain advertisers could impact its earnings.⁵⁶³

Some investors find that the growth potential of Snap is limited because of the age demographic to which the mobile app appeals.⁵⁶⁴ However, the Company made clear in its first S-1 filing that the age demographic that uses Snapchat is beneficial to their advertising revenue.⁵⁶⁵ Snap expects its advertising revenue to grow from \$652 billion in 2016 to \$767 billion in 2020, with mobile advertising being the Company’s fastest growing division due to the

clone/ [<http://perma.cc/29NP-AG96>].

⁵⁵⁹ Luke Lango, *Buy Facebook Inc (FB) Stock as It Steals Snap Inc’s (SNAP) Thunder*, INVESTORPLACE (Mar. 15, 2017), http://investorplace.com/2017/03/buy-facebook-inc-fb-stock-snap-inc-snap/#.WM_8nhiZMb1 [<http://perma.cc/Ry8A-AL69>].

⁵⁶⁰ *Id.*

⁵⁶¹ Associated Press, *supra* note 58.

⁵⁶² Constine, *supra* note 132.

⁵⁶³ Registration, *supra* note 35, at 2.

⁵⁶⁴ See Taulli, *supra* note 8 (“Consumer internet and mobile operators can quickly fizzle. For the most part, users can be fickle — especially young ones.”); Tsukayama, *supra* note 62 (“While Snapchat definitely appeals to a young audience, Snap wants investors to know that it is maturing into a serious company); Eric Jackson, *4 Questions For Snapchat To Answer During Their IPO Roadshow*, FORBES (Feb. 7, 2017), <http://www.forbes.com/sites/ericjackson/2017/02/07/4-reasons-to-be-wary-of-the-snapchat-ipo/#-145e31cd339b> [<http://perma.cc/5WAR-Y3PJ>] (voicing concern over Snapchat’s claim that this “is a new way for millennial to watch TV”).

⁵⁶⁵ See Registration, *supra* note 35, at 3 (“We believe that one of the major factors driving this growth is the shift of people’s attention from their televisions to their mobile phones. This trend is particularly pronounced among the younger demographic, where our Daily Active Users tend to be concentrated.”).

younger demographic that uses the app.⁵⁶⁶ As the Company claims, “one of the major factors driving growth is the shift of people’s attention from their televisions to their mobile phones . . . particularly pronounced among the younger demographic”⁵⁶⁷ People between ages eighteen and twenty-four represent 36 percent of Snapchat’s users, and the next largest age group of users is people between the ages of twenty-five and thirty-four at 27 percent of the DAU.⁵⁶⁸ The Company also claimed that the DAU is “quickly expanding into older demographics” because currently, users over twenty-five years old represent the majority of DAU.⁵⁶⁹

Since the IPO, investors and even the SEC have become concerned with the nature of shares offered during Snap’s IPO.⁵⁷⁰ As the prospectus stated, Snap only offered Class A common stock that has no voting rights during the IPO.⁵⁷¹ This is an “unprecedented feature” of IPO shares.⁵⁷² Private investors that owned Snap stock before the IPO are the only shareholders allowed to vote on Company matters.⁵⁷³ Investors have criticized Snap’s offering of non-voting stock as “harmful” to not only U.S. markets, but also foreign markets that might follow suit in this unequal treatment of stockholders.⁵⁷⁴

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.* at 118.

⁵⁶⁹ *Id.*

⁵⁷⁰ Zacks Equity Research, *Will Snap Inc (SNAP) be Barred from Market Indexes?*, YAHOO FIN. (Mar. 7, 2017), <http://finance.yahoo.com/news/snap-inc-snap-barred-market-155203053.html> [<http://perma.cc/2TQ8-AEAE>] (“SNAP has come under fire from several institutional investors. This group of investors isn’t happy with the company’s offering of 200 million Class A shares that carry no voting rights.”); see Eleanor Bloxham, *Snap Shouldn’t Have Been Allowed to Go Public Without Voting Rights*, FORTUNE (Mar. 3, 2017), <http://fortune.com/2017/03/03/snap-ipo-non-voting-stock/> [<http://perma.cc/8XQ6-MVR2>] (“While dual-class shares with limited voting were a race to the bottom, Bertsch says the Snap IPO with no voting shares may mean ‘we have now hit bottom.’”).

⁵⁷¹ Prospectus, *supra* note 42, at 4.

⁵⁷² Ross Kerber, *Exclusive: SEC Advisory Committee to Question Snap’s Transparency for Investors*, REUTERS (Mar. 1, 2017), <http://www.reuters.com/article/us-snap-ipo-investors-idUSKBN1685R0> [<http://perma.cc/8K29-5RWA>].

⁵⁷³ Bloxham, *supra* note 144.

⁵⁷⁴ *Id.*

Many investors are calling for Snap stock to be denied access to public Standard & Poor's and Dow Jones indices since offering of non-voting stock allows Snap to avoid certain disclosures and basically operate as a private company.⁵⁷⁵ The SEC's Investor Advisory Committee plans to review Snap's offering of non-voting shares and the potential effect on its public disclosures.⁵⁷⁶ The Committee plans to ask "[I]s this a one-off novelty pump-and-dump IPO, or is this a new trend with these unicorns?"⁵⁷⁷ The non-voting nature of this IPO caused "some governance specialists" to call for "funds to avoid the IPO"⁵⁷⁸ while Snap's shares may soon be excluded from several well-known indexes because the shares offered are non-voting.⁵⁷⁹

Finally, during the roadshow, Snap was expected to pitch that the Company, even though young, can "evolve from a messaging platform into a content and media powerhouse."⁵⁸⁰ Spiegel was apprehensive about being "overly dependent" on phone companies such as Apple and Google, with Snap relying primarily on mobile phones' camera lenses.⁵⁸¹ Snap has prominently categorized itself in its filings as a "camera company" that focuses on its camera mobile app and its most recent hardware development, Spectacles.⁵⁸² This focus and the introduction of Spectacles may be reassuring to investors about the Snap's potential growth.⁵⁸³ One commentator stated that Snap

⁵⁷⁵ *Id.*; Zacks Equity Research, *supra* note 144.

⁵⁷⁶ Bloxham, *supra* note 144; Kerber, *supra* note 146.

⁵⁷⁷ Kerber, *supra* note 146.

⁵⁷⁸ *Id.*

⁵⁷⁹ MSCI, Inc. already redacted its statement that Snap was eligible for enlistment because the "company failed to meet the eligible criteria," while S&P 500 Dow Jones said that Snap would not be "qualified for enlistment for at least 6-12 months following its IPO." Zacks Equity Research, *supra* note 144.

⁵⁸⁰ Farrell & Driebusch, *supra* note 114.

⁵⁸¹ Georgia Wells & Betsy Morris, *Snap Brings Camera Into Focus as Social Messaging Tool; Company bought a series of companies specializing in computer vision, augmented reality*, WALL ST. J. (Mar. 1, 2017), <https://www.wsj.com/articles/snap-brings-camera-into-focus-as-social-messaging-tool-1488110405?mg=id-wsj> [<http://perma.cc/9AHZ-GDB9>].

⁵⁸² Prospectus, *supra* note 42, at 63 ("Snap Inc. is a camera company. We believe that reinventing the camera represents our greatest opportunity to improve the way that people live and communicate."); Registration, *supra* note 35, at 1.

⁵⁸³ Taulli, *supra* note 8.

“appears to be a rare example of a company that can be successful in both the software and hardware worlds.”⁵⁸⁴ However, many investors are still evaluating the Company “through a media and entertainment lens,” not persuaded by the Company’s new branding ambition.⁵⁸⁵ During the roadshow, “many investors remained unconvinced” that Snap was more valuable than Facebook, but they recognized that Snap had “built momentum as this year’s biggest technology IPO and the darling of millennials.”⁵⁸⁶

D. Conclusion

The Snap IPO announcement caused a great deal of buzz in the investment community about potentially the “third-largest technology debut in history.”⁵⁸⁷ Snap’s various filings with the SEC before the IPO slowly released more information about its IPO,⁵⁸⁸ while also raising concerns for investors including increasing losses and the limited user demographic stymying potential growth.⁵⁸⁹ Also, Snap acknowledged the uncertainty facing the offering of Class A common stock during the IPO on the NYSE because “no other company has completed an initial public offering of non-voting stock on a U.S. stock exchange,” which may cause investors concern.⁵⁹⁰ Pompliano’s lawsuit came at a time of uncertainty for Snap when it was trying to appeal to investors.⁵⁹¹ The alleged misrepresentations surrounding Snap’s user

⁵⁸⁴ *Id.*

⁵⁸⁵ Wells, *supra* note 155; see Trainer, *supra* note 29 (“Despite Snap’s claims to be a camera company, the firm’s heavy reliance on advertising dollars (96% of 2016 revenue) pits it against some of the largest media/internet firms in the market.”).

⁵⁸⁶ Lauren Hirsch & Liana B. Baker, *Confident Snap brushes off concerns on second day of IPO roadshow*, REUTERS (Feb. 21, 2017), <http://www.reuters.com/article/us-snap-ipo-idUSKBN1602UM> [<http://perma.cc/7LKL-PYJP>].

⁵⁸⁷ Tsukayama, *supra* note 62.

⁵⁸⁸ *E.g.*, Second Amendment, *supra* note 42, at 8; Third Amendment, *supra* note 42, at 168.

⁵⁸⁹ Tsukayama, *supra* note 62.

⁵⁹⁰ Registration, *supra* note 35, at 5 (“We cannot predict whether this structure and the concentrated control it affords Mr. Spiegel and Mr. Murphy will result in a lower trading price or greater fluctuations in the trading price of our Class A common stock . . .”).

⁵⁹¹ See Kramer, *supra* note 105 (“At the very least, this could add some psychological baggage for investors already skeptical about tech IPOs . . .”); Mannion, *supra* note 71.

and growth metrics may cause more hesitation among investors than the uncertainties that already exist and give rise to potential legal issues for the Company.⁵⁹²

Emily M. Henderson⁵⁹³

⁵⁹² Kramer, *supra* note 105.

⁵⁹³ Student, Boston University School of Law (J.D. 2018).