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The Sum of Its Parts: The Lawyer-Client Relationship in Initial Public Offerings

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THE SUM OF ITS PARTS: THE LAWYER-CLIENT RELATIONSHIP IN INITIAL PUBLIC OFFERINGS

*Jeremy R. McClane**

This Article examines the impact of the quality of a lawyer's working relationship with his or her client on one of the most important types of capital markets deal in a company's existence: its initial public offering (IPO). Drawing on data from interviews with equity capital markets lawyers at major law firms, and analyzing data from IPOs in the United States registered with the Securities and Exchange Commission between June 1996 and December 2010, this study finds a strong association between several measures of IPO performance and the familiarity between the lead underwriter and its counsel, as measured by the number of times a particular law firm serves as counsel to a managing underwriter within a relatively short time period. Performance is gauged according to a stock's opening day returns, price performance over thirty, sixty, and ninety trading days, correct price revision, litigation rates, and the speed at which deals are completed. I also analyze the relationships between the lawyers for the lead underwriter and the lawyers for the issuer. The analysis shows some benefits from familiarity, albeit generally smaller than those associated with the underwriter-lawyer relationship. In all cases, the positive effects of repeated interaction diminish the further back in time the previous collaborations occurred. To rule out selection and reverse causality, I perform a number of tests using smaller subsets of the data to remove observations that are plausibly selection driven. I also show that the relationships between familiarity and deal quality occur independently of the level of the lawyers' experience.

These findings support the conclusion that lawyers' relational skill can positively influence deal outcomes, independent even of substance and process knowledge. I hypothesize that the core advantage of repeated interaction is the formation of more effective lawyer-client team dynamics.

* Associate Professor, University of Connecticut School of Law. I am indebted for the helpful advice and input of many friends and colleagues in undertaking this project. In particular, I am grateful for advice and feedback from Bob Bordone, Stephen Burbank, Jill Fisch, Jonah Gelbach, James Kwak, Patricia McCoy, Peter Siegelman, Joseph Singer, Michael Sinkinson, Tobias Barrington Wolff, and workshop participants at the University of Connecticut School of Law, Cardozo School of Law, and the University of Richmond School of Law. All errors are my own.

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INTRODUCTION

To what extent does familiarity among lawyers, and between lawyers and their clients, impact the outcome of a deal, even independently of the lawyers' expertise? The question is significant given that clients frequently choose their counsel based, at least in part, on relationships and past experiences with counsel.¹ The question is also important as part of the ongoing discussion of what value lawyers add for clients generally.² In a transactional setting, as in many others, lawyers do not perform their work in isolation, but in concert with clients and other parties who shepherd transactions to completion.³ The output of a transaction is a collective work product, and therefore, an inquiry of what value lawyers add cannot be disentangled from an inquiry of what value can be created through effective working relationships amongst lawyers and clients.⁴ And while many would agree that there are intangible benefits from familiarity, it is not obvious that lawyers' relationships with clients or other counsel would add any quantifiable value to the handling of a matter. Indeed, familiarity might just as easily destroy value if it causes lawyers to take a client relationship for granted, makes a law firm difficult to fire because of interpersonal concerns, or interferes with counsel's ability to make objective judgments about the client's issues.

This Article reports the initial findings of a research program to study the working relationships between lawyers and their clients, as well as lawyers and their opposing counsel, in the transactional setting. The study focuses on a particular type of transaction—the initial public offering (IPO) of a company's stock—and draws upon data from interviews with equity capital markets practitioners who work on such deals, as well as publicly available data on deal performance.

The results provide evidence that the quality of the working relationship between a lawyer and his or her client, as well as relationships between a lawyer and the counsel on the other side of the transaction, have a significant impact on deal performance in the context of IPOs. The study adds to the literature about the nature of lawyers' relationships with their

1. See, e.g., John C. Coates et al., *Hiring Team, Firms and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market*, 36 LAW & SOC. INQUIRY 999, 1028–30 (2011) (finding that in-house legal counsel rely on relationships and prior experience with law firms when selecting counsel).

2. For one of the more famous articulations of, and answers to, that question, see Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239 (1984).

3. See, e.g., Manuel A. Utset, *Producing Information: Initial Public Offerings, Production Costs, and the Producing Lawyer*, 74 OR. L. REV. 275, 285–86 (1995) (describing a theory of IPO transactions in which lawyers act as one part of a larger endeavor by bankers, accountants, and other parties to produce information).

4. See Jon R. Katzenbach & Douglas K. Smith, *The Discipline of Teams*, HARV. BUS. REV., Mar.–Apr. 1993, at 111, 112 (describing team outputs as “a collective work-product reflect[ing] the joint, real contribution of team members”).

clients⁵ and provides quantitative evidence of the benefits that a good working relationship can yield in a transactional setting.

To provide this evidence, I analyze the impact of repeated collaborations between managing underwriters and the various legal counsel they employ in the IPO process, as a proxy of better working relationships. I also analyze the impact of repeated interactions between different sets of counsel on IPO transactions within a relatively short period. I find a strong association between the number of times a particular law firm and bank work together within the preceding one, two, and three years and better deal outcomes, as gauged by a stock's opening day returns and price performance over thirty, sixty, and ninety trading days, as well as the time to completion of each deal. The impact on stock performance decreases the further back in time successive lawyer-client interactions go. To rule out selection, I perform an analysis using smaller samples of only the most prestigious and experienced banks and perform other tests on subsets of the data that exclude observations that could plausibly be the product of selection. I also show that frequent interaction between lawyers and their clients is associated with deals that are more accurately priced (as indicated by an increasing probability of correct upward price revision for each prior representation) and completed more quickly (as indicated by increasingly faster deal completion from the filing date of the preliminary prospectus for each prior representation). In addition, I show that relational effects as proxied by repeated interactions impact deal outcomes independently of the experience of the lawyers involved.

These findings provide evidence that lawyers' familiarity and relational skill can positively influence deal outcomes, independent even of their level of experience with regard to substantive legal expertise. I hypothesize that the core advantage of repeated interaction is the generation of trust and familiarity, leading to more effective lawyer-client team dynamics. That explanation is consistent with research on teams indicating that repeated interaction among team members fosters lower error rates and better team outputs,⁶ as well as the accounts of practicing lawyers gleaned from interviews. The basic conclusion to which the literature points is that frequent collaboration is a product of frequent interaction, and groups who collaborate form better teams. Better teamwork in turn produces overall better performance in the negotiation of capital markets transactions, leading to better information product, more efficient allocation of marketing

5. See, e.g., Coates et al., *supra* note 1, at 999–1000 (reporting the results of a survey of corporate in-house counsel finding that large companies keep a stable of preferred law firms to provide services; that relationships are important to selection of counsel; and that clients focus on teams and departments, as well as entire firms and individuals, in choosing firms); David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 FORDHAM L. REV. 2067, 2070 (2010) (arguing that the relationship between corporate counsel and corporate clients resembles a strategic alliance or partnership more than an agency relationship).

6. See J. Richard Hackman, *Why Teams Don't Work*, in THEORY AND RESEARCH ON SMALL GROUPS 245, 250 (R. Scott Tindale et al. eds., 1998) (discussing research on teams indicating that repeated team interactions lead to lower rates of error, among other things).

efforts, and ultimately better stock performance. The broader implication of this conclusion is that the model of lawyer-client relationship in transactions should incorporate a consideration of the team dynamics involved as well as more traditional principal and agent roles.

This research brings a previously unexplored perspective to the study of securities law and transactional lawyering. To date, despite a large body of research on IPO transactions⁷ and the role of lawyers in deal making,⁸ no studies have sought to investigate the impact of collaboration on IPO deals. Scholarship in the past several decades has supported the idea that cooperation among lawyers would be beneficial to both clients and society as a whole, and much research has focused on finding ways to foster it in the legal profession.⁹ However, these studies have not focused on the quality of working relationships between the various parties involved in a group production process like an IPO.¹⁰

Because my goal is to explore individuals' interactions, and by extension the familiarity among the lawyers and bankers conducting deals, I limit the time frames to the one year, two years, and three years preceding each deal. I gather data from interviews with professionals in law firms, investment banks, and institutional investment firms to understand their perceptions of the impact of familiarity and to supplement the statistical analysis by unpacking the causal mechanisms and meanings that the numbers do not reveal. I examine a number of outcome-related variables for which data is available, including price performance, informational completeness (evidenced by disclosure), probability of securities litigation, length of time from the initiation of the deal to the offering date, and decimal versus

7. See, e.g., B. Espen Eckbo et al., *Security Offerings*, in HANDBOOK OF CORPORATE FINANCE: EMPIRICAL CORPORATE FINANCE 275–355 (B. Espen Eckbo ed., 2007) (reviewing the voluminous empirical finance literature on IPOs).

8. See, e.g., Ronald J. Gilson, *Lawyers As Transaction Cost Engineers*, in THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW 508–14 (Peter Newman ed., 1998); Gilson, *supra* note 2, at 240–44; Ronald J. Gilson & Robert H. Mnookin, *Foreword: Business Lawyers and Value Creation for Clients*, 74 OR. L. REV. 1, 2–6 (1995)

9. See, e.g., Rachel Croson & Robert H. Mnookin, *Does Disputing Through Agents Enhance Cooperation? Experimental Evidence*, 26 J. LEGAL STUD. 331, 331–33 (1997) (examining experimentally the impact of lawyer reputational concerns in improving cooperation); Ronald J. Gilson & Robert H. Mnookin, *Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation*, 94 COLUM. L. REV. 509, 550 (1994); see also James K.L. Lawrence, *Collaborative Lawyering: A New Development in Conflict Resolution*, 17 OHIO ST. J. ON DISP. RESOL. 431, 431–35 (2002) (discussing the professionalization of collaborative lawyering approaches). The type of cooperation that these studies deal with is distinct from teamwork, as it is used in this Article. Cooperation, as used in other research, refers to the lawyers on opposite sides of litigation revealing information and working to come to a swift resolution for their clients. See Gilson & Mnookin, *supra*, at 550. Teamwork includes cooperation but goes beyond it, encompassing the working relationships between all parties, including the lawyers, clients, and other outside experts, largely subsuming adversarialism in pursuit of a common goal.

10. Cf. Armen A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777, 779 (1972) (defining team production as “production in which 1) several types of resources are used and 2) the product is not a sum of separable outputs of each cooperating resource . . . [and] 3) not all resources used in team production belong to one person”).

integer pricing (an indicator of a well negotiated final price). I control for a number of other factors that affect performance commonly employed in the literature on IPOs. Appendix Figure A sets out the variables analyzed and standard controls used.

The results are generally illustrated by Figure 1 below, showing the relationship present in the raw data between the IPO stock's performance on the first day of trading (the first day "bounce" if the change is positive) and the number of times in the preceding year an underwriter has collaborated with its counsel, as well as the number of times the two sets of law firms involved in the deal have encountered each other working on an IPO. As Figure 1 shows, repeated interactions bear a linear relationship to an incrementally increasing opening day bounce. The pattern remains in regression analyses controlling for factors that may also influence the first day bounce, as detailed below.

The trend in first day bounce has mixed implications but is generally a positive result for the underwriter and its counsel. A large first day price increase indicates that the stock was priced at a level lower than what the market would bear, at least in the short term. Because underwriters are typically compensated by commission (usually around 7 percent) on the gross proceeds of the offering at its initial price, the large first day bounce appears at first blush to represent money that the underwriter leaves on the table.¹¹ However, underpriced IPOs are a ubiquitous phenomenon, and it is widely believed that a moderate first day bounce indicates a successful transaction.¹² This is because a healthy first day bounce purportedly generates publicity for the offering, attracts investor interest, and allays the possibility of an undersubscribed offering.¹³ For these reasons, underwriters are reported to underprice IPOs intentionally by approximately 10 to 15 percent of the stock's expected market value once it is fully distributed.¹⁴

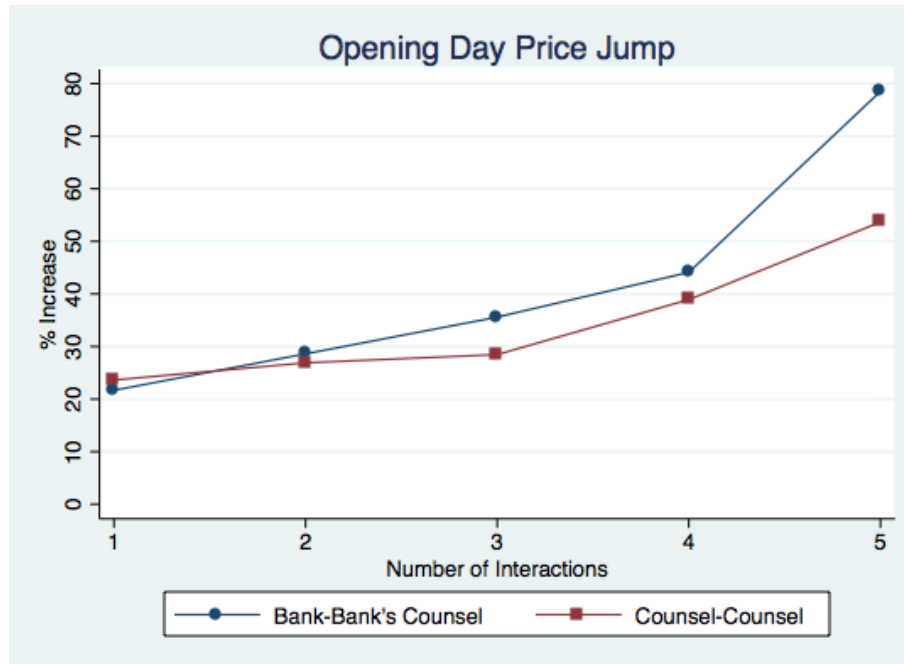
11. See Sean J. Griffith, *Spinning and Underpricing: A Legal and Economic Analysis of the Preferential Allocation of Shares in Initial Public Offerings*, 69 BROOK. L. REV. 583, 590–99 (2004).

12. See generally Randolph P. Beatty & Jay R. Ritter, *Investment Banking, Reputation, and the Underpricing of Initial Public Offerings*, 15 J. FIN. ECON. 213 (1986); Tim Loughran & Jay Ritter, *Why Has IPO Underpricing Changed Over Time?*, FIN. MGMT., Autumn 2004, at 5, 5–37; Jay R. Ritter & Ivo Welch, *A Review of IPO Activity, Pricing, and Allocations*, 57 J. FIN. 1795 (2002). See also Janet Cooper Alexander, *The Lawsuit Avoidance Theory of Why Initial Public Offerings Are Underpriced*, 41 UCLA L. REV. 17, 18–22 (1993) (describing underpricing and critiquing litigation avoidance theories for it); James C. Spindler, *IPO Underpricing, Disclosure, and Litigation Risk* (Univ. S. Cal. Law Sch. Law & Econ., Working Paper No. 94, 2009), <http://law.bepress.com/cgi/viewcontent.cgi?article=1105&context=usclwps-lewps> (analyzing explanations of underpricing) [<http://perma.cc/BDM5-3U8D>]. For a review of the finance literature discussing underpricing, see generally Alexander Ljungqvist, *IPO Underpricing*, in HANDBOOK OF CORPORATE FINANCE: EMPIRICAL CORPORATE FINANCE 375–422 (B. Espen Eckbo ed., 2007) (reviewing the literature on underpricing).

13. See Griffith, *supra* note 11, at 599–618 (explaining the potential benefits for underwriters and issuers of a significant first day price increase).

14. Underwriters frequently attempt to attain a certain level of underpricing intentionally, typically around 15 percent of the stock's expected equilibrium trading price.

Figure 1: Repeated Counsel Interactions and First Day Bounce



Moreover, even though a high first day bounce—indicating high levels of underpricing—represents a significant loss of money to the underwriter because it results in lower commissions, underwriters have been able to garner significant value from underpriced offerings through trading commissions and future services from preferred clients, who profit from buying into the underpriced offerings.¹⁵ Therefore, whether the result

The purpose of the underpricing is reported to be ensuring strong demand and mitigating the impact of hedge funds and other investors “flipping” the stock in the market. For example, sealed documents from the *eToys* litigation made public in early 2013 feature a Goldman Sachs pitchbook stating that an IPO should be priced at a “10–15% discount to the expected fully distributed trading level [which is its] anticipated ‘seasoned’ trading value 1–3 months after the offering.” Joe Nocera, *eToys vs. Goldman Sachs: The Documents*, N.Y. TIMES (Mar. 9, 2013), <http://www.nytimes.com/interactive/2013/03/10/opinion/sunday/nocera-goldman-sachs-etoys.html> (publishing sealed documents from the case *eToys Inc. ex rel. Post Effective Date Committee v. Goldman Sachs & Co.*, No. 02/601805 (N.Y. Sup. Ct. 2002)) [<http://perma.cc/5M3X-V8HP>].

15. See Ritter & Welch, *supra* note 12, at 1810 (explaining underpricing as a form of compensation to investors for past business and inducement for future business: “If underwriters are given discretion in share allocations, the discretion will not automatically be used in the best interests of the issuing firm. Underwriters might intentionally leave more money on the table than [sic] necessary, and then allocate these shares to favored buy-side clients. There is some evidence that underpriced share allocations have been used by underwriters to enrich buy-side clients in return for quid pro quos . . . to curry favor with the executives of other prospective IPO issuers in a practice known as “spinning” . . . or even to influence politicians” (citations omitted)); see also Nocera, *supra* note 14 (disclosing

shown in Figure 1 represents excessive underpricing or not, it indicates an increasingly positive deal outcome for the underwriter.

This relationship between first day price performance and repeated interaction, as well as other results, is further elaborated below. All specifications in the empirical model include controls for each industry, each year, and other confounds, and all of the results are significant at the 10 percent level, with the majority significant at the 5 percent level using robust standard errors clustered by industry, year, and lead underwriter. It should be noted that the quantitative and qualitative empirical methods used in this Article each have their limits, as will be further discussed. Nonetheless, the results survive numerous tests for robustness as well as tests to rule out selection. Moreover, the results are consistent with existing theory, other empirical literature, and practitioner understanding of IPO deals, such that they provide strong support for this Article's conclusions.

Part I of this Article describes the IPO process, generally, and the roles of the relevant parties, in particular the lawyers. This part also reviews the literature relevant to counsels' role in IPO transactions and develops testable hypotheses about the impact of repeated interactions. Part II describes the data and methodology of this study and discusses the statistical results of the hypothesis testing. Part III explains the assumptions employed in the study and the limitations of the methodology. Part III also discusses the normative and policy implications of the results.

I. IPO PRICING AND THE LAWYERS' ROLE IN TRANSACTION MANAGEMENT

Before delving into the analysis of lawyer-client interactions, it is useful to discuss the prevailing theory about how lawyers add value in transactions and what specific features of a lawyer's work in IPOs align with that theory. One of the first actions taken by both underwriters and issuing companies about to go public is to appoint legal counsel to assist in the process.¹⁶ The lawyers are essential to the transaction from the very beginning.¹⁷ Lawyers can influence the outcome of a capital markets transaction in any number of ways, but the most obvious mechanisms at

documents indicating that the underwriter profited through various kinds of reciprocal investor paybacks). As one commentator has illustrated:

eToys opened at \$78 per share, which meant that Goldman's clients were sitting on a profit of \$475 million the minute that the stock started trading on the open market. In most cases, the clients cashed out—which was smart, because eToys didn't stay at those levels for long. But if Goldman got back 40% of those profits in trading commissions, then it made \$190 million in commissions, compared to that \$11.5 million in fees.

Felix Salmon, *Where Banks Really Make Money on IPOs*, REUTERS (Mar. 11, 2013), <http://blogs.reuters.com/felix-salmon/2013/03/11/where-banks-really-make-money-on-ipos/> [<http://perma.cc/SP8V-9MN2>].

16. Carl W. Schneider et al., *Going Public: Practice, Procedure and Consequences*, 27 VILL. L. REV. 1, 6–7 (1981) (discussing the importance of the issuing company's advisors, including its counsel, when beginning an IPO).

17. *See id.*

work in IPOs are the lawyer's ability to influence the information available to the market via disclosure and the lawyer's ability to reduce transaction costs. These mechanisms were famously articulated in Professor Ronald Gilson's description of the lawyer as "transaction cost engineer."¹⁸ The "transaction cost engineer" description starts by accepting the validity of the Capital Asset Pricing Model (CAPM), which provides a theoretical basis for calculating the expected return on a given asset, given the asset's risk characteristics.¹⁹ The "transaction cost engineer" explanation of lawyering posits that lawyers contribute to better deals through services that cause financial products or transactions to conform to the assumptions underlying the CAPM.²⁰ In the context of financial instruments, one way that lawyers do this is by helping to create products whose risk and return profiles are conveyed accurately and comprehensibly to participants in the markets, such that the market can efficiently value such products. In the following sections, I describe the tasks that lawyers perform in IPOs that fit the "transaction cost engineer" description, and I explain how these tasks are the product of collaboration with clients as well as other sets of lawyers, as opposed to individual efforts by any particular set of counsel.

A. *Lawyers and Information Production in IPOs*

An IPO is a company's introduction to the public markets, and therefore gathering and disseminating information about the issuing company and its prospects is one of the most important components of the transaction. It follows that one means by which lawyers can influence the performance of an IPO is through their central role producing information about the issuing company.

1. The Role of Lawyers and Their Clients in Producing Information

From the outset of the IPO process, the lawyers for the underwriters and the lawyers for the issuing company will play an important role in creating the information product that will be used to price and market the issuing

18. See Gilson, *supra* note 2, at 255 (arguing that lawyers add value in transactions by "devising efficient mechanisms which bridge the gap between capital asset pricing theory's hypothetical world of perfect markets and the less-than-perfect reality of effecting transactions in this world"); see also Gilson, *supra* note 8, at 508–14; Gilson & Mnookin, *supra* note 8, at 2–4.

19. See Eugene F. Fama & Kenneth R. French, *The Capital Asset Pricing Model: Theory and Evidence*, 18 J. ECON. PERSPS., Summer 2004, at 25, 25–30 (describing the capital asset pricing model and research on its validity). The model provides a means of estimating the non-diversifiable risk of an asset—the risk that cannot be offset by including the asset in a diversified portfolio. The risk corresponds to the return an investor should expect on the asset to compensate for that risk. *Id.*; see also Ronald J. Gilson & Reinier Kraakman, *The Mechanisms of Market Efficiency*, 70 VA. L. REV. 549, 561–62 n.41 (1984); Ronald J. Gilson & Reinier Kraakman, *The Mechanisms of Market Efficiency Twenty Years Later: The Hindsight Bias*, 28 J. CORP. L. 715, 718 (2003).

20. See Gilson, *supra* note 2, at 254.

company's stock.²¹ This task will first involve a due diligence review, in which the lawyers and the underwriter thoroughly investigate the issuing company's business.²² During the due diligence review, the attorneys will gather and verify information for the prospectus, which in turn helps to manage liability risk from material omissions and misstatements.²³ Typical legal due diligence often includes a review of material contracts, related party transactions, cross default provisions, negative pledge agreements, and rights of third parties to terminate contracts.²⁴ Due diligence requires involvement of the issuing company, which gathers the relevant information for the lawyers to review. It also necessarily involves the underwriters, who may raise questions or ask for verification on particular matters during the process.²⁵

While due diligence progresses, the lawyers for both the issuer and the underwriters are heavily involved in drafting the prospectus, which is the main document through which the newly issued securities will be marketed.²⁶ The prospectus is usually drafted iteratively in meetings involving both sets of counsel and their clients and through a series of exchanged drafts.²⁷ Counsel for the issuer typically takes the lead in drafting the prospectus and thus has a large amount of control over the draft,²⁸ but the underwriter's counsel has significant impact as well.²⁹ The issuing company's management, as well as representatives from the underwriter, provides input throughout the process, as each has a direct interest in how the document is drafted.³⁰ The underwriter can often play a significant role by providing precedent documents at the outset of the transaction, thus setting the template from which the deal documentation draws.³¹

The Securities and Exchange Commission (SEC) regulations specify the information that must be disclosed³² and also require that the prospectus

21. See Utset, *supra* note 3, at 277 (describing the lawyers' job in an IPO to be the production of an information bundle).

22. See Royce de Rohan Barondes et al., *Underwriters' Counsel As Gatekeeper or Turnstile: An Empirical Analysis of Law Firm Prestige and Performance in IPOs*, 2 CAP. MKTS L.J. 164, 167 (2007).

23. See *id.*; see also Schneider et al., *supra* note 16, at 4–5.

24. See Barondes et al., *supra* note 22, at 167 (explaining the details of the lawyers' involvement in the IPO process).

25. See *id.*

26. See *id.*

27. See *id.* ("This drafting is an iterative process, as knowledge gained in due diligence informs what needs to be said about the issuer.")

28. See Schneider et al., *supra* note 16, at 14–15 ("The 'quarterback' in preparing the registration statement is normally the attorney for the company. Company counsel is principally responsible for preparing the non-financial parts of the registration statement.")

29. See *id.* at 16 ("Close cooperation is required among counsel for the company, the underwriters' counsel, the accountants, and the printer.")

30. See *id.* at 14, 18.

31. See Telephone Interview with Attorney (Feb. 2, 2014) (name withheld by request) (on file with author).

32. See generally 17 C.F.R. §§ 229.10–229.915 (2014). Required disclosure includes: (1) information about the company's business, see *id.* §§ 229.101–229.103; (2) the

disclosure not be misleading.³³ Moreover, the prospectus must not contain any material misstatements or omissions,³⁴ with “material” defined as “matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.”³⁵ Applying the materiality standard requires legal analysis and judgment, and lawyers play a significant role deciding what is necessary to disclose.³⁶ Nonetheless, the prospectus is a marketing document as well as a regulatory one, and the underwriter typically has requirements of its own that make the prospectus a more effective tool for marketing purposes.³⁷ Additionally, the issuing company usually takes a strong interest in how its story is told.³⁸ Thus, the drafting process requires collaboration between all the parties and requires counsel to work closely with each other and with both sets of clients.

The due diligence process continues throughout the drafting of the prospectus, and can continue even after the filing of a preliminary version prospectus with the SEC.³⁹ The SEC’s review of the preliminary prospectus typically involves several rounds of comments and requests for clarifications, additions, or alterations to the disclosure, each of which must be addressed.⁴⁰ During the time that the SEC is reviewing the preliminary prospectus, the underwriter and issuer’s management engage in marketing efforts.⁴¹ The lead underwriter and issuer’s management market the stock by visiting institutional investors in various cities and presenting the company’s story as set out in the preliminary prospectus.⁴² Through this process (known as a “road show” or “dog and pony show”), the underwriter

management’s discussion and analysis of financial condition of the company, including future projections if desired, *see id.* § 229.303; (3) financial statements and an auditor’s opinion covering them, *see id.* § 210; (4) a description of material contracts, *see id.* §§ 229.10–229.915; (5) information about legal and regulatory problems facing the company, *see id.* § 229.103; (6) information about the officers and directors of the company and their compensation, *see id.* §§ 229.403–405; and (7) certain industry specific information, *see generally* SEC, INDUSTRY GUIDES, <http://www.sec.gov/about/forms/industryguides.pdf> [<http://perma.cc/XY8S-G6L2>].

33. *See* § 230.408.

34. *See* Securities Act of 1933 § 11, 15 U.S.C. §§ 77a–77aa (2012); Exchange Act of 1934, 17 C.F.R. § 240.10b-5.

35. *See* 17 C.F.R. § 230.405.

36. *See* Barondes et al., *supra* note 22, at 168 (reviewing the process by which lawyers negotiate and draft the prospectus disclosure and concluding that it is a “process . . . involving the exercise of judgment”).

37. *See id.*; Schneider et al., *supra* note 16, at 14.

38. Schneider et al., *supra* note 16, at 14, 18.

39. Kathleen Weiss Hanley & Gerard Hoberg, Strategic Disclosure and the Pricing of Initial Public Offerings 2 (Mar. 2008) (unpublished manuscript), http://server1.tepper.cmu.edu/Seminars/docs/hanley_hoberg_March.pdf [<http://perma.cc/VXA7-MDKY>].

40. *See* Schneider et al., *supra* note 16, at 45–50 (discussing the SEC comment and review process); *see also* William W. Barker, *SEC Registration of Public Offerings Under the Securities Act of 1933*, 52 BUS. LAW. 65, 70–72 (1996) (describing the SEC staff’s role in the registration and disclosure process).

41. *See* Schneider et al., *supra* note 16, at 22 (noting that the “red herrings” are distributed after filing and while the SEC reviews the filing).

42. *See id.*

assesses the demand for the stock by building a book of indicative orders from interested investors.⁴³ Because the Securities Act prohibits public offers or sales of the stock before the prospectus is finalized and approved, investor orders cannot yet be binding.⁴⁴ Moreover, information given to the investors during the road show must conform to what is contained in the preliminary prospectus.⁴⁵

When the marketing effort is complete, the lead underwriter negotiates with the issuing company's management to set a final price for the stock based largely on the investor demand ascertained during the road show.⁴⁶ Once the final price is negotiated, a final version of the prospectus and final pricing information are deemed effective by the SEC.⁴⁷ The shares are then sold to the investors at the final price, and the company goes public.⁴⁸

Throughout this process, the lawyers for both the issuer and the underwriter play a key role verifying and synthesizing historical information and producing new information that may be needed by offering a legal interpretation of key issues in the deal.⁴⁹ In addition, counsel are often responsible for helping to produce accurate information about

43. *See id.* at 22–23; *see also* JOHN C. COFFEE, JR. & HILLARY A. SALE, SECURITIES REGULATION 115, 122–25 (11th ed. 2009) (describing the road show and bookbuilding process); Barondes et al., *supra* note 22, at 168–69 (describing the development of an offering price and using the initial filing range as a proxy for the estimate developed during the “beauty contest”).

44. *See* 15 U.S.C. § 77e(e) (2012); *see also* COFFEE & SALE, *supra* note 43, at 114 (“Sales are . . . still barred . . . and the underwriter also cannot accept customers’ oral offers to buy. But the underwriters can ‘build their book,’ collecting non-binding indications of interest from customers, which they hope to convert into sales once the registration statement is declared effective.”).

45. *See* 15 U.S.C. § 77j(b) (prohibiting material misstatements and omissions in connection with the sale or offer of securities); *id.* § 77l(a)(2) (civil liability for documents containing materially false or misleading information); *see also* COFFEE & SALE, *supra* note 43, at 123–25 (discussing disclosures to investors during road show presentations).

46. *See* Barondes et al., *supra* note 22, at 168 (“In a customary IPO, there is not a definitive agreement on the price at which the underwriters will resell the stock to the public until after the preliminary marketing process is complete, some time after a preliminary prospectus has been circulated. SEC rules, however, require that a preliminary prospectus for an IPO circulated prior to the pricing include a bona fide estimate of the price, frequently stated as a range, at which the stock will be sold. This price estimate may change in subsequent preliminary prospectuses, as the managing underwriter acquires information during the marketing process.”).

47. *See* 17 C.F.R. §§ 230.424(b), 230.430A (2014); *see also* COFFEE & SALE, *supra* note 43, at 128–29. Before the promulgation of Rule 430A, the underwriters were required to file pricing information in the form of an amendment to the registration statement before the SEC declared the registration statement effective. *See id.* Under Rule 430A, the registration statement can be declared effective before the filing of pricing-related information as long as a complete final prospectus is filed shortly thereafter. *See* 17 C.F.R. § 230.430A.

48. *See* COFFEE & SALE, *supra* note 43, at 129.

49. For example, counsel typically give formal legal opinions regarding the issuer and the stock being issued, as well as interpret legal matters such as tax and litigation consequences. *See* Schneider et al., *supra* note 16, at 18 (“In addition, company counsel normally renders a formal opinion on the legality of the securities being registered, which is filed as an exhibit to the registration statement. In connection with a common stock offering, the opinion would state that the shares being offered are legally issued, fully paid, and non-assessable.”).

possible future performance by working with the accountants to ensure that earnings projections and discussions of planned activities are appropriately balanced and match the financial statements in the prospectus.⁵⁰ Counsel also play a key role in determining how the information will be presented, which in turn influences how clearly the information is conveyed to investors and analysts.⁵¹ All of these activities require significant input from clients and therefore benefit from good working relationships between counsel and clients, as well as a good understanding by counsel of what clients' interests are in each stage of the process. The ultimate product has an impact on the performance of the deal, as discussed in the next section.

2. The Role of Information in Transactional Outcomes

In theory, the information product that lawyers work with their clients to produce impacts the extent to which investors can accurately assess the risk and return profiles of issuing companies, and therefore should impact the performance of a company's stock, at least in the short- and medium-term. The theoretical impact of disclosure on price is supported by empirical work that has studied the connection between the two.⁵²

Empirical studies have generally found a connection between rough measures of disclosure quality and the market's reception of an IPO stock.⁵³ Disclosure quality has been proxied in these studies in terms of volume,⁵⁴ proportion of the prospectus,⁵⁵ and level of ambiguity.⁵⁶ These studies indicate that certain types of disclosure bear significant relationships to price performance of the issued securities in the market. The studies indicate that risk factor disclosure—described as a negative or ambiguous disclosure—bears a positive association with underpricing.⁵⁷ In other words, risk factor disclosure is related to a large price increase of the stock on the first day of trading, which means that the offering price was lower than the market uptake of the stock would have predicted, at least in the short-term. By contrast, greater levels of neutral or positive disclosure (i.e.,

50. *See id.*

51. *See id.* at 18–19.

52. *See, e.g.,* Merritt B. Fox, *Retaining Mandatory Securities Disclosure: Why Issuer Choice Is Not Investor Empowerment*, 85 VA. L. REV. 1335, 1369–93 (1999) (surveying available empirical studies on the impact of mandatory disclosure).

53. *See, e.g.,* Tom Arnold et al., *The Effects of Ambiguous Information on Initial and Subsequent IPO Returns*, 39 FIN. MGMT. 1497, 1497–1500 (2010) [hereinafter Arnold et al., *Effects of Ambiguous Information*]; Kathleen Weiss Hanley & Gerard Hoberg, *The Information Content of IPO Prospectuses*, 23 REV. FIN. STUD. 2821, 2821–23 (2010); Spindler, *supra* note 12, at 1–5; Tom Arnold et al., *Measuring Risk Disclosure in IPOs and Its Effect on Initial and Subsequent Returns* (Aug. 2007) (unpublished manuscript), http://www.researchgate.net/publication/228419565_Measuring_Risk_Disclosure_in_IPOs_and_its_Effect_on_Initial_and_Subsequent_Returns [<http://perma.cc/7LTY-WSN2>].

54. *See* Spindler, *supra* note 12, at 9.

55. *See* Hanley & Hoberg, *supra* note 53, at 2830–40; *see also* Spindler, *supra* note 12, at 9–10 (using ratio of risk factors to prospectus summary as a proxy for overall proportion of positive to negative disclosure).

56. Arnold et al., *Effects of Ambiguous Information*, *supra* note 53, at 1497.

57. *See* Spindler, *supra* note 12, at 9–19.

everything outside of the risk factors) have been found to correspond to less underpricing.⁵⁸ More particularly, certain sections of the prospectus containing important information, specifically the Management Discussion and Analysis (MD&A), the Prospectus Summary, and Use of Proceeds sections, have been found to correspond to lower levels of underpricing.⁵⁹ Taken together, these studies indicate that positive information leads to more accurate pricing, while ambiguous or negative information leads to less accurate pricing and more money left on the table by the issuing company.⁶⁰ This also results in lower commissions for the underwriter, but as explained below, the underwriter may garner benefits from this phenomenon that more than offset any loss. These studies are relevant to the lawyers' role in the transaction and in the securities law scheme more generally, because both sets of lawyers provide substantial input into the disclosure. The lawyers produce information for the prospectus and verify its content through due diligence, make legal judgments about the extent of information necessary to include in the prospectus, review the prospectus for accuracy, and negotiate its content with each other and with the SEC via rounds of comment and response. Therefore, to the extent disclosure has an impact on material outcomes of the deal, such as price accuracy and stability over time, the lawyers' role in creating the prospectus is significant.

B. Lawyers and Transaction Costs in IPOs

Transaction cost engineering involves minimizing transaction costs that unnecessarily reduce the value of a financial product, while bearing no inherent relationship to the financial product's expected risk or return.⁶¹ Transaction costs create inefficiencies in the deal making process, causing it to become more difficult or costly than it would be if conducted in a hypothetical perfect market.⁶² These costs can arise from numerous sources: time, expense, regulatory costs, bargaining costs, enforcement costs, inefficient communication, irrational or strategic behavior, and externalities.⁶³ Lack of information, risk, and uncertainty also create transaction costs. With respect to transaction costs, risk, uncertainty, and lack of information affect a transaction because they impose costs to

58. *See id.* at 16–19.

59. *See* Hanley & Hoberg, *supra* note 53, at 2830–34. I have located no study that has been able to confirm a causal relationship between disclosure and underpricing, and several have noted that it may be the result of underlying uncertainty. As explained below, this Article provides previously unavailable evidence of causation through instrumental variable regression.

60. *See id.* at 2857–61.

61. *See id.*

62. *See, e.g.,* OLIVER HART, FIRMS, CONTRACTS AND FINANCIAL STRUCTURE 21–28 (1995) (describing how transaction costs affect firm size and choices); Oliver E. Williamson, *The Economics of Organization: The Transaction Cost Approach*, 87 AM. J. SOC. 548, 553–56 (1981) (discussing different types of transaction costs and their effects on asset allocation).

63. *See generally* HART, *supra* note 62; Williamson, *supra* note 62.

overcome them, disable complete contracting or, as often happens, create obstacles that can cause a deal to break down even when it should make economic sense.⁶⁴

Lawyers can minimize transaction costs in a number of ways in addition to producing accurate information as described in the preceding section, and good working relationships with clients are important to all of them. Lawyers may reduce costly inefficiencies by helping parties avoid and resolve potentially costly disputes that could needlessly prevent valuable deal making.⁶⁵ Lawyers can contribute to reducing transaction costs by helping coordinate the different parties involved and ensuring that all parties have a proper understanding of the tasks to be completed at each stage of the deal.⁶⁶ Expertise with respect to the IPO process is important for accomplishing this end, but relational skill is perhaps more important because it facilitates efficient interactions between the parties.⁶⁷ This can, in turn, facilitate faster deal completion and establish processes that require less work on the part of clients, who can then focus their energies on other aspects of the deal. Greater time efficiency can reduce unwanted deal delays and allow the underwriter better to control the timing of the deal to ensure the best performance.

Familiarity of the underwriter's counsel with the underwriter—both through relationships with the underwriter's personnel and through knowledge of its institutional practices—might also reduce agency costs. Although agency costs are a distinct concept from transaction costs, agency costs—stemming from the divergence between information and interests of the principal and the agent—can lead to inefficiencies that can be categorized as a form of transaction cost as well. The better a lawyer knows his or her client's preferences, the less time and energy are needed for the client to transfer information to the agent, and the lower the likelihood that the lawyer will erroneously represent the client's interest. The more familiar the lawyer and the client become, the more trust they develop, and the less effort the client has to put forth to monitor the lawyer. Moreover, the more familiar a lawyer is with the underwriters' ideal

64. See generally BARRIERS TO CONFLICT RESOLUTION (Kenneth J. Arrow et al. eds., 1995); Benjamin Klein et al., *Vertical Integration, Appropriable Rents, and the Competitive Contracting Process*, 21 J.L. & ECON. 297 (1978) (explaining how transaction costs lead to contract incompleteness, which in turn is a barrier to deal completion); Paul Milgrom & John Roberts, *Bargaining Costs, Influence Costs, and the Organization of Economic Activity*, in PERSPECTIVES ON POSITIVE POLITICAL ECONOMY 57–89 (James E. Alt & Kenneth A. Shepsle eds., 1990).

65. See Gilson, *supra* note 2, at 254; Gilson, *supra* note 8, at 509. Professors Gilson and Mnookin expand upon this model by explaining that skilled lawyers help their clients by negotiating value-creating exchanges, capitalizing on economies of scale and scope, and managing inherent tensions between value creation and distribution. See Gilson & Mnookin, *supra* note 8, at 9–12.

66. See Schneider et al., *supra* note 16, at 19 (describing the importance of coordination between the lawyers and other parties and the importance of having a common understanding of the deal structure).

67. See *id.*

outcomes, the more they would be able to advocate for the underwriters' interests, with less delay and lower danger of miscommunication.

Finally, a lawyer's substantive expertise can reduce regulatory costs, a subset of transaction costs,⁶⁸ adding value by advising clients on ways to avoid costly government regulations. This might take the form of avoiding direct costs, such as when a lawyer advises a client on how to minimize taxation. Or it might involve less direct, but no less significant costs, such as when a lawyer advises a client on the most favorable jurisdiction and/or form in which to incorporate to reduce legal uncertainty, or avoid litigation.⁶⁹ In the IPO context, counsel may assist in managing regulatory costs by advising on the issuer's legal organization, governance, or capital structure prior to the commencement of the deal.⁷⁰ Counsel also liaise with the SEC and other regulators, and the lawyers' ability to handle issues that the regulators bring up can have an impact on the timing and efficiency of the deal.⁷¹

C. Lawyers As Reputational Intermediaries

Another way to describe the value of transactional lawyers is through their role as reputational intermediaries.⁷² Reputational intermediaries convey important information to the market about the quality of a transaction.⁷³ This model suggests that lawyers (as well as other professionals involved in the deal) add value by providing a signal of quality in the underlying transaction.⁷⁴ This model is not exclusive of the

68. See Steven L. Schwarcz, *Explaining the Value of Transactional Lawyering*, 12 STAN. J.L. BUS. & FIN. 486, 500–02 (2006) (reporting the results of a survey in in-house legal counsel on the value of transactional lawyers).

69. See *id.*; see also Oren Bar-Gill et al., *The Market for Corporate Law* (Harvard Law Sch. John M. Olin Ctr. for Law, Econs. & Bus. Discussion Paper Series, Paper 337, 2002), http://lsr.nellco.org/cgi/viewcontent.cgi?article=1165&context=harvard_olin (describing the market for corporate law, as evidenced by choices of jurisdiction of incorporation that most reduces costs related to legal uncertainty and use of familiar default rules) [<http://perma.cc/7WPT-QT7Q>].

70. See Schneider et al., *supra* note 16, at 18–19.

71. See *id.* at 19–20 (discussing the process of dealing with SEC comment and deficiency letters).

72. See Peter J. Gardner, *A Role for the Business Attorney in the Twenty-First Century: Adding Value to the Client's Enterprise in the Knowledge Economy*, 7 MARQ. INTELL. PROP. L. REV. 17, 46–48 (2003); see also Karl S. Okamoto, *Reputation and the Value of Lawyers*, 74 OR. L. REV. 15, 44–45 (1995) (proposing alternatives to lawyers as reputational intermediaries). The impact of lawyer expertise has been examined in the mergers and acquisitions context. See C.N.V. Krishnan & Ronald W. Masulis, *Law Firm Expertise and Mergers and Acquisitions*, 56 J.L. & ECON. 189, 189–99 (2013).

73. See generally Randolph P. Beatty, *Auditor Reputation and the Pricing of Initial Public Offerings*, 64 ACCT. REV. 693 (1989); Beatty & Ritter, *supra* note 12; Richard Carter & Steven Manaster, *Initial Public Offerings and Underwriter Reputation*, 45 J. FIN. 1045, 1053 (1990); Richard B. Carter et al., *Underwriter Reputation, Initial Returns, and the Long-Run Performance of IPO Stocks*, 53 J. FIN. 285, 285–290 (1998).

74. See Randolph P. Beatty & Ivo Welch, *Issuer Expenses and Legal Liability in Initial Public Offerings*, 39 J.L. & ECON. 545, 596 (1996); see also Okamoto, *supra* note 72, at 18 (“The suggestion here is that service as a reputational intermediary is a defining aspect of lawyers’ work.”).

“transaction costs engineers” model; in fact, a lawyer’s reputation may itself derive from the ability to reduce transaction costs in the way that Gilson and others describe. Nonetheless, the reputational intermediary model encompasses more than the lawyer’s substantive ability to reduce frictions by applying legal or negotiation skill. The model includes the possibility that because of reputational concerns, lawyers will screen transactions before agreeing to take on the work, and therefore the mere fact of a lawyer’s participation in a deal is a signal of quality.⁷⁵

In the context of IPOs specifically, theories have been advanced that the reputation of the underwriter,⁷⁶ auditor,⁷⁷ and underwriter’s counsel⁷⁸ might all convey information to investors beyond what is contained in the prospectus and affect the price of the IPO stock. Empirical tests of these theories have demonstrated a relationship between lead underwriter reputation and lower levels of underpricing, indicating more accurate pricing of the offering.⁷⁹ This has been explained as a function of the incentives of high reputation underwriters in preserving their reputations through more accurate pricing. A similar relationship has been demonstrated with regard to auditors.⁸⁰ However, studies of lawyers’ reputations have had mixed results: one study found a negative relationship between market share of legal counsel and IPO underpricing generally, although the trend reversed with respect to large New York law firms.⁸¹ Other studies have found that lawyers’ reputations, when measured by market share, do not impact price.⁸² This makes sense to the extent that the identity of the lawyers rarely plays a role in investors’ decision making.⁸³ However, as explained further in subsequent sections, the reputation of legal counsel alone is unlikely to play a large role in the performance of IPO deals.

D. Repeated Interaction and Selection of Counsel

Apart from lawyer reputation, lawyers’ ability to add value in the ways just described might all be affected by their familiarity with the clients whom they represent. Even reputation, though not directly impacted by

75. *See id.*

76. *See e.g.*, Beatty & Ritter, *supra* note 12, at 213; Carter et al., *supra* note 73, at 285.

77. *See, e.g.*, Beatty, *supra* note 73, at 693.

78. *See, e.g.*, Barondes et al., *supra* note 22, at 166.

79. *See* Hanley & Hoberg, *supra* note 53, at 2853–55. *But see* Patch Paczkowski & Majdi Anwar Quttainah, Law Firm Prestige As a Signal of Value for Initial Public Offerings (June 19, 2012) (unpublished manuscript), <http://papers.ssrn.com/abstract=2087695> [<http://perma.cc/T2QJ-SQ6Y>]. For further discussion of this theory, see generally Franklin Allen & Gerald R. Faulhaber, *Signaling by Underpricing in the IPO Market*, 23 J. FIN. ECON. 303 (1989).

80. *See generally* Beatty, *supra* note 73.

81. *See* Royce de R. Barondes & Gary C. Sanger, Lawyer Experience and IPO Pricing 16–21 (May 4, 2000) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=227729 [<http://perma.cc/6PF2-XNP8>].

82. *See* Beatty & Welch, *supra* note 74, at 575–95.

83. Telephone Interview with Attorney (June 21, 2013) (name withheld by request) (on file with author).

familiarity with clients, might be related to lawyers' ability to cultivate and maintain client relationships. One way to assess whether good working relationships have any impact on deals is to look at the repeated interactions between lawyers and clients. Repeated interactions provide a useful proxy for better lawyer-client relationships because they build familiarity and trust, establish common understanding, and facilitate communication.⁸⁴

As previously noted, my research has not revealed other studies of the impact of lawyers' relational skill in the transactional setting. However, empirical studies of lawyer relationships in other contexts shed some light on what results might be expected, and a number of instructive studies have looked at lawyers as repeat players. One noteworthy study demonstrated that iterative relations significantly promote collaboration between lawyers on opposite sides of a case in the litigation context.⁸⁵ Another empirical study tested repeated interactions among litigators and concluded that frequent contact helps lawyers to learn about each other's strategies, build relationships, and foster concern for reputation.⁸⁶ The study concluded that repeated interactions increase cooperation between lawyers negotiating a settlement, as the different sides learn how best to deal with each other.⁸⁷ It is possible that the dynamics at work for repeated meetings among litigators would hold true for repeated meetings between lawyers and clients in the transactional setting as well.

The empirical literature on teams adds support to the hypothesis that repeated interaction fosters trust and better teamwork. A number of studies provide evidence that frequent interaction leads to the creation of group norms, shared understanding of the tasks to be completed, and routinized processes.⁸⁸ These processes further allow each member of the team to leverage individual expertise more effectively and in concert with other team members. Experimental evidence suggests that when team members are replaced by newer members of a team, some of these gains are lost as the team and the new member adjust to a new group dynamic.⁸⁹ This

84. See Steve W. J. Kozlowski & Daniel R. Ilgen, *Enhancing the Effectiveness of Work Groups and Teams*, 7 PSYCHOL. SCI. PUB. INT. 77, 81 (2006).

85. See Gilson & Mnookin, *supra* note 9, at 534–64 (discussing the impact of iterative interactions on litigators); see also Croson & Mnookin, *supra* note 9, at 340–45.

86. Jason Scott Johnston & Joel Waldfogel, *Does Repeat Play Elicit Cooperation? Evidence from Federal Civil Litigation*, 31 J. LEGAL STUD. 39, 46, 59–60 (2002).

87. See *id.* at 40–48 (outlining mechanisms by which better results are obtained through repeated interactions); see also Croson & Mnookin, *supra* note 9, at 331–50 (stating game-theoretic bases for increased cooperation over time).

88. See Kozlowski & Ilgen, *supra* note 84, at 81 (“[R]epeated interactions among individuals that constitute processes tend to regularize, such that shared structures . . . crystallize and then serve to guide subsequent process interactions. Process begets structure, which in turn guides process.”); see also Schneider et al., *supra* note 16, at 17–19 (discussing the need for deal team members to have a common understanding of the tasks to be accomplished).

89. See Kozlowski & Ilgen, *supra* note 84, at 86. In one interesting experiment, teams were assembled to create origami birds. Teams gained efficiency from repeating the task together multiple times, but lost efficiency when members of the existing team were replaced with new members. See *id.*

further suggests that frequent collaboration engenders benefits to a group endeavor that cannot be easily replicated in the absence of such familiarity.

Empirical studies of the relationships between lawyers and their clients suggest that clients value familiarity.⁹⁰ Large corporate clients such as investment banks frequently choose from among a panel of lawyers, all of whom are of high quality.⁹¹ But recent empirical work indicates that selection of counsel is based on more than quality of counsel and fee structure as traditionally assumed; relationships with lawyers and teams of lawyers within each firm exert a strong influence on which law firms are selected to act for a client.⁹² Similarly, lawyers in the equity capital markets space emphasize the importance of interpersonal relationships with clients as a major factor that helps them to get repeat business.⁹³ Thus, there are indications that familiarity and relationships are valuable to clients as well as lawyers.

Nonetheless, familiarity and repeated interaction might not necessarily lead to measurably better outcomes. First, even if there are intangible benefits from familiarity, they may not translate into any quantifiable results in terms of deal performance. The various individuals who are party to the deal might enjoy the experience more, and feel it is more efficient, but this may or may not translate into, for example, better disclosure, better marketing, or better price performance. Second, familiarity does not necessarily lead to better quality of interaction in every instance. Some research suggests that working together repeatedly may not lead to better collaboration if team processes are not well thought out.⁹⁴ Moreover, it is not difficult to imagine that familiarity might make counsel less able to be objective, either for fear of offending the client or from loss of perspective after spending too much time taking the client's point of view. Alternatively, familiarity might cause lawyers to take the relationship for granted and therefore devote fewer resources to the client. In the same vein, interpersonal considerations or overreliance might make it difficult for a client to fire its counsel, thus allowing counsel to shirk. I turn now to a discussion of the data to explain which way it cuts.

90. See Coates et al., *supra* note 1, at 999–1003.

91. See *id.*

92. See *id.* But see Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 357–68 (1985) (advancing a model of lawyer selection based on relationship to a firm and firm-specific capital rather than interpersonal relationships among individuals).

93. Some banks have preferred firms. For example, Morgan Stanley is known to work with Davis Polk & Wardell regularly on equity capital markets deals. Similarly, Goldman Sachs is known to work frequently with Sullivan & Cromwell. Several of the lawyers in these firms have such close relationships with bank personnel that they participate in business related decisions, and their capital markets partners become involved in the marketing side of IPOs. See Telephone Interview with Attorney (July 23, 2013) (name withheld by request) (on file with author).

94. See Hackman, *supra* note 6, at 249–50.

II. EMPIRICAL ANALYSIS

The empirical analysis and its implications are set out below. This part begins by describing the qualitative and quantitative data in detail and walks through the quantitative analysis. The part discusses how the quantitative data can be interpreted and how the findings illuminate (or fail to illuminate) the questions raised in the previous part. This part also discusses some important caveats and potential weaknesses of the analysis and discusses why the data are informative despite those weaknesses.

A. *Repeated Interactions and IPO Deal Outcomes*

In this section, I describe the data and empirical analysis that support the implications of the theoretical discussion above. First, I describe the impressions of team dynamics taken from interviews with practicing lawyers. I then explain the quantitative analysis, drawing from an original dataset of IPOs and examining the repeated interactions between banks and law firms that handle the transactions.

1. Practitioner Experience and Team Dynamics

Practitioner accounts are useful for understanding how lawyers and their clients perceive the impact of team dynamics on deals outcomes. The lawyers interviewed for this study routinely listed familiarity and trust as key hallmarks of IPO deals that they experience as successful. Often they cite past experience working with their clients as an important precursor for familiarity and trust.⁹⁵ Moreover, better deals result when all the parties working on the deal seem to have a common vision of how the deal should be done.⁹⁶ While there are certain similarities between deals, each underwriter leading a deal has idiosyncratic institutional priorities, and the people within the underwriting banks have their own preferences.⁹⁷ Lawyers frequently report that understanding those preferences from the outset of the deal helps to facilitate the entire process.⁹⁸ The lawyers on the deal come to understand their client organizations' operations,⁹⁹ including the key personnel to contact to accomplish the range of tasks necessary to move the deal along.¹⁰⁰ In addition, lawyers develop an understanding of the communication norms inside an investment bank,¹⁰¹ as well as the

95. See Telephone Interview with Attorney (July 24, 2013) (name withheld by request) (on file with author).

96. See Telephone Interview with Attorney (Feb. 2, 2014), *supra* note 31.

97. See *id.*

98. There was a consensus among lawyer interviews that this was the case. See, e.g., Telephone Interview with Attorney (Oct. 20, 2013) (name withheld by request) (on file with author).

99. Telephone Interview with Attorney (July 23, 2013) (name withheld by request) (on file with author).

100. *Id.*

101. Telephone Interview with Attorney (Oct. 20, 2013) (name withheld by request) (on file with author). As one lawyer in a large capital markets practice described, "It gets easier

institutional preferences with regard to how to negotiate the deal.¹⁰² This understanding of how the client operates supplements an enhanced understanding of the client's institutional interests, as well as the preferences of individuals in the client organization.¹⁰³ The result, in theory, is better coordination of agents with their principals in the performance of their tasks. In addition, information disparities are less a source of agency costs because the lawyer-agent has less need to spend time gathering information about the client's interests and can negotiate more forcefully on the client's behalf.

Further, when lawyers and clients work together frequently, they develop greater mutual trust, assuming previous deals have gone well. Trust allows clients to feel less need to monitor their lawyer-agents, freeing the client to focus on marketing and other commercial aspects of the deal.¹⁰⁴ Indeed, some lawyer-client relationships involve such a high degree of trust and familiarity that lawyers become involved in helping their clients to think through business strategy in addition to providing legal advice.¹⁰⁵ The overall impression is that frequent collaboration leads to trust, that each member of the deal team can focus on his or her job better, and that the team produces better work, more quickly.

If familiarity creates trust and efficiency, lack of familiarity can create the opposite. When describing deals that did not go well, lawyers recall working with other counsel who do not seem to know the norms of how deals should be done.¹⁰⁶ These deals typically involve issuer's counsel that either lack experience in IPOs, or resolutely refuse to trust underwriters. In such situations, there is often a lack of trust and an adversarial attitude toward the underwriter and its counsel. In such cases, lawyers for issuing companies reportedly fight over issues that most seasoned participants in IPO deals would think are unimportant, and when the issuing company's management makes unreasonable demands, the issuer's lawyers refuse to counsel their clients on commonly accepted industry practices.¹⁰⁷

the more times you work together. I know exactly who to e-mail or call if I need something. Or who to prod if something needs to get done." *Id.*

102. Telephone Interview with Attorney 2 (July 24, 2013) (name withheld by request) (on file with author).

103. Telephone Interview with Attorney (Feb. 2, 2014), *supra* note 31. For example, one in-house lawyer taking his company public recounts that during negotiations, the underwriter's counsel, who worked frequently with the underwriters on such deals, regularly expressed confidence about what his client would or would not agree to, without any need to confer with anyone from the bank's team. *See* Interview with Attorney (June 19, 2013) (name withheld by request) (on file with author).

104. Telephone Interview with Attorney (July 23, 2013), *supra* note 99 (recounting that some partners in some law firms understand their industry so well that they actually are able to advise on the help with the commercial side of the a capital markets deal).

105. *Id.*

106. Telephone Interview with Attorney (Feb. 2, 2014), *supra* note 31.

107. *See id.* Experienced attorneys are reportedly better able to counsel issuing company management against making exaggerated statements or falling out of step with standard practices. *See also* Schneider et al., *supra* note 16, at 14.

On the client side, personnel in investment banks who work with lawyers describe poor deals as those in which the lawyers do not seem to know what they are doing and in which the bankers have to explain every step. The deals are marked by a lack of trust in the bank's counsel and the need to recheck and sometimes redo work that the lawyers have done.¹⁰⁸

2. Quantitative Analysis

The basis for the quantitative analysis below is the observation that lawyers working on IPOs frequently represent the same underwriter and the same teams within an underwriting bank. Moreover, lawyers representing underwriters will often meet the same sets of counsel representing issuers from deal to deal.¹⁰⁹ While it is difficult to observe interpersonal interactions with enough regularity to assess their systematic impacts, a meaningful proxy of these interactions is the frequency with which an investment bank managing a deal and the lawyers serving as the bank's counsel work together.¹¹⁰ Although I do not observe the individuals inside the investment banks themselves, it is reasonable to infer that many of the same individuals would be involved in deals done within a short time frame if the deals are done out of the same office, in the same location, and within a particular industry. Accounting for those factors, the membership of the teams within banks and firms reportedly remains stable over relatively short periods of time.¹¹¹

I examine repeated interactions by looking at the number of IPO deals completed in the preceding one year, two years, and three years involving: (1) the same underwriter's counsel and lead underwriter(s) and (2) the same sets of counsel. In theory, if repeated interaction improves relationships between a lawyer and his or her client, it might have positive benefits for a lawyer's effectiveness, coordination, and communication in furtherance of the client's interests. In addition, relationships across the table can help to facilitate the deal. With respect to uncertainty and risk, better coordination could help produce more complete and easily digested disclosure, thus reducing uncertainty in the market and allowing investors to confidently calculate risk. Coordination might help in this regard because both sets of lawyers and the underwriter would have a shared understanding of the type

108. Telephone Interview with Attorney (July 23, 2014), *supra* note 99.

109. Between 1996 and 2010, the same law firm and lead underwriter(s) worked across the table from one another multiple times in the same year on 450 occasions, out of 2265 total deals. Between 1996 and 2010, there were also 406 instances in which issuer's counsel had acted as underwriter's counsel for the same underwriter within the previous year. On 206 of those occasions, the issuer's counsel also had worked across the table from the lead underwriter more than one time in the past year, out of a total of 2265 deals. Between those same years, 454 IPO deals featured law firms that had worked across the table from one another in an IPO deal at least three times within the preceding two years.

110. As an additional robustness check, names of individual attorneys for each deal were collected and matched to each transaction. The result shows a significant effect, with a stronger magnitude. These results, as well as others, will be reported in a future study.

111. This was corroborated by interviews. *See, e.g.*, Telephone Interview with Attorney (Feb. 2, 2014), *supra* note 31.

of information to unearth in the due diligence process and how best to present it in the prospectus to tell the appropriate story to the market.¹¹² This would in turn translate into more accurate pricing and better performance in the market. Stronger market performance, coupled with better disclosure, should produce less IPO-related litigation, all else being equal.

B. Analysis of the Data

The following discussion explains the quantitative analysis and result of this study in detail. The data analyzed below comes from a number of public sources. The starting point for data collection on IPOs in the United States is the Kenney-Patton IPO Database.¹¹³ This dataset contains information for 2287 de novo IPOs between 1996 and 2010.¹¹⁴ Each IPO was cross-checked with the Thompson ONE deal record to confirm the date, ticker, and issuer name.¹¹⁵ From the Thompson ONE database I also pull information on the underwriting syndicate, including the names of the bookrunners or joint bookrunners, managers' and issuer's counsel, and the age of the issuing company. The dealsheet also includes the initial price range filed with the SEC as well as the stock opening price, which I use to determine whether the opening price was revised up or down from the initial range. To find measures of each stock's performance over time, I use information from the Center for Research in Security Prices (CRSP) database.¹¹⁶ In particular, I look at the opening day closing price relative to the offer price; the price change at thirty, sixty, and ninety days and one year; and the volatility over thirty, sixty, and ninety days. In addition, from the SEC's EDGAR database, I gather the offering prospectuses from each IPO and cull from these the total word counts, as well as the word counts for each section of the prospectus including the prospectus summary, the risk factors, and the management's discussion and analysis section.¹¹⁷ The word counts disregard information contained in tables and charts. This methodology is used in other research on IPOs on the rationale that pure word counts, while constituting a very rough estimate of the types of

112. See Schneider et al., *supra* note 16, at 18–19 (discussing the importance of close coordination among members of the deal team).

113. For more information on the database, see MARTIN KENNEY & DONALD PATTON, U.C. DAVIS, GUIDE TO THE FIRM DATABASE OF EMERGING GROWTH INITIAL PUBLIC OFFERINGS (IPOS) FROM 1990 THROUGH 2010 (2013), http://hcd.ucdavis.edu/faculty/webpages/kenney/misc/Firm_IPO_Database_Guide.pdf [<http://perma.cc/PRE8-G25G>].

114. The database excludes offerings of capital trusts, securitizations, IPOs of preferred stock, and spin-offs.

115. THOMPSON ONE DATABASE, http://financial.thomsonreuters.com/en/products/tools-applications/trading-investment-tools/thomson-one-investment-research-tools.html?gclid=CjwKEAiAx4anBRDz6JLYjMDxoQYSJAA4loRmqel_bXT8gpjPqFxFxMyt6A9VmdVOXXoM_u9oMbvA_3EhoCJdvw_wcB (last visited Sept. 27, 2015) [<http://perma.cc/VU27-UJ3K>].

116. CRSP U.S. STOCK DATABASES, <http://www.crsp.com/products/research-products/crsp-us-stock-databases> (last visited Sept. 27, 2015) [<http://perma.cc/54TD-Q9CJ>].

117. U.S. SEC. EXCHANGE COMMISSION, <http://www.sec.gov/edgar.shtml> (last visited Sept. 27, 2015) [<http://perma.cc/BGN2-LBMJ>].

disclosure included, do not suffer from the potential bias associated with hand-coded disclosure elements.¹¹⁸ Information on class action litigation was taken from the Stanford Securities Class Action Clearinghouse.¹¹⁹

Twenty-two records were dropped because information could not be found on the issue in the Thompson ONE database or because the CRSP database did not contain information on the share price. The resulting dataset has 2265 IPOs spanning fifteen years. The identities of each IPO's managing underwriter or underwriters are taken from this data set. A bank is considered a managing underwriter if it is either the sole bookrunner or a joint bookrunner.¹²⁰ The identities of the underwriter's counsel and issuer's counsel are similarly determined from this data.¹²¹

The offer date is used to construct variables of how often a certain underwriter-counsel and counsel-counsel pair have worked together in the previous one year, two years, and three years for each new issue. For example, Goldman Sachs was a manager of Goodman Global's IPO on April 5, 2006, and their counsel was Cahill Gordon & Reindel. This was the third time the pair had worked together in a year, as they had also worked together on Horizon Lines Inc.'s September 26, 2005 IPO and New Skies Satellites May 9, 2005 IPO. Prior to that, they had not worked together since they teamed up for Equinix, Inc.'s August 10, 2000 IPO. Time periods beyond three years are not examined given the likelihood of lower rates of overlap between teams working together on transactions after such long time periods.

With respect to the recurring deal in which the same counsel represents an underwriter, or in which the same law firms meet on opposite sides of the deal, I analyze a number of quantifiable deal outcomes: price performance, the incidence of price correction before offering date, the incidence of litigation, the length of time to complete a transaction, and the occurrence of non-integer pricing (as a signal of a more heavily negotiated price). These performance measures are readily quantifiable and offer

118. See Spindler, *supra* note 12, at 9 (noting the this method "has the advantage of being objective, as it does not rely upon subjective evaluations of particular disclosures (such as coding a line of disclosure as 'good' or 'bad') and does not require subjective index weighting"). Word counts for my study were taken for a total of 2258 prospectuses. A small number (seven) of prospectuses were excluded due to transcription errors in the database.

119. STAN. L. SCH. SEC. CLASS ACTION CLEARINGHOUSE, <http://securities.stanford.edu> (last visited Sept. 27, 2015) [<http://perma.cc/XK24-VTNU>].

120. The most frequent lead underwriters are Goldman Sachs (217), Merrill Lynch (154), Morgan Stanley (137), Lehman Brothers (131), and JP Morgan (122). Bank mergers are treated as the "death" of each of the merging banks and the "birth" of the merged bank. To give an illustrative example, "Credit Suisse," "First Boston," and "Credit Suisse First Boston" are treated as three different firms.

121. The most frequent managers' counsel are Wilson Sonsini Goodrich & Rosati (176), Latham & Watkins (160), Davis Polk & Wardwell (151), Cravath, Swaine & Moore (111), and Skadden, Arps, Slate, Meagher & Flom (106). As with investment banks, law firm mergers are treated as the death of each old firm and the birth of a new firm. In the rare cases of multiple firms representing management, the two firms are treated as a single unit for that transaction.

strong indications of how well the parties to the deal have performed once other relevant factors are controlled for.

With respect to price performance, for purposes of investigating the extent to which frequency of interaction matters, I employ Ordinary Least Squares (OLS) regression analysis¹²² using the stock price increase during the first day of trading (Appendix Table 1) and the price change after thirty, sixty, and ninety days of trading, relative to the performance of the S&P Index to account for the effect of market movements (Appendix Table 2). With respect to the probability of price correction (Appendix Table 3) as well as class action litigation (Appendix Table 4), I employ a probit regression analysis.¹²³ For upward price revision, I estimate the change in probability that the parties to the deal will correctly raise the offering price from the top of the initial filing range for deals that perform well in the market. With respect to litigation, I estimate the change in probability that a securities class action lawsuit will be filed in the first six months and the first year after the IPO offer date.

In addition to these variables, I use a number of other independent variables to ensure a generalizable result, in line with prior empirical literature on IPOs.¹²⁴ These variables include: (1) dummy variables for the IPO year, (2) the industry category of the issuer (as determined according to Standard Industrial Classification (SIC) code) to control for different market conditions over time and in various industries, (3) each investment bank in order to allow for variation in outcome variables associated with each lead underwriter, as well as (4) the interaction of these variables. (Appendix Figure A).¹²⁵ In addition, for all specifications, I control for the IPO size measured in terms of the gross proceeds of the offering, a variable frequently used as a proxy for deal quality.¹²⁶

122. OLS is a statistical method that attempts to find a function that approximately fits a set of data; i.e., it attempts to determine the relationship between a set of explanatory variables and an outcome variable of interest. See JEFFREY M. WOOLDRIDGE, *ECONOMETRIC ANALYSIS OF CROSS SECTION AND PANEL DATA* 53 (MIT Press 2010).

123. A probit model is a statistical model in which the outcome variable can take on only one of two values; it is useful for estimating the probability of an event occurring, versus the probability of the event not occurring. See *id.* at 566–67.

124. See *e.g.*, Hanley & Hoberg, *supra* note 53, at 2830–33; see also Eckbo et al., *supra* note 7, at 276–79.

125. Dummy variables provide a method of controlling for variation within certain categories of variables by removing the mean of the observations for the dependent variable of interest. For example, in an OLS regression using first day price jump (i.e., underpricing) as the dependent variable, fixed effects for (inter alia) each year are used. This allows for variation in overall underpricing from year to year, by removing the mean underpricing for each year and controlling for the variation in underpricing that is specific to that particular year. So if, for example, 1999 was a year that saw a particularly large amount of underpricing, the fixed effect would remove the year-specific average underpricing and leave only the variation attributable to other factors. The same is done for each IPO quarter, each lead underwriter, each industry, and the interaction of each industry and year. See WOOLDRIDGE, *supra* note 122, at 307–10.

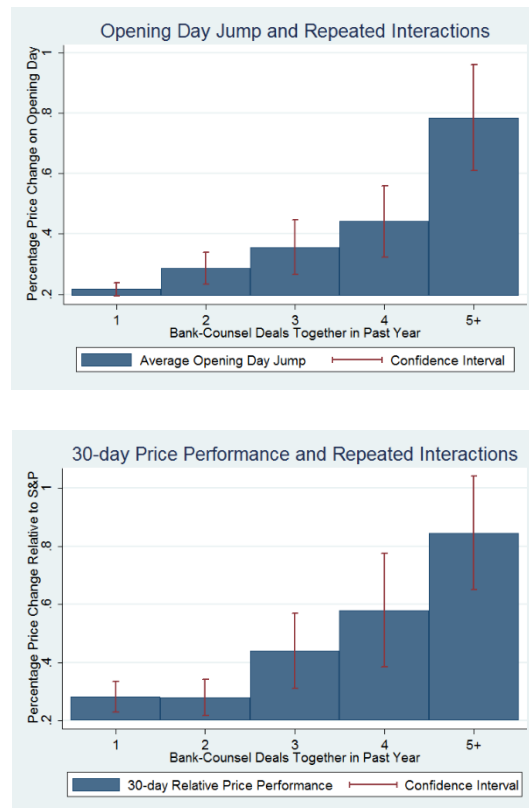
126. See Hanley & Hoberg, *supra* note 53, at 2830–33; Eckbo et al., *supra* note 7, at 276–79. Regressions use the natural log of gross proceeds to mitigate skewness in the distribution of dollar amounts. See, *e.g.*, Hanley & Hoberg, *supra* note 53, at 2830–33. In the alternative specifications in Appendix Tables 8 and 9, I also use the size of the company

I perform each analysis using a number of alternative specifications to test the robustness of the model. Appendix Tables 7 and 8 report the results for analysis of the first day price increase and the probability of litigation under the alternative specifications.

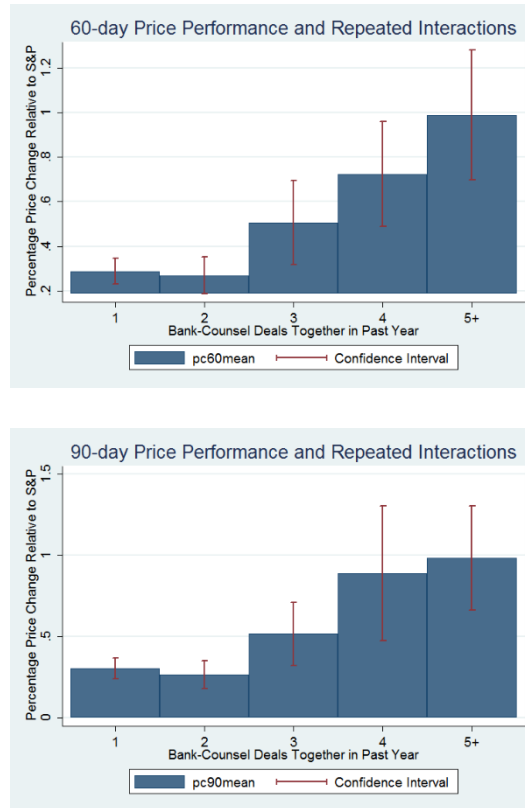
C. Main Results

This section illustrates some of the basic relationships in the raw data. The figures below show that repeated bank-lawyer interactions in the past year are associated with a greater opening day price jump, as well as greater price performance after the first thirty, sixty, and ninety trading days (relative to the S&P 500 Index).

Figure 2: Repeated Interactions and Price Performance



(measured by total assets) and the book value per share as alternatives ways to control for deal quality. Regressions using total assets yield coefficients similar to those using the log of gross proceeds, indicating that the latter is a good proxy for the size of the issuing company.



These graphs show that issues where the lead underwriting bank and counsel have worked together repeatedly tend to exhibit superior price performance (as well as underpricing) at incrementally higher levels. Of course, this is merely descriptive, and there are many confounds that also affect these performance measures. To attempt to investigate if this relationship is real, I turn to OLS regression analysis controlling for factors that influence market performance.

1. Price Performance Regression Analysis

The first performance measure analyzed is the opening day price jump. Panel A of Appendix Table 1 shows the results, demonstrating a strong and significant effect from increased bank-counsel interactions, even after controlling very flexibly for year, industry, and bank fixed effects.

The first two specifications look at the number of bank-counsel interactions within a year of the IPO, with and without bank fixed effects. The subsequent columns look at the number of interactions in the preceding two and three year periods. In all cases, the marginal effect of an additional interaction is positive and statistically significant. There are two notable trends across these specifications: the value of a marginal interaction decreases as the time horizon increases, and the effect survives the

introduction of bank fixed effects to control for quality concerns or bank idiosyncrasies.

The next set of performance measures to be examined is the percentage price change over the first thirty, sixty, and ninety trading days, relative to the percentage change in the S&P Index over the same set of days to control for the effect of overall market returns. The controls in all cases are dummies for the IPO year, the SIC category, and the interaction of those two sets.¹²⁷ Robust standard errors are used for each regression.¹²⁸

Panel A of Appendix Table 2 shows the results for the thirty, sixty, and ninety-day price performance measures. Deals involving frequent collaborators are associated with strong market performance over the first ninety days, as measured by price relative to the S&P 500 Index. The effect of each additional interaction on the relative change in a stock's price relative to the S&P Index after thirty trading days is 4.4 percent when the lawyer-underwriter collaborations occur within the past year. The marginal performance price increase drops to 2.8 percent when the lawyer-bank collaborations are spread over the past three years. Correspondingly, fewer recent interactions between a bank and a law firm are strongly associated with lower price performance over the same periods. The effect remains for the first ninety days of trading, for which each deal in the past year is associated with a 7.5 percent increase, declining to a 4.1 percent increase in relative price for deals within the preceding three years.

From the regression analysis, it appears that frequency of interaction bears a strong positive correlation with stock performance. This is consistent with the hypothesis that teams of lawyers and bankers working together repeatedly and over a short period of time are able to improve deal outcomes, leading to a positive impact on the price of a stock. However, these outcomes may also indicate overly high levels of underpricing, especially because the price increase is sustained over the long term. In addition, selection is a particular concern with respect to the underwriter and its counsel because managing underwriters might be likely to pick the same law firms repeatedly to do the best performing deals. In order to rule out selection and tease apart positive relational impacts from negative ones, I perform further tests below.

2. Selection

A concern with respect to interactions between the underwriters and their counsel is the possibility that the results above are selection driven. After all, underwriters select their counsel, and we might be concerned that their selection criteria are related somehow to the outcomes analyzed above. If

127. Additional controls such as the syndicate size were not significant and so were not reported.

128. To eliminate the possibility of clustering with respect to industry, bank, and year, each regression was run using clustered standard errors on those dimensions with no change in the significance of the results. See A. Colin Cameron et al., *Robust Inference with Multiway Clustering*, 29 J. BUS. & ECON. STAT. 238, 238–49 (2011).

that is the case, then the underwriter's selection of counsel could be tied to the quality of the issuer and the quality of the transaction as a whole, and metrics such as price performance might simply be a result of the same underlying considerations that led to the appointment of a particular law firm. Therefore, the quality of the deal drives both the result and the selection of counsel. For instance, if Goldman Sachs wins the lead underwriting spot in a "hot" IPO, it may select its most preferred counsel, Sullivan & Cromwell, to act as counsel on the deal, and because the deal is "hot," it may generate better market performance and/or more underpricing.

The most compelling argument against this possible selection story is that the underwriter selects its counsel before due diligence takes place and before the bookbuilding process begins, meaning that the worrisome early selection takes place well before the bank is in a position to know how a particular issue will perform in the market. One might nonetheless observe that an underwriter can have a good sense of what sort of price performance an issue will yield in advance of the bookbuilding itself—after all, the underwriter has to come up with a proposed price range when making its pitch to the issuer in the first place.

Even taking this fact into account, however, the incremental nature of the results (i.e., that each additional interaction is associated with an incremental increase in price performance on average) makes the selection story above unlikely. That is the case because in order for selection to be driving the results, it would have to be true that lead underwriters can accurately and systematically predict the level of underpricing and market price performance (as well as time to completion and litigation outcomes as further discussed below) and choose different legal counsel a specific number of times based on the precise predictions for each deal. That scenario is extremely unlikely.¹²⁹

Nonetheless, further analysis of the data is useful to provide evidence that selection is unlikely to be driving the observed effects. I do this by cutting the data to isolate observations that might plausibly be the product of selection. As previously described, the most obvious selection story is that investment banks managing high performing IPOs are more likely to choose particular counsel repeatedly. If this were the case, it would also produce a pattern in which repeated bank-counsel interactions are associated with incrementally better market performance, as seen above. To determine whether this selection story is supported by the data, I observe that a relatively small group of investment banks typically leads the "hot" IPOs. The banks that tend to get these deals are the ones that have the greatest amount of IPO experience.¹³⁰ I continue by limiting the sample to those banks, creating smaller subgroups consisting of those banks that serve as lead underwriter in at least forty issues in the dataset (the top

129. *See, e.g.*, Telephone interview with Attorney (June 21, 2013) (name withheld by request) (on file with author).

130. *See id.* In addition, prior to entering academia, I spent several years as an associate in the capital markets department of a major international law firm, where I worked on IPOs as well as other types of transactions.

eighteen banks) and to those that manage at least eighty issues in the dataset (the top seven banks).¹³¹ If the main results are selection driven, they should disappear in the limited samples, because those samples contain most of the “hot” IPOs, and any significant variation due to the quality of the underwriter or the quality of the deal should flatten out. But as Appendix Table 9 shows, the results remain even in these limited samples. I conduct the same analysis using dollar market share in the year preceding any given deal as a measure of bank quality, instead of the number of deals in the dataset, and the results remain. To further rule out the possible impact of selection, I perform the same regressions after removing all deals in which the bank employs its “favorite” law firms. I determine a bank’s “favorite” law firms in two different ways. First, I remove the deals involving law firms with which banks have done the greatest number of deals within the preceding one, two, and three years. Second, I remove deals involving lawyer-underwriter pairs that are reported in interviews to be favored lawyer-client relationships in equity capital markets. If selection is driving the main results, and banks are simply picking their favored law firms for the best deals, then the results should disappear when the deals involving favored law firms are removed. However, the results remain. Finally, I create a variable for the experience level of each law firm to see if selection based on expertise might be driving the results. The results remain when controlling for IPO experience of each firm. Moreover, when the number of deals a firm has done in the past over the last one, two, and three years is used as the dependent variable in regressions, instead of the interactions between firms and investment banks, the effect does disappear. This further indicates that the interaction between lawyers and their clients impacts the deal beyond the lawyers’ experience alone. These results, along with other robustness checks, are reported in Appendix Tables 7 and 8.

3. Performance Versus Excessive Underpricing

Another issue which complicates the interpretation of the data is that first day price performance, or underpricing, has both good and bad interpretations for deal quality. A very large opening day bounce can be viewed not as an indicator of better stock performance, but rather as evidence of pricing error on the part of underwriter and poor service provided to the issuing company.¹³² However, as previously discussed, an IPO can be considered a success for an underwriter even where

131. I note that the proxy used here for quality is different than that used in some other studies. *See* Hanley & Hoberg, *supra* note 53, at 2830–34 (using dollar market share for the previous year as a measure of underwriter quality). However, for present purposes, the number of deals works as well or better than other measures because it more directly relates to the potential selection problem inherent in repeated interactions with counsel. Nonetheless, as a test for robustness, I tested the more commonly employed measure of quality (dollar market share for the preceding year). The results remained.

132. *See generally* Alexander, *supra* note 12 (discussing a theory of underpricing as an artifact of error, combined with abundance of caution).

underpricing is high, because underwriters are able to capture value through trading commissions on the IPO stock (the trading of which tends to increase the more underpriced the stock is), as well as quid pro quo business from favored investors who receive allocations of the underpriced stock and profit from the rise in its price.¹³³ In order to better understand how to interpret first day price increase and the effect of repeated interactions, it is necessary to parse the underpricing puzzle more finely.

Understanding the implications of underpricing for the relationship between the underwriter and its counsel requires a brief detour into the vast economic literature on underpricing. Numerous theoretical explanations for underpricing have been advanced, and a few that are especially relevant to the analysis here are worth noting.¹³⁴ One such explanation is that the underpricing serves as a compensation mechanism for investment banks' favored institutional clients, who often bear risk by agreeing to purchase shares in IPO issuers.¹³⁵ The banks need these investors to ensure adequate demand for stock in certain offerings, including offerings in which the risk of return is uncertain. Banks compensate these clients for agreeing to purchase such stock (and thus ensure adequate demand for the offering) by giving an essentially guaranteed margin of return through the underpricing. Another possible explanation is that underpricing is a form of insurance against the risk of liability, as a stock that performs well relative to its offer price is much less frequently the subject of litigation than those which perform poorly.¹³⁶ Regardless of the explanation, the phenomenon is generally seen as a transfer of value from the issuing company, which receives a lower price for the stock than it otherwise could, to the initial investors (and indirectly the investment banks), who realize the gain. Thus, while underpricing might be necessary, the issuer would seek to keep it at a minimum, where the underwriter would seek to maximize it in the pricing negotiation.

Most relevantly, various studies have investigated whether different attributes of the major players in the IPO process are related to the level of underpricing. A number of studies have found an association between

133. See Griffith, *supra* note 11, at 591–92.

134. Most of the theoretical explanations come from finance literature. See generally James R. Booth & Richard L. Smith III, *Capital Raising, Underwriting and the Certification Hypothesis*, 15 J. FIN. ECON. 261 (1986); Kevin Rock, *Why New Issues Are Underpriced*, 15 J. FIN. ECON. 187 (1986); Seha M. Tiniç, *Anatomy of Initial Public Offerings of Common Stock*, 43 J. FIN. 789 (1988). However, the legal literature has addressed the issue as well. See, e.g., Alexander, *supra* note 12, at 17–22; Yoram Barzel et al., *Prevention Is Better than Cure: The Role of IPO Syndicates in Precluding Information Acquisition*, 79 J. BUS. 2911, 2911–13 (2006); Barondes & Sanger, *supra* note 81, at 16–21; Richard A. Booth, *Going Public, Selling Stock, and Buying Liquidity*, 2 ENTREPRENEURIAL BUS. L.J. 649, 649–51 (2007); Spindler, *supra* note 12, at 15–16.

135. See generally Murat M. Binay et al., *The Role of Underwriter-Investor Relationships in the IPO Process*, 42 J. FIN. QUANTITATIVE ANALYSIS 785 (2007).

136. See Tiniç, *supra* note 134, at 789–95, 803–15 (explaining the liability theory and testing it empirically).

greater underwriter reputation and lower levels of underpricing.¹³⁷ At the same time, one prominent study found the opposite to be true, particularly in offerings of smaller issuers.¹³⁸ Another set of studies examined IPO auditors, finding that greater auditor reputation and level of compensation were strongly associated with lower levels of underpricing.¹³⁹ Of those, a few have looked at the relationship of counsel in the deal and the existence and/or degree of underpricing.

Studies of the relationship between legal counsel and underpricing have presented a mixed picture. One study examined the relationship of the issuer's counsel's reputation, measured by level of compensation, and found a correlation between counsel with a good reputation and lower levels of underpricing.¹⁴⁰ The explanation for this is thought to be either that better counsel help the issuer to be more aggressive in its negotiations and advocate for more positive disclosure in the prospectus, or that they provide quality assurance to the underwriters, or both.¹⁴¹ Another study examined the impact on underpricing of the experience level of underwriter's counsel, using a law firm's market share within its particular geographic area to determine experience level.¹⁴² This study found a strong negative correlation between the experience level of the manager's counsel and the level of upward price adjustment from the initial offering range. Those authors theorize that this effect is the result of more experienced counsel's ability to require more negative disclosure about an issuer in the preliminary and final prospectus, because this disclosure is the primary basis for the bank's marketing efforts, which in turn affects the final price.¹⁴³ These authors cite previous studies showing upward price adjustment as correlated with underpricing to conclude that high-experience law firms help to create less underpricing.¹⁴⁴

In order to separate what might be considered positive implications of underpricing from negative ones, as well as to isolate the impact of familiarity among the parties, it is necessary to analyze (1) what elements of the first day bounce data would be consistent with a deal that performs well and inconsistent with pricing error or agency problems between the underwriter and issuer, and (2) whether either of the above can be explained by experience or quality of the lawyers or underwriters, as opposed to

137. See, e.g., Carter & Manaster, *supra* note 73, at 1046; Barondes & Sanger, *supra* note 81, at 16–21.

138. See Loughran & Ritter, *supra* note 12, at 11–12, 30–31.

139. See Beatty, *supra* note 73, at 693–709; Randolph P. Beatty, *The Economic Determinants of Auditor Compensation in the Initial Public Offerings Market*, 31 J. ACCT. RES. 294, 294–300 (1993).

140. Beatty & Welch, *supra* note 74, at 561, 596. For a study on the relationship between IPO market share by bank and announcement of an investigation by the SEC, see generally Beatty et al., *The Indirect Economic Penalties in SEC Investigations of Underwriters*, 50 J. FIN. ECON. 151 (1998).

141. See Beatty & Welch, *supra* note 74, at 595–97.

142. See Barondes & Sanger, *supra* note 81, at 2–3, 19–21.

143. See *id.*

144. See *id.*; see also Kathleen Weiss Hanley, *The Underpricing of Initial Public Offerings and the Partial Adjustment Phenomenon*, 34 J. FIN. ECON. 231, 231–36 (1993).

factors related to the interactions between the lawyers and bankers. The following sections perform this analysis, revealing both inconsistencies with the underpricing explanation and strong indications of a well-performing deal.

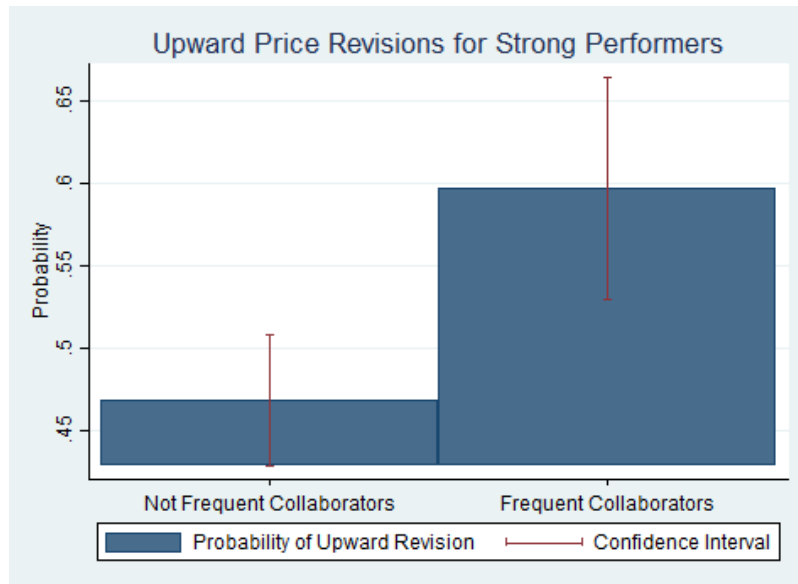
a. Upward Price Revision

To test whether the first day bounce is more consistent with good performance versus error or lack of independence, I look at the propensity for accurate upward price revision between the initial offer range and the offer price in the presence of high levels of underpricing, when lawyers and managing underwriters have worked together more frequently. A greater propensity for correct price revision linked to counsel's interaction with the underwriter would indicate lower error rates, and possibly greater independence on the part of counsel, because the underwriter typically prefers to keep the price down and benefits less from revising up.¹⁴⁵

To examine this, I first construct two measures of strong performers, or companies whose stock price after thirty trading days is at least 20 percent and 30 percent higher, respectively, than the midpoint of their *filing* price range (controlling for the performance of the S&P Index during the same thirty days). The reason for doing this is to find issuances that clearly exceed the level of underpricing for new issues that would be intended and advertised by a typical underwriter (usually 15 to 20 percent) and therefore should presumably have had an upward price revision if the price is to remain at 15 to 20 percent below the "correct" level. I then calculate the probability of an upward price revision occurring before the deal closes for those deals in which the bank and counsel have worked together frequently and for those deals in which the bank and counsel have not worked together frequently. For this analysis, banks and counsel are considered to have worked together frequently if they have worked together at least three times in the preceding two years. If the first day bounce associated with repeated interactions is the result of greater error rates, or an intentional scheme to price at a low level, one should expect the probability of an upward revision to be lower when the bank and counsel have worked together more frequently. However, the analysis shows the opposite. Figure 3 shows these probabilities in the raw data.

145. A possible contrary interpretation would be that repeated interactions cause the underwriter to be less effective when negotiating the price with the issuer. However, as explained below in the discussion of integer versus decimal pricing, this interpretation is unlikely.

Figure 3: Upward Price Revisions



As Figure 3 shows, there is greater propensity for upward price correction, and efforts to reduce underpricing, when banks and their lawyers are frequent collaborators. When banks and their counsel do not work together often, upward price revision occurs a little more than 45 percent of the time. However, when the two are frequent collaborators, the probability is nearly 60 percent.

To measure this effect precisely, I employ a probit regression to determine whether the offer price was revised upward past the maximum of the initial offer range for the sample of issues that showed a significant increase in value (20 percent and 30 percent above the upper filing range on the thirtieth trading day, controlling for S&P returns during that time period). Panel A of Appendix Table 3 shows the results of the probit regression (marginal effects are reported). Frequent collaborators are 8 to 9 percent more likely to correctly revise the filing price upward past the high end of the initial offer range for strong performers.¹⁴⁶ This finding in turn further supports a conclusion that relational dynamics between the underwriter and its counsel help to improve the deal overall. The upward price correction implies, however, that the lead underwriter is capturing less of the benefits of underpricing because it means that their favored institutional clients will not gain as much as they otherwise might have.

146. Other studies that examine price revision typically measure from the midpoint of the initial offer range to the closing price on the first day of trading. *See, e.g.*, Hanley & Hoberg, *supra* note 53, at 2830–34. I use the high end of the offer range to the first day closing price, which results in a smaller calculated price increase. The measure is intentionally conservative, to err on the side of caution. Employing the methodology used in other studies would have made the results in this specification appear stronger.

Nonetheless, as upward revision in these deals is also accompanied by very strong first day performance, it is reasonable to conclude that the overall effect is beneficial—the price is more accurate, the issuer gets more than it otherwise might have, and the underwriter and its customers still garner a very large share of the value.

I note that an alternative possible interpretation posited in the literature is that price revision in fact represents lower levels of due diligence by the underwriter and counsel prior to the offering.¹⁴⁷ Scholars advancing this interpretation reason that pricing can be done one of two ways: through pre-offering information discovery (via due diligence) or through bookbuilding, during which investors convey pricing information to the issuer and underwriters by means of the demand they express for the stock.¹⁴⁸ Some scholars posit that there is a tradeoff between due diligence-related ex ante pricing and ex post price discovery through bookbuilding.¹⁴⁹ If enough information is available to price the stock before bookbuilding, then the disclosure will be more informative and there will be a lower incidence of price revision during bookbuilding.¹⁵⁰ Likewise, if less diligence is conducted, then disclosure will be less informative and use more boilerplate language, resulting in the need to rely on the bookbuilding process for price discovery and leading to more price revision once bookbuilding is complete and demand for the stock is known.¹⁵¹ It is beyond the scope of this Article to analyze the plausibility of this interpretation in detail. However, I note that even if this interpretation is correct, it would support the conclusion that the repeated representations are related to an increasingly better outcome for the underwriter. This is because the underwriter, if given a choice, would prefer to allow for price discovery ex post through bookbuilding over conducting costly and time-consuming research ex ante.¹⁵² According to this interpretation, from the underwriter's perspective, ex post price discovery is more efficient because the underwriter expends fewer resources than it would through more diligence (which is expensive and time-consuming), but is still just as well off, if not better off, because it does not suffer ill effects from underpricing, and may even benefit from it. Under this interpretation, the price revision result implies that price discovery is taking place during bookbuilding, which is efficient from the underwriter's perspective.

b. Isolating the Effects of Interaction from Experience or Reputation

To test whether the results with respect to price performance could be driven by the experience or reputation of counsel or the underwriters, I

147. *See generally id.*

148. *See generally id.*

149. *See generally id.*

150. *See generally id.*

151. *See generally id.*

152. *See generally id.*

construct variables to account for the experience of both as signaled by the number of deals done in a given industry and within a given time period. I also create variables to represent the market share of each bank and firm during the year preceding any particular deal, to provide a measure of the prestige of each firm. I use these variables in the regressions specified above to see if they impact the result, and find that they do not. These results are reported in Appendix Tables 7, 8, 11, and 12. That measures of both bank and law firm experience, as well as measures of reputation as proxied by market share, do not change the estimates in the model strongly indicates that the results are not driven by experience and substantive skill, or by reputation and signaling effects with respect to either the banks or the firms. This in turn provides support for the conclusion that relational factors resulting from repeated interaction drive the results.

4. Litigation

The filing of securities litigation is a salient indicator of deal performance, particularly if it happens within a relatively short period of time following the IPO.¹⁵³ Securities liability can arise for numerous reasons and does not necessarily indicate problems with the lawyers or their relationship with their clients. Nonetheless, a systematic pattern of either increased or decreased litigation may indicate either weaker or stronger disclosure and deals.

In order to examine whether interaction has any impact on litigation, I perform a probit regression on the occurrence of class action lawsuits within six months and within one year¹⁵⁴ of an IPO for which the underwriter and the underwriter's counsel were frequent collaborators. While the timeframes are somewhat arbitrary, it is often the case that IPO-related class actions are filed within the first year.¹⁵⁵ Controls are the same as those used in the previous regressions. The results are shown in Panel A of Appendix B Table 4.

The regressions reveal no significant relationship between litigation and frequent interaction between the underwriter and its counsel within the preceding year. The negative coefficient for class actions within six months indicates that, if anything, there may be a very small decrease in the probability of short-term litigation, but there is not enough of a relationship to draw any strong conclusions. The lack of significant result remains for deals within the past two and three years as well. The lack of relationship is

153. Class actions were filed within one year with respect to 119 of the issuers in the dataset, after discounting multiple separate class actions filed with respect to the same issuer. This number constitutes 4.36 percent of the dataset.

154. The six-month and one-year cutoffs are more conservative than those used in other studies of IPO litigation. *See, e.g.,* Michelle Lowry & Susan Shu, *Litigation Risk and IPO Underpricing*, 65 J. FIN. ECON. 309, 315 (2002) (analyzing the occurrence of litigation at any time after the IPO). The six-month and one-year cutoff are used to ensure that litigation is related to the IPO, and in particular, the IPO-related work product that the lawyers would have produced.

155. *See id.* at 315 (discussing statistics on lawsuits filed).

noteworthy in comparison to the incidence of litigation seen in relation to other interactions, as discussed below.

Before concluding the analysis of litigation as well as short-term price performance, I should note another prominent, but unlikely, theory of underpricing that could affect the interpretation. This theory explains underpricing as a form of insurance against IPO-related litigation.¹⁵⁶ To understand why this might make sense, consider that section 11 of the Securities Act of 1933 imposes liability for material misstatements in a prospectus that lead to losses by investors.¹⁵⁷ Underwriting banks have been able to escape liability in such lawsuits by claiming that they conducted adequate due diligence and that statements in the prospectus were true to the best of their knowledge;¹⁵⁸ however, issuing companies are not able to employ a due diligence defense and therefore bear strict liability for material misstatements that result in losses to investors.¹⁵⁹ Liability under section 11 is limited to the difference between the market price of the stock and the offering price.¹⁶⁰ In practice, this means that an issuer faces potential liability any time its stock price drops below the offering price after the IPO, because even frivolous claims usually settle before the existence of any material misstatement or omission is ever adjudicated on the merits.¹⁶¹ With that danger in mind, issuers and their underwriters might use underpricing as a form of insurance against section 11 liability because if the offering price is low enough, it is very unlikely that the market price will drop below it.¹⁶²

156. See generally Tiniç, *supra* note 134 (originating the hypothesis that underpricing serves as insurance for litigation). See also Lowry & Shu, *supra* note 154, at 309–11 (providing empirical support for the litigation insurance explanation for underpricing).

157. 15 U.S.C. § 77k(a) (2012).

158. See, e.g., *Escott v. Bar-Chris Constr. Corp.*, 283 F. Supp. 643, 688–89 (S.D.N.Y. 1968) (establishing the due diligence defense for non-issuer defendants in prospectus-related litigation if the defendant can show reasonable grounds for that belief after a reasonable investigation into the truth of the alleged misstatements).

159. See 15 U.S.C. § 77k(b)(3).

160. See *id.* § 77k(e).

161. Stephen J. Choi et al., *The Screening Effect of the Private Securities Litigation Reform Act*, 6 J. EMPIRICAL L. STUD. 35, 35–36 (2009) (noting that securities class actions almost always end in settlement regardless of the merits because “defendants, anxious to avoid the distraction of litigation, high defense attorney fees, negative publicity surrounding a securities lawsuit, and the specter of potentially bankrupting damages, may be willing to pay a ‘nuisance’ settlement to make the case go away, even when they perceive the likelihood of the plaintiff succeeding at trial as rather low”). The perception of high levels of frivolous litigation was one of the motivations behind the passage of the Private Securities Litigations Reform Act of 1995. *Id.*

162. The issuer and underwriters can be—and often are—sued under section 10 and Rule 10b-5 of the Securities Exchange Act of 1934 in connection with IPO-related losses. See *id.* at 41–42. Damages for such actions are not limited by the offering price, but the issuer is not subject to strict liability for damages in such cases. Compare *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 201 (1976) (holding that “§ 10(b) [of the Exchange Act] was addressed to practices that involve some element of scienter and cannot be read to impose liability for negligent conduct alone”), and 15 U.S.C. § 78r(a) (providing for “damages caused by” reliance on material misstatements or omissions), with 15 U.S.C. § 77k(a) (providing for strict liability), and 15 U.S.C. § 77k(e) (permitting damages “not exceeding the price at which the security was offered to the public”). I focus in this section on liability

If underpricing is insurance against litigation, then one might interpret the first day price jump results above, and the lack of any reduction in probability in litigation reported in this section, to conclude that frequent interaction is causing issuers to pay for costly insurance that is having no measurable effect. This would, of course, indicate a negative outcome from repeated interactions.

However, while the underpricing-as-insurance argument makes logical sense, it is widely disputed, and a priori problematic for a number of reasons. First, there is evidence that underpricing leads to higher share turnover in the aftermarket as investors who bought early seek to make a quick profit by selling their cheaply purchased shares into the rising market.¹⁶³ Higher share turnover in the aftermarket, in turn, is an input of increased litigation.¹⁶⁴ Therefore, underpricing may be just as likely to draw litigation as is it is to deter it.

Second, and more significantly, using underpricing as litigation insurance does not make economic sense because it would be vastly more expensive than what would be warranted given the expected costs of IPO litigation.¹⁶⁵ This is because the costs given up by the issuer due to high levels of underpricing are likely to be much higher than the ex ante expected cost of litigation in most circumstances, even taking into account non-liability related transaction costs, such as the costs of counsel, reputational costs, and management's time and energy costs.¹⁶⁶

under section 11 of the Securities Act because that section is the primary source of liability for IPO firms, *see* Choi et al., *supra* note 161, at 41, and provides much of the rationale for the litigation insurance explanation for underpricing, *see* Lowry & Shu, *supra* note 154, at 309–13.

163. *See* Rajesh K. Aggarwal et al., *Strategic IPO Underpricing, Information Momentum, and Lockup Expiration Selling*, 66 J. FIN. ECON. 105, 107 (2002) (describing this model as an alternative interpretation).

164. *See* Lowry & Shu, *supra* note 154, at 320–21. Lowry and Shu use market turnover as an input into litigation risk. *See id.* at 321 (“Stock turnover, measured as the proportion of shares traded at least once during a given period, is also related to plaintiffs’ incentives to initiate lawsuits. This is because shareholder damages are generally increasing in the number of shares traded at the allegedly misleading prices. . . . Not surprisingly, sued firms have significantly higher turnover.”).

165. This point has been made by numerous critics of the litigation insurance hypothesis. *See, e.g.*, Alexander, *supra* note 12, at 19–20.

166. To illustrate, the average probability of class action litigation within the first year for all deals in the dataset is 4 percent. The average payment for settlement of securities class actions is approximately \$3 million. *See* Lowry & Shu, *supra* note 154, at 310, 315 (noting average settlement payment of \$3.3 million in “lawsuit sample . . . of all firms that had an IPO between 1988 and 1995”). Meanwhile, the average level of underpricing is closer to 20 percent, which on average amounts to \$300 million left on the table given the average deal size in the dataset (or \$152 million in terms of median deal size in the dataset). This means that underpricing would be the equivalent of paying roughly \$152 million to \$300 million to avoid an average expected litigation cost of \$1.2 million (\$3 million * .04), making underpricing an extraordinarily high price to pay to avoid litigation cost, even accounting for reputational and other harms that result from litigation. *See also* Qing Hao, *Securities Litigation, Withdrawal Risk and Initial Public Offerings*, 17 J. CORP. FIN. 438, 454 (2011) (reporting the results of a recent empirical analysis showing no reliable relation between underpricing and subsequent litigation risk for U.S. IPOs from 1996 to 2005); Jay R. Ritter, *Equilibrium in the Initial Public Offerings Market*, 3 ANN. REV. FIN. ECON. 347, 354 (2011)

Third, it has been widely noted that other countries with developed securities markets have far less securities litigation, and are much less plaintiff friendly, but still have underpricing similar to what is seen in many U.S. IPOs.¹⁶⁷ Therefore, it is unlikely that the lack of any association between lawyer-client familiarity and reduction in litigation rates has any negative implications for the other results reported here.

5. Disclosure

The amount of different types of disclosure in the prospectus does not, by itself, indicate a positive or negative outcome for the deal. However, because disclosure is a facet of the deal most directly influenced by counsel, it is useful to analyze it, both to inform the other results and to provide some insight on the possible mechanisms at work in the results previously reported.

Appendix Table 10, Panel A, shows the effects of repeated interactions between an underwriter and its counsel and risk factors. The table demonstrates a significant effect from repeated interaction: each additional deal together in the preceding year is associated with a 30 percent increase in the proportion of the prospectus occupied by risk factors. For repeated deals in the past two years, the marginal increase is 20 percent, and for three years, it is 15 percent, all significant at the .1 percent level.¹⁶⁸

The content and impact of different risk factors vary, and so it is not always clear which party, if any, benefits from increased levels of such disclosure. On the one hand, it is potentially prophylactic against litigation. On the other hand, it may lead to underpricing and even provide a roadmap for litigation. Generally speaking, the underwriter in a typical IPO tends to favor more negative disclosure than the issuer. This is due to the fact that, unlike the issuer, the underwriter benefits from negative disclosure, as it gains protection from liability while suffering few of its costs, because it can benefit even if the offering price is negatively impacted.¹⁶⁹ Therefore, from a better team dynamic between underwriters and counsel one would predict an increased proportion of negative to positive disclosure (estimated here as the share of the prospectus devoted to risk factors).

Despite the ambiguity of the level of disclosure, given the lack of association between repeated interactions and litigation demonstrated in the preceding section, a tentative inference can be drawn that the increase in risk factor disclosure is beneficial. The benefit likely inures to the underwriter more than the issuer, as the underwriter stands to lose less and

(“This lawsuit avoidance theory of underpricing has the problem that leaving money on the table is an incredibly inefficient way of deterring lawsuits: The opportunity cost in foregone proceeds is \$1 for what is at most a few cents of expected benefits.”).

167. See Ritter, *supra* note 166, at 354 (“[T]he litigation environment in the U.S. is fairly unique, yet the magnitude of IPO underpricing in the U.S. is not unusual.”).

168. Results for share of the prospectus devoted to MD&A were not significant and not reported.

169. See, e.g., Ritter & Welch, *supra* note 12, at 1810; see also Nocera, *supra* note 14.

gain more from underpricing and thus has a different cost-benefit analysis with respect to litigation risk.

6. Time to Deal Completion

Repeated interaction reveals a small but significant positive effect on the length of time to complete a deal. If repeated interaction and better teamwork yield positive benefits, one would expect efficiency and speed to be one of them. Therefore, I test the data to see if repeated interactions between underwriters and counsel lead to a decrease in the length of time that deals take. As mentioned in the previous section, many factors could influence the timing of the offering, and some of those factors cannot be controlled for in a regression. Therefore, while the lack of a trend would not necessarily be troubling, a general trend would provide further evidence of negative or positive effects from repeated interactions.

I analyze the length of time between the date that Form S-1 is filed with the SEC and the offer date. This time period is only a portion of the entire length of the deal, but it nonetheless must serve as a proxy because it is the only observable information regarding the length of time to complete the deal. Because the timing of the deal may depend on market conditions in a relatively narrow stretch of time leading up to the offering, I construct a dummy variable for each quarter of the IPO year, instead of using the entire year variable as in other regressions. In addition, the number of lead managers in the deal have a significant impact on deal length (each additional manager increases the deal length by approximately six days), so the managers are added to the group of controls. In my preferred specification, I limit the analysis to deals that are completed within one year, because the presence of a number of long-dated deals in the dataset raises the possibility of overstating the true effect of repeated interactions. The results are reported in Panel A of Appendix Table 5.

The results of the analysis indicate a modest but significant reduction by almost two days in the amount of time to complete a deal, for each repeated interaction within the past year. This effect fades in both magnitude and significance for repeated interactions within two and three years. In general, however, the trend supports the idea that better teamwork produces better results.

7. Integer Versus Decimal Pricing

The type of price arrived at likewise indicates positive benefits for the underwriter from repeated interaction with its counsel. Other research on IPOs hypothesizes that if an IPO is priced using a non-integer number then the issuer's management team had more information and negotiated more effectively over price than might otherwise be the case.¹⁷⁰ The reason for

170. See Daniel J. Bradley et al., *Negotiation and the IPO Offer Price: A Comparison of Integer Vs. Non-Integer IPOs*, 39 J. FIN. & QUANTITATIVE ANALYSIS 517, 518 (2004)

this conclusion is that arriving at whole numbers in a negotiation suggests less thorough analysis of relevant criteria and more reliance on anchoring techniques.¹⁷¹

Panel A of Appendix Table 6 reports the results of a probit regression measuring the change in probability of a non-integer price with repeated interactions. The results show a small but significant effect, with each repeated interaction within the past year resulting in a 1.3 percent lower chance of the final price being an integer.¹⁷² Significance does not remain for interactions over two and three years. Nonetheless, this may indicate a stronger negotiating position on the part of the underwriter, aided by assistance from familiar counsel.

D. Interactions Between Issuer's Counsel and Underwriter's Counsel

One might expect the lawyers on either side of the table in a capital markets deal to gain perhaps the most from repeated interaction. These individuals encounter each other frequently, and a good working relationship can help them to work more effectively together. Analysis of frequent interaction between sets of counsel, however, yields few significant results.

1. Price Performance

As before, first day price increase is examined for counsel-counsel repeat interactions. The results for first day price increase, reported in Panel B of Appendix Table 1, indicate a moderate but significant effect. These significant but modest price gains are sustained over thirty, sixty, and ninety days, as reported in Panel B of Appendix Table 2

2. Price Revision

I again examine the probability of correct upward price revision and find there is a weakly significant (at the 10 percent level) relationship between interactions and the probability of upward price revision when the first day bounce is 30 percent or more. No other significant results are seen. These results are reported in Panel B of Appendix Table 3.

3. Litigation

Each additional interaction between sets of counsel is associated with a small (0.5 percent) and weakly significant (at the 10% level) decrease in class action litigation filed within six months following the IPO offer date. No significant relationship is seen when the time period is expanded to one year, as shown in Panel B of Appendix Table 4.

(arguing that non-integer prices represent more negotiation effort and less uncertainty regarding offer price).

171. *See id.* at 528–29. This methodology is borrowed from Bradley and his coauthors.

172. Out of 2265 deals in the dataset, 383 (14.03 percent) came to a final price using a decimal number.

4. Disclosure

Counsel deals together continue the trend of marginally increasing risk factor disclosure, as reported in Panel B of Appendix Table 10. The degree of increase remains relatively constant regardless of whether the previous interaction has taken place in the past one year (19 percent), two years (17.3 percent), or three years (15 percent).¹⁷³ Once again, this result is obtained after controlling for factors that might otherwise influence risk factors or the riskiness of the firm overall: the firm's industry, the time period, the age of the company, the size of the company (measured by company assets), and the involvement of sophisticated venture capital investors. This suggests that the inclusion of additional risk factors may be driven more by norms of legal practice with regard to prospectus drafting than by anything related to the deal itself or the parties at the table.

As above, risk factors increasing while the probability of a securities class action either decreases or bears no relationship to risk factors, could indicate that the two sets of counsel, working together more frequently, are doing marginally better work and protecting firms from litigation (at least in the first six months).

5. Deal Timing and Integer Pricing

No significant relationship was identified between repeated interaction among sets of counsel and deal completion times or the probability of an integer final price, as shown in Panel B of Appendix Tables 5 and 6. This is somewhat surprising, given that better team dynamics would presumably create a more efficient process. However, the length of time a deal takes may be affected by many factors outside the lawyers' control. The timing of the deal is also usually managed by the underwriters more than other parties at the table, so perhaps it should not be surprising that counsel does not affect it. Testing for integer pricing yields a marginally significant, but very small negative result. This result indicates that counsel pairs may have a very small effect on what kind of price issuers choose. However, this result may also be an artifact of the reality that there are many counsel interactions and relatively few non-integer prices in the dataset.

E. Summary of Findings and Interpretation of Results

Taken together, the results above indicate some positive benefits associated with repeated collaboration between underwriters and their counsel, as well as between different sets of lawyers on opposite sides of a deal. In particular, when the lead underwriter and its counsel have worked together frequently, deals tend to perform better in the short and long term, and they are less marked by signs of pricing error or excessively high, unmitigated underpricing. While negative and risk-related disclosure

¹⁷³ Each is significant at the 1 percent level. Results for share of the prospectus devoted to MD&A were not significant and not reported.

increase somewhat in such interactions, there is no corresponding association with litigation in the first year, when IPO-related litigation is most likely. The data also suggests that deals get done slightly faster. Similar results are evident for deals in which both sets of counsel have worked together frequently, except that there is a small but significant negative marginal effect on litigation within the first year but there is no significant effect on deal timing. This suggests that counsels' relational dynamics in these situations improves the transaction by reducing uncertainty, the cost of information production, and lowering agency costs and transaction costs.

With respect to the two sets of counsel, the results are more mixed. First day price jump increases modestly in repeated interactions, indicating low levels of underpricing. Nonetheless, no significant result is seen with respect to price correction. This could simply be due to more accurate pricing to begin with, or it might indicate that repeated interactions between counsel have a relatively modest impact on the ability of the deal team to market the deal. The strong price performance over the first thirty, sixty, and ninety days is also related to repeated interactions, further indicating good deal execution. Repeated interactions are weakly associated with lower probability of litigation, at least in the first six months after the offering.

F. Caveats and Robustness Checks

While the associations described above provide interesting insights, the regression analysis alone gives no assurance that some underlying factors are not driving the repeated selection of both the banks and the different sets of counsel, as well as the results. For instance, the industry of the company going public, the size of the company, the time period of the IPO, or the recent experience of a particular law firm in a particular industry might all factor into the choice to use the same counsel for multiple deals in a given time period. At the same time, such factors could influence the results of the deal, without regard to the effect of repeated interaction. To conclude that repeated interaction is indeed driving the results, I must rule out the impacts of such factors as drivers of the results. I employ a number of strategies to do so.

As previously explained, to rule out the impact of time period and industry, I use year fixed effects, industry fixed effects, and the interaction of the two. In alternative specifications, I use a fixed effect for the quarter in which an IPO occurs, interacted with the industry of the issuing company. I also use the geographic location by ZIP code of each firm, and the results remain. In my main specification, I also use a fixed effect for each underwriter, with no significant change in the results. In addition, there are several years in the dataset in which IPO activity, as well as several of the outcome variables analyzed in the paper, is especially high. The years 1999 and 2000 have especially high numbers of IPOs (as well as repeated interactions) and are associated with very high levels of underpricing and litigation. Although the use of fixed effects for these

years removes the mean of the impact of these years on the outcomes, as a further test of robustness I remove all deals completed in these years from the data set completely, and the results remain.

As discussed above, law firm experience and reputation are also unlikely to be driving the results. When a control for law firm experience is used, the results do not change. In addition, if “law firm deals” is used as a dependent variable in the analysis, no effect is apparent. Further, the consensus among practitioners interviewed for the study is that the markets do not consider the reputation of the law firms representing the parties in the deal when making investment decisions. This may reflect that all of the firms who do IPOs are of sufficiently high quality, and therefore reputation does not matter per se to investors. But in any event, law firm reputation and experience do not explain the results.

Nor is it problematic that issuers’ and underwriters’ choice of law firm is often based on either a previous relationship or recent experience doing IPOs in a given industry. Indeed, that explanation would be consistent with the findings above, as well as other empirical research on clients’ choice of lawyers.¹⁷⁴ It would be difficult to imagine how such previous relationships would be related to the outcomes analyzed herein, except through the relational effects I am studying. With respect to the law firms’ recent experience and reputation, I employ several strategies to rule these out as confounding factors. To rule out the possibility that law firm quality or experience is driving the result, I construct variables to represent the number of deals each firm has done in the previous one year, two years, and three years in each industry and overall. These variables do not change the results when added to the model. I also add fixed effects for certain law firms that appear most frequently in the dataset, and the results remain.¹⁷⁵

Finally, other factors that may influence selection of counsel, as well as the outcome variables, are factors related to the quality of the deal, availability of information about the issuer, and sophistication of the parties. These factors are: the presence of venture capital or private equity investors, the age of the company (which impacts the amount of information available about the company), the value of the company in terms of total assets, the value of the company as determined by book value per share, the size of the underwriting syndicate, and the proportion of insider stock sold in the deal.¹⁷⁶ Including these factors in the model yields the same results as those obtained in my preferred specification. All results

174. See Coates et al., *supra* note 1, at 999–1001.

175. In particular, Wilson Sonsini appears a disproportionately high number of times on the dataset (n=426). Adding a fixed effect for Wilson Sonsini does not change the results. Removing Wilson Sonsini completely from the dataset lowers the precision of the estimates in the model such that they are no longer significant, which is to be expected when removing such a large number of data points. Nonetheless the results remain even under that specification.

176. Recall also that deal size, measured by the log of gross proceeds, is a standard control in all specifications.

discussed in the subsection are reported in Appendix Tables 7 and 8 for the first day price bounce and probability of litigation variables.

To illustrate the point further, the results with respect to an issuing company's counsel could be interpreted to suggest that some underlying factors are driving both underpricing and litigation risk, as well as the selection of counsel. This explanation draws from theories of underpricing as both insurance for, and deterrent to, litigation previously mentioned.¹⁷⁷ Under this theory, the level of underpricing might correspond to the litigation risk inherent in the issue, on the assumption that pricing lower would reduce the probability of the issuance being overpriced. An overpriced issue draws more litigation because when the price inevitably falls in the market, investors lose money and often will bring suit. Moreover, where there is inherent uncertainty regarding the issuer's valuation or industry, underpricing may further help to mitigate the associated risks.¹⁷⁸

The tests described here make this interpretation unlikely, because if this story were true, one would expect to see the underpricing and litigation effects disappear when controlling for factors that would *ex ante* impact the risk of litigation for a particular firm. However, that result is not observed. The systematic incremental nature of the results (i.e., that each additional interaction is associated with an incremental increase in underpricing and litigation on average) also makes it unlikely that there is an underlying factor driving the results as well as the selection of counsel. In order for such underlying factors to be at work, it would have to be true that the parties selecting members of the deal team are doing so based on a very accurate prediction of the future levels of underpricing and litigation. This would mean not only systematically predicting the level of underpricing and litigation with a high degree of accuracy, but also choosing different counsel and banks to work together and across the table from each other a specific number of times based on the specific prediction for each deal. As discussed above, that scenario is extremely unlikely, especially once other possible confounding factors are controlled for.

III. DISCUSSION OF FINDINGS

The findings above indicate that the frequency of lawyer-client interaction bears a significant relationship to the quality of IPO deal outcomes. This has implications for how deals are currently structured and the lawyers' conception of their role in a transaction. Below, I discuss what these implications are for teamwork in deal making and the principal-agent relationship between lawyers and their clients.

177. See Lowry & Shu, *supra* note 154, at 309, 320–21; see also Alexander, *supra* note 12, at 19 (“A large literature has attempted to explain IPO underpricing. One intriguing theory is that IPOs are underpriced as a form of insurance against legal liability based on claims of federal securities law violations on the offering.”).

178. See Alexander, *supra* note 12, at 18–20 (explaining the litigation theory).

A. Lawyers, Clients, and Teamwork

The results described above do not reveal the precise mechanism by which repeated interaction relates to the deal outcomes I have examined. More research is required to elaborate precisely how such a relationship might work. However, a plausible explanation is that repeated interaction and familiarity produce better teamwork, which results in reduced transaction costs, better disclosure, and more effective use of each team member's time and expertise. In this section, I discuss how the findings above might fit into existing models of law practice. I start by discussing how the findings are consistent with the role of teamwork in transactional practice and argue that teamwork should be considered more carefully and intentionally with respect to lawyers and their clients. I also discuss some potentially problematic aspects of teamwork for lawyers, and I argue that team dynamics should be more actively designed and managed to avoid these problems.

1. Importance of Teamwork for Deal Lawyers

IPO transactions can fairly be described as team production endeavors, although teamwork is only starting to be considered seriously in legal theory or practice.¹⁷⁹ When teamwork is discussed, it often focuses on teamwork among lawyers working together in a firm, but leaves out consideration of the teamwork between lawyers and their clients, or teamwork with opposing counsel. Effective cooperation across these different dimensions is also important to a lawyer's effectiveness, and it warrants further consideration.

Teams in the legal context can be defined, borrowing from social science, as a bounded social system whose members are interdependent and whose members are working toward a shared purpose.¹⁸⁰ The benefits of teamwork over individual effort have been well documented.¹⁸¹ Despite this fact, and the prevalence of team tasks in the practice of law, the profession is only beginning to provide the necessary attention to relational skills or to the systematic study of a matter of theoretical importance or skills training. Lawyers and their professional governance are more frequently analyzed through the lens of principal-agent theory,¹⁸² although an equally appropriate lens would be that of team production theory in certain instances. This is especially true when lawyers are engaged in capital markets deals. While the lawyer-client relationship has principal

179. Some excellent examples do exist, however. *See, e.g.*, Utset, *supra* note 3, at 275–80; *see also* Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 247–55 (1999) (describing corporate outputs as the products of team, rather than principal-agent efforts).

180. *See* Alchian and Demsetz, *supra* note 10, at 777.

181. *See, e.g.*, JACK D. OSBORN ET AL., *SELF-DIRECTED WORK TEAMS: THE NEW AMERICAN CHALLENGE* (1990); *see also* Paul Osterman, *Supervision, Discretion, and Work Organization*, 84 AM. ECON. REV. 380, 380–84 (1994).

182. *See, e.g.*, Croson & Mnookin, *supra* note 9, at 331–34 (analyzing the tension between lawyers as agents and their clients as principals).

and agency features, the lawyer in such situations does not simply await orders from the client to act upon; the lawyers help to shape those wishes by conveying advice and information about what is appropriate and wise in a given context.¹⁸³ They often help to prompt the client to action and inform them about what they should be doing at a given point in time in the deal.¹⁸⁴

Relationships and repeated interactions play a critical role in establishing good team processes.¹⁸⁵ The relational dynamics emerging from repeated interactions have the capacity to produce significantly better team performance and, in theory, better output.¹⁸⁶ One common feature of teams that perform well is familiarity among the team members and experience working together multiple times in the past.¹⁸⁷ This point is illustrated in a study conducted by the National Transportation Safety Board (NTSB) showing that team functioning, rather than mechanical problems or technical ability of individual pilots, is the key cause of most airline accidents.¹⁸⁸ This study highlights a fact which is born out in NTSB statistics: that 73 percent of accidents in its database occurred on a crew's first day flying together, and 44 percent of those accidents happened on the crew's very first flight.¹⁸⁹ Research on airline crews and teams of doctors further shows that experienced teams who have worked together in the past perform significantly better—even when fatigued—than do rested crews who have not worked together before.¹⁹⁰ Relational benefits translate to deals as well. Parties involved develop trust and learn each others' norms for communication, language coding, risk tolerance, preferences, preferred

183. See Blair & Stout, *supra* note 179, at 259 (“[P]art of the agent’s job is to figure out what needs to be done (a situation we suspect is the norm rather than the exception in most public corporations). A related point is that the principal-agent model assumes that it is clear who the principal is and who the agent is in the particular relationship or transaction under study. Yet many of the most important relationships inside corporations may be more ambiguous, in the sense that both parties may be contributing productive inputs and neither may have authority over the other.”).

184. This point will be familiar to many who have practiced in capital markets and was confirmed by practitioner interviews.

185. See Kozlowski & Ilgen, *supra* note 84, at 81 (“In that sense, team cognitive structures, emergent states, and routinized behavior patterns are the echoes of repeated process interactions and, hence, are indicative of the nature and quality of dynamic team processes.”).

186. See *id.*

187. See *id.* (“[R]epeated interactions among individuals that constitute processes tend to regularize, such that shared structures . . . crystallize and then serve to guide subsequent process interactions. Process begets structure, which in turn guides process.”).

188. See Robert L. Helmreich, *On Error Management: Lessons from Aviation*, 320 *BMJ* 781, 781–85 (2000); J. Bryan Sexton et al., *Error, Stress, and Teamwork in Medicine and Aviation: Cross Sectional Surveys*, 320 *BMJ* 745, 745–49 (2000); see also Kozlowski & Ilgen, *supra* note 84, at 86–87 (explaining an experiment where teams were given the task of creating origami birds and became more efficient when they repeated the task together, but less efficient when members of the team were replaced with new members).

189. See Hackman, *supra* note 6, at 250.

190. See Kozlowski & Ilgen, *supra* note 84, at 77–81.

roles, strengths, weaknesses, and working styles.¹⁹¹ As lawyer and client come to better understand each other, the lawyer is more able to anticipate his or her client's needs, negotiating positions, and areas of focus.¹⁹² The lawyer can act as a better agent in managing the transaction and in dealing with the issuer and its counsel in the conduct of due diligence and disclosure drafting. The investment bank client, in turn, is freer to engage in the business-oriented side of the deal, with an informational and legal product that matches its expectations and needs. Thus, the client is able to focus on marketing, negotiating, and engaging in other activities within its expertise that are needed to make the deal successful.

2. Making the Whole Better than the Sum of Its Parts

While good teamwork can be beneficial, it does not necessarily appear spontaneously, and optimal team dynamics must be cultivated. Team efforts are generally found to be better than individual ones, but it is not always the case that teams produce gains exceeding those of the sum of their parts.¹⁹³ Groups can suffer from process losses, such as coordination, and motivation problems can erode the benefit of team effort.¹⁹⁴ This reality has been born out in experiments comparing actual teams and “nominal” teams (teams that never work together but whose output is constructed by aggregating the output of each individual) in the performance of a given task.¹⁹⁵ In many of these experiments, adding the output of members of the nominal team produces results that are as good as or better than those obtained by the actual teams.¹⁹⁶ This research suggests that teams do not automatically get better results simply by virtue of being a team.¹⁹⁷ Repeated interaction appears to aid team dynamics over time, but other useful team skills may be less intuitive.¹⁹⁸ Creating an effective team requires certain conditions to be met, and the presence of those conditions will increase the likelihood that a team will function well.¹⁹⁹ In addition, research suggests that collaboration among lawyers may become harder to achieve when the lawyers face performance pressure, or when a client situation is perceived to be high stakes.²⁰⁰ An IPO can easily become such

191. *See id.* at 84 (“[W]e conclude that a shared team mental model that captures the structure of relations among key aspects of the team, its task and role system, and its environment is a key emergent cognitive structure that shapes coordination processes relevant to team goals and their accomplishment.”); *see also* Schneider et al., *supra* note 16, at 17–19 (discussing the importance of coordination among deal team members and the need to have a common understanding of the tasks to be accomplished).

192. *See id.*

193. *See* Hackman, *supra* note 6, at 249–50.

194. *See generally* IVAN D. STEINER, *GROUP PROCESS AND PRODUCTIVITY* (1972).

195. *See* Hackman, *supra* note 6, at 246.

196. *Id.*

197. *Id.* at 254.

198. *Id.* at 249–50 (discussing elements of high performing teams that are not necessarily intuitive).

199. *Id.* at 248.

200. *See* Heidi K. Gardner, *Effective Teamwork and Collaboration*, in *MANAGING TALENT FOR SUCCESS* 145, 145–46 (Rebecca Normand-Hochman ed., 2013) (discussing

a situation. It is worth considering how to improve upon lawyers' relational skill to avoid some of these problems. Best practices, including relatively simple but effective interventions such as appointing a definite leader, clearly defining roles, explicitly expressing norms of behavior, and setting concrete expectations can improve collaboration but do not necessarily happen naturally.²⁰¹ In addition, further research would be useful to discover how lawyers might be able to foster better collaboration and leverage some of the benefits of familiarity, even without the benefit of repeated interactions with other lawyers or clients. For example, a more intentional focus on group processes and communication norms might lead to better group interaction without having to learn by trial and error. Moreover, learning to recognize and diagnose group process problems early on might lead to better collaboration even without repeated interactions.

That relational skill can have such a large impact on a transaction implies that collaboration and teamwork should be further addressed in the legal profession in order to garner more of its benefits. It is often assumed that members of teams do not require any particular additional skills to be effective team members.²⁰² That is rarely the case. This may be especially true for individuals trained as lawyers, given the individualistic nature of many of the pursuits that gain recognition in legal education.²⁰³ If it is true that relational skill and effective teamwork can have a significant and tangible impact on the substantive outcomes of a business transaction, then relational skill should be added alongside technical knowledge of regulation and value creation in the set of tools important to transaction cost engineering. It is worth considering how a lawyer's team management and process management skills come into play in this context and how they might be honed and enhanced.

In addition to familiarity and repeated interaction, research has identified conditions which facilitate effective collaboration and without which collaboration rarely yields results better than what individuals can do on their own. These conditions include: setting clear boundaries for group membership and involvement, ensuring that team members have a clear idea of the team's goals and direction, allowing individuals' various levels of expertise to be leveraged, providing clear norms of conduct, and providing ample opportunities for feedback and direction on the group's processes.²⁰⁴ While these conditions may seem simple, they are often overlooked. In addition, many groups harbor incorrect assumptions about what makes teamwork successful. One such assumption concerns the roles of team leaders. While leaders are important for setting direction, it is typically better for leaders to set up the conditions that facilitate team

research indicating that lawyers become less creative, and more risk averse and less likely to collaborate, when they perceive the stakes to be high).

201. See Hackman, *supra* note 6, at 254–56.

202. *Id.* at 254.

203. See *id.* (noting that individualistic work cultures may not readily lend themselves to collaboration).

204. See *id.* at 264–66.

functioning, as opposed to being overly directive, or overly hands-off.²⁰⁵ Another commonly held assumption is that contrarian attitudes are corrosive to team behavior. While someone who is overly averse to teamwork may be ill-suited for group work, groups tend to function best when they have a member who challenges group assumptions and orthodoxies.²⁰⁶ Without the voice of dissent, groups can become mediocre, and fall into patterns of groupthink. The problem is that most participants in group work tend to shy away from challenging orthodoxies, believing that it will create conflict and disrupt the group dynamic.²⁰⁷

These are just a few examples, and this Article does not purport to provide an exhaustive list of ways in which group processes can be tweaked so that deal teams can perform optimally. However, the legal profession would have much to gain from further consideration of how to capture more benefits from group processes in deal making. It is worth considering how such skills can be taught to practicing lawyers as well as law students. At the very least, team skills should receive more emphasis and study than they currently do, and an awareness of relational dynamics should be incorporated into law school as well as continuing education curricula. It is also worth considering how the incentive structures that exist in most law practices might be tweaked to reward team performance, as opposed to individual performance, such as billable hour targets which bear relationship to firm profitability in the short term without necessarily bearing any relationship to the lawyers' ability to best serve clients.

3. Managing Drawbacks of Teamwork

Group collaboration also deserves attention in the transactional context because of its potential to conflict with a lawyer's agency duties. The group production task that lawyers are involved in when doing an IPO necessarily involves partisan interests. So-called groupthink and other byproducts of team production may poorly serve clients whose interests diverge from those of others at the table.²⁰⁸ This may detract from the benefits of team functioning and undermine the lawyer's central role as advocate for his or her client. One means of managing the tension is to develop a better understanding of when the role of team member and agent are likely to come into conflict. This in turn requires a better understanding of where parties' interests might diverge.

However, simply understanding where interests diverge is an incomplete solution. Lawyers must know how and when to raise issues and not feel the pressure of the group to suppress concerns. At first glance, it may seem that identifying divergence of interest might be antithetical to good team function. However, the ability to raise conflicts is an important component

205. *See id.* at 265–66.

206. *See* Diane Coutu, *Why Teams Don't Work*, HARV. BUS. REV., May 2009, at 99, 102–05.

207. *See id.*

208. *See* Kozlowski et al., *supra* note 84, at 77, 81.

of team functioning, and finding ways to do so may in fact enhance team dynamics.²⁰⁹ Research on team dynamics suggests that one component of highly effective teams is a set of norms and practices governing dispute resolution.²¹⁰ A more explicit understanding of the interaction between agency and teamwork and norms promoting productive avenues of dissent when necessary would allow deal lawyers to leverage team dynamics while still remaining zealous advocates. Lawyers' process expertise is particularly suited to designing and implementing such systems, and further education and research in this area would yield enormous benefits to transactional lawyers.

B. Further Considerations

While a detailed catalogue of recommendations is beyond the scope of this Article, I will briefly summarize some preliminary proposals and areas for future research. The first basic proposal that the empirical findings of this Article suggest is that previous relationships might be important disclosure to investors in securities markets. If familiarity between lawyers and bankers are significantly related to the way a stock performs in the market, then investors might be well served by having that information. It may well be the case that the "reasonable" investor may not know or care about the effects of repeated interactions. However, market analysts and others who provide them with information may find the disclosure more useful and incorporate it into their analysis of stock.

The second overarching proposal suggested by the findings above is that law should focus more on the impact of relational ability as a core component of effective legal practice. Though other professions have incorporated teamwork and collaboration as a crucial component of professional education, law has been slow to embrace it. Business schools and medical schools routinely incorporate team tasks and skills training into their basic curriculum, based on compelling research that good teamwork fosters better results and poor teamwork fosters mistakes. With respect to law, team skills are equally important, and perhaps critical to a lawyer's ability to add value in a deal. While this Article has focused on transactions, in the litigation context lawyers frequently work in teams as well. In fact, in a law firm practice of any size, lawyers frequently engage in team tasks and could serve their clients far better if such tasks were optimally structured.

However, for lawyers, the team dynamic takes on additional complications. This suggests that not only are team skills important, but so is the complex skill of balancing team productivity with advocacy. If familiarity has benefits for deal outcomes, it may have drawbacks as well, particularly for the deal lawyer, who must balance the competing concerns of advocacy with the coordination and cooperation that facilitate deal

209. See PFEIFFER BOOK OF SUCCESSFUL TEAM-BUILDING TOOLS 247–65 (Elaine Biech, ed. 2008); Hackman, *supra* note 6, at 255.

210. See Hackman, *supra* note 6, at 250.

making. Simply working repeatedly with other members of a deal team is not enough to promote better deal outcomes, as demonstrated by the results for repeated interactions between sets of lawyers. Leveraging the benefits of teamwork without sacrificing the duty of agency will involve more intentional consideration of both and a more complex model of the deal negotiations than is typically described.

CONCLUSION

To ask how lawyers add value is to miss half the equation. In transactional practice, lawyers and clients add value by working together effectively to accomplish a common aim. This Article provides evidence that repeated lawyer-client interaction leads to better substantive deal outcomes. This is a conclusion that should come as little surprise, but it has not previously been documented to the same degree. The results suggest that lawyers do their best work when they form effective teams with their clients because they establish trust and learn how to optimize their roles, communication styles, and preferences. This is a natural product of repeated interactions, but it can also be enhanced by more intentional awareness of the importance of team dynamics. Precisely how lawyers can work better with clients is an issue that warrants further study, but it is clear that lawyers would benefit if the issue were addressed earlier in their training and more directly. Law schools currently lack much training relating to teams or managing group processes, a feature which puts law students behind peers in professions like business and medicine. Moreover, these topics are virtually absent from continuing legal education. Nonetheless, if lawyers are to be effective “transaction cost engineers,” these skills are essential, particularly at a time when the value of legal education is in question and corporate clients complain that lawyers lack value additive skills.

APPENDIX

*Appendix Figure A:
Variables Analyzed*

Independent Variables of Interest: Types of Lawyer Interactions Tested (IPOs together within the preceding 1 year, 2 years, and 3 years)	Dependent Variables	Control Variables
<ul style="list-style-type: none"> • Lead Underwriter— Underwriter's Counsel • Issuer's Counsel— Underwriter's Counsel 	<ul style="list-style-type: none"> • First trading day price change • Price change relative to the S&P Index at 30 days, 60 days, 90 days post-offering • Probability of correct price revision • Probability of securities class action litigation at 6 months, 1 year, and 3 years post-offering • Prospectus size • Risk Factor proportion • MD&A proportion • Time to deal completion (length of time from the filing of Form S-1 to the offer date) • Whether deal final price is integer or decimal 	<ul style="list-style-type: none"> • Offering size (as the log of gross proceeds) • IPO Year fixed effects (a dummy variable for each year in the sample) • IPO Industry fixed effects (a dummy variable for each industry in the sample, using the SEC's 3-digit SIC codes) • Bank fixed effects (a dummy variable for each lead underwriting bank) • Syndicate size • Log age of the Issuer • Lead Underwriter quality (according to number of IPOs performed) • Lead Underwriter quality (by dollar market share for the preceding calendar year) • Law firm experience (as the number of IPO deals each law firm has performed in the preceding 1 year, 2 year, and 3 year periods) • Presence of venture capital firms • Size of inside shareholder stake sold into deal • Log of company total assets • Company book value per share • Geographic location of law firm (by city and ZIP Code)

*Appendix Figure B:
Summary Statistics*

	N	Mean	Median	Standard Deviation
Total IPO Deals	2,265			
Lead Underwriters	2,729*	1.40	1.00	0.82
Underwriter-Counsel Deals Together: Past 1 Year	2,729*	1.80	1.00	1.59
Underwriter-Counsel Deals Together: Past 2 Years	2,729*	2.20	1.00	2.21
Underwriter-Counsel Deals Together: Past 3 Years	2,729*	2.46	1.00	2.62
Underwriter Counsel-Issuer Counsel Deals Together: Past 1 Year	2,268*	1.77	1.00	2.15
Underwriter Counsel-Issuer Counsel Deals Together: Past 2 Years	2,268*	2.16	1.00	3.17
Underwriter Counsel-Issuer Counsel Deals Together: Past 3 Years	2,268*	2.46	1.00	4.02
First Day Price Increase (percent)	2,725*	0.28	0.11	0.59
Log (gross proceeds)	2,729*	17.96	17.93	1.06
Company Age (years)	2,265	12.80	7.00	18.21
Syndicate Size (number of banks)	2,265	11.41	9.00	8.29

* A number of deals involve more than one lead underwriter, which creates more observations than deals. Observations are de-weighted accordingly to account for this.

*Appendix Table 1:
Opening Day Performance and Repeated Interactions*

Dependent Variable: Opening Day Price Jump %						
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A: Lead Underwriter & Underwriters' Counsel						
Deals Together in the Past Year	0.049*** (0.011)	0.030* (0.012)				
Deals Together in the Past 2 Years			0.033*** (0.007)	0.019* (0.0078)		
Deals Together in the Past 3 Years					0.0257*** (0.0057)	0.014* (0.006)
Log Gross Proceeds	0.067*** (0.012)	0.054*** (0.016)	0.0668*** (0.0115)	0.053*** (0.0156)	0.0678*** (0.0116)	0.053*** (0.016)
Adj. R ²	0.20	0.27	0.20	0.27	0.20	0.27
Number of Observations	2,725	2,725	2,725	2,725	2,725	2,725
Panel B: Underwriters' Counsel & Issuer's Counsel						
Deals Together in the Past Year	0.021** (0.007)	0.015 (0.008)				
Deals Together in the Past 2 Years			0.017** (0.052)	0.011 (0.005)		
Deals Together in the Past 3 Years					0.015*** (0.004)	0.009* (0.005)
Log Gross Proceeds	0.0695*** (0.012)	0.048** (0.016)	0.071*** (0.0121)	0.050** (0.0156)	0.072*** (0.012)	0.051** (0.015)
Adj. R ²	0.18	0.26	0.18	0.26	0.18	0.26
Number of Observations	2,725	2,725	2,725	2,725	2,725	2,725
IPO Year Dummies	X	X	X	X	X	X
Industry*Year Dummies	X	X	X	X	X	X
Bank Dummies		X		X		X

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases, and the weight of each such observation is reduced.

*Appendix Table 2:
30, 60 & 90 Day Price Performance*

Dependent Variable: Percentage Price Change Relative to S&P Index									
	(1)	30-Day (2)	(3)	(4)	60-Day (5)	(6)	(7)	90-Day (8)	(9)
Panel A: Underwriters' Counsel & Managing Underwriter									
Deals Together in the Past Year	0.044*** (0.013)			0.068*** (0.019)			0.074*** (0.024)		
Deals Together in the Past 2 Years		0.033*** (0.009)			0.043*** (0.012)			0.049*** (0.015)	
Deals Together in the Past 3 Years			0.028*** (0.007)			0.034*** (0.012)			0.041*** (0.013)
Adj. R ²	0.09	0.09	0.09	0.13	0.13	0.13	0.13	0.13	0.13
Number of Observa- tions	2,725	2,725	2,725	2,721	2,721	2,721	2,720	2,720	2,720
Panel B: Issuer's Counsel & Underwriters' Counsel									
Deals Together in the Past Year	0.022* (0.009)			0.038* (0.016)			0.041* (0.017)		
Deals Together in the Past 2 Years		0.016* (0.007)			0.030* (0.012)			0.039** (0.013)	
Deals Together in the Past 3 Years			0.013* (0.006)			0.025* (0.010)			0.034** (0.011)
Adj. R ²	0.08	0.08	0.08	0.12	0.12	0.12	0.13	0.13	0.13
Number of Observa- tions	2,725	2,725	2,725	2,721	2,721	2,721	2,720	2,720	2,720
Industry Dummies	X	X	X	X	X	X	X	X	X
IPO Year Dummies	X	X	X	X	X	X	X	X	X
Industry* Year Dummies	X	X	X	X	X	X	X	X	X

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases.

*Appendix Table 3:
Probit Analysis of Upward Revision for Strong Performers*

Dependent Variable: Upward Revision				
	(1)	(2)	(3)	(4)
	20% Bounce		30% Bounce	
Panel A: Lead Underwriter & Underwriters' Counsel				
Frequent Collaborator	0.270** (0.109)	0.262** (0.113)	0.231- (0.124)	0.224- (0.129)
Log Gross Proceeds	0.582*** (0.078)	0.597*** (0.084)	0.486*** (0.091)	0.485*** (0.100)
Marginal Effect (frequent)	0.093** (0.037)	0.087** (0.037)	0.079+ (0.043)	0.078- (0.045)
Number of Observations	964	906	698	625
Pseudo R ²	0.12	0.15	0.10	0.11
Panel B: Underwriters' Counsel & Issuer's Counsel				
Frequent Collaborator	0.120 (0.096)	0.142 (0.101)	0.058 (0.111)	0.098 (0.118)
Log Gross Proceeds	0.591*** (0.079)	0.608*** (0.085)	0.498*** (0.092)	0.499*** (0.100)
Marginal Effect (frequent)	0.042 (0.033)	0.047 (0.034)	0.021 (0.038)	0.034 (0.041)
Number of Observations	964	906	698	625
Pseudo R ²	0.12	0.15	0.10	0.11
Industry Dummies	X	X	X	X
IPO Year Dummies	X	X	X	X
Industry*Year Dummies		X		X

Robust standard errors are in parentheses. Estimates marked with +, *, **, and *** are statistically significant at the 10%, 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases, and the weight of each such observation is reduced.

*Appendix Table 4:
Probit Analysis of Probability of Class Action Litigation*

Dependent Variable: Securities Class Action Litigation Filed				
	Within 6 Months of Offer Date		Within 1 Year of Offer Date	
	(1)	(2)	(3)	(4)
Panel A: Lead Underwriter & Underwriters' Counsel				
Deals Together in the Preceding 1 Year	-0.002 (0.039)	-0.004 (0.428)	0.003 (0.027)	-0.021 (0.030)
Log Gross Proceeds	0.237*** (0.057)	0.254*** (0.070)	0.254*** (0.469)	0.244*** (0.056)
Marginal Effect (of collaboration)	-0.0007 (0.002)	-0.0003 (0.003)	0.0002 (0.002)	-0.002 (0.003)
Number of Observations	2,639	1,386	2,705	1,885
Pseudo R ²	0.12	0.16	0.07	0.09
Panel B: Underwriters' Counsel & Issuer's Counsel				
Deals Together in the Preceding 1 Year	-0.120+ (0.061)	-0.151+ (0.057)	0.002 (0.024)	-0.004 (0.025)
Log Gross Proceeds	0.262*** (0.073)	0.334*** (0.094)	0.288*** (0.057)	0.323*** (0.071)
Marginal Effect (of collaboration)	-0.005+ (0.002)	-0.01+ (0.005)	0.0001 (0.002)	0.0005 (0.002)
Number of Observations	2,202	979	2,253	1,416
Pseudo R ²	0.12	0.19	0.075	0.98
Industry Dummies	X	X	X	X
IPO Year Dummies	X	X	X	X
Bank Dummies		X		X

Robust standard errors are in parentheses. Estimates marked with +, *, **, and *** are statistically significant at the 10%, 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases, and the weight of each such observation is reduced.

*Appendix Table 5:
Time to Completion from S-1 Filing*

	Dependent Variable: Length of Time from S-1 Filing to Offer Date (in days)					
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A: Lead Underwriter & Underwriters' Counsel						
Deals Together in the Preceding 1 Year	-2.52*** (0.916)	-1.76*** (0.580)				
Deals Together in the Preceding 2 Years			-1.88** (0.66)	-0.883 (0.490)		
Deals Together in the Preceding 3 Years					-1.70*** (0.577)	-0.75 (0.427)
Log Gross Proceeds	-8.17*** (2.50)	-9.73*** (1.50)	-10.55*** (2.56)	-9.83*** (1.50)	-10.48*** (2.55)	-9.83*** (1.50)
Lead Underwriting Bank	6.27 (3.70)	5.87*** (1.99)	5.53 (3.07)	5.97*** (1.99)	5.54 (3.07)	6.01*** (1.99)
Adj. R ²	0.22	0.31	0.32	0.23	0.20	0.32
Number of Observations	2,723	2,723	2,723	2,723	2,723	2,723
Panel B: Underwriters' Counsel & Issuer's Counsel						
Deals Together in the Preceding 1 Year	-0.794 (0.583)	-0.114 (0.483)				
Deals Together in the Preceding 2 Years			-0.590 (0.429)	-0.104 (0.372)		
Deals Together in the Preceding 3 Years					-0.622 (0.344)	-0.184 (0.300)
Log Gross Proceeds	-12.85*** (2.71)	-10.91*** (1.61)	-12.86*** (2.72)	-10.91 (1.61)	-12.85 (2.71)	-10.89 (1.61)
Lead Underwriting Bank	7.29 (4.98)	5.99 (3.22)	7.25 (4.97)	5.99 (3.21)	7.26 (4.97)	5.98 (3.21)
Adj. R ²	0.15	0.26	0.15	0.26	0.15	0.26
Number of Observations	2,263	2,2063	2,263	2,263	2,263	2,263

Appendix Table 5 continued

	Dependent Variable: Length of Time from S-1 filing to Offer Date (in days)					
	(1)	(2)	(3)	(4)	(5)	(6)
Industry Dummies	X	X	X	X	X	X
IPO Quarter Dummies	X	X	X	X	X	X
Industry Dummies* IPO Quarter Dummies	X	X	X	X	X	X
All Deals	X		X		X	
Deal Length < 365 Days		X		X		X

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases, and the weight of each such observation is reduced.

The sample for this analysis was limited to deals that are completed in 365 days or less from the filing of the S-1. The reason for limiting the sample in this way is to give a more accurate picture of the effect of counsel interactions. The majority of transactions in the dataset are completed within one year of filing of the S-1, and the presence of a number of outlier deals that took much longer than one year biased estimate of increased efficiency upward.

In addition, as the dependent variable in this specification is a time period less than one year long, a quarter-year fixed effect is used instead of the IPO-year fixed effect used in other specifications.

*Appendix Table 6:
Probit Analysis of the Effects of Interactions on Probability
of Non-Integer Pricing*

Dependent Variable: Non-Integer Offering Price		
	(1)	(2)
Panel A: Lead Underwriter & Underwriters' Counsel		
Deals Together in the Preceding 1 Year	-0.062* (0.026)	-0.064* (0.028)
Log Opening Price	-0.486*** (0.079)	0.508*** (0.081)
Marginal Effect (of collaboration)	-0.013* (0.006)	-0.013* (0.005)
Number of Observations	2,723	2,604
Pseudo R ²	0.09	0.11
Panel B: Underwriters' Counsel & Issuer's Counsel		
Deals Together in the Preceding year	-0.071* (0.030)	-0.075* (0.032)
Log Opening Price	0.448*** (0.087)	0.492*** (0.089)
Marginal Effect (of collaboration)	-0.015* (0.006)	-0.015* (0.007)
Number of Observations	2,264	2,200
Pseudo R ²	0.08	0.10
Industry Dummies	X	X
IPO Year Dummies	X	X
Industry*Year Dummies		X

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases, and the weight of each such observation is reduced.

*Appendix Table 7:
Alternative Specification—
Opening Day Price Increase Outcome Variable*

	(1)	(2)
	Underwriter- Counsel: Deals in the Past 1 Year	Underwriter's Counsel- Issuer's Counsel: Deals in the Last 1 Year
(1) Preferred estimate—with standard controls (standard errors)	0.049*** (0.011)	0.021** (0.007)
<i>Calibrating for quality of Lead Underwriter—measured by number of deals</i>		
(2) Limiting sample to biggest Lead Underwriters: more than 40 IPO deals	0.029* (0.013)	0.029** (0.012)
(3) Limiting sample to biggest Lead Underwriters: more than 80 IPO deals	0.041* (0.018)	0.031 (0.017)
<i>Calibrating for quality of Lead Underwriter—measured dollar marketshare</i>		
(4) Controlling for Lead Underwriter dollar market share for IPOs in preceding year	0.044*** (0.011)	0.033*** (0.010)
(5) Limiting sample to banks with highest dollar marketshare for IPOs in preceding year	0.048*** (0.011)	0.027*** (0.011)
<i>Calibrating for law firm experience—measured by number of deals done</i>		
(6) Controlling for number of IPOs done by law firm in the past 1 year	0.048*** (0.011)	0.027** (0.011)
(7) Controlling for number of IPOs done in the past 2 years	0.049*** (0.011)	0.029*** (0.010)
(8) Controlling for number of IPOs done in the past 3 years	0.049*** (0.012)	0.029*** (0.010)
(9) Excluding Wilson Sonsini (outlier firm in number of deals)	0.049*** (0.011)	0.035*** (0.012)
<i>Calibrating for Lead Underwriters' use of "favorite" law firms</i>		
(10) Removing Lead Underwriters' most frequently used law firm in the dataset	0.072*** (0.019)	0.031*** (0.011)
(11) Removing anecdotally reported "favorite" law firm-bank relationships	0.053*** (0.012)	0.033*** (0.009)
<i>Calibrating for availability of information about the Issuer/issuer risk</i>		
(12) Controlling for the age of the Issuer in number of years since founding	0.049*** (0.011)	0.031*** (0.009)
(13) Controlling for the age of the Issuer in the log of the number of years since founding	0.048*** (0.011)	0.030*** (0.009)
(14) Controlling for the presence of venture capital investors prior to IPO	0.047*** (0.011)	0.030*** (0.009)
<i>Altering year control categories</i>		
(15) IPO quarter instead of year	0.048*** (0.011)	0.031*** (0.010)
(16) Removing the year 1999	0.039*** (0.011)	0.022*** (0.008)
(17) Removing the year 2000	0.037*** (0.011)	0.033*** (0.013)

*Appendix Table 8:
Alternative Specifications for Correct Upward Price Revision**

	(1)	(2)
	Underwriter- Underwriter's Counsel: Deals in the Past 1 Year	Underwriter's Counsel- Issuer's Counsel: Deals in the Past 1 Year
(1) Preferred estimate—with standard controls (standard errors)	0.087* (0.037)	0.047 (0.034)
<i>Calibrating for quality of Lead Underwriter—measured by number of deals</i>		
(2) Limiting sample to biggest Lead Underwriters: more than 40 IPO deals	0.100* (0.043)	0.034 (0.043)
(3) Limiting sample to biggest Lead Underwriters: more than 80 IPO deals	0.064 (0.057)	-0.013 (0.056)
<i>Calibrating for quality of Lead Underwriter—measured dollar marketshare</i>		
(4) Controlling for Lead Underwriter dollar marketshare for IPOs in preceding year	0.054** (0.020)	0.013 (0.018)
(5) Limiting sample to banks with highest dollar marketshare for IPOs in preceding year	0.081*** (0.023)	0.011 (0.022)
<i>Calibrating for law firm experience—measured by number of deals done</i>		
(6) Controlling for number of IPOs done by law firm in the past 1 year	0.062** (0.021)	0.0064** (0.019)
(7) Controlling for number of IPOs done in the past 2 years	0.060** (0.021)	0.005 (0.019)
(8) Controlling for number of IPOs done in the past 3 years	0.056** (0.021)	0.003*** (0.019)
(9) Fixed effect for Wilson Sonsini (outlier firm in number of deals)	0.060*** (0.019)	-0.008 (0.019)
<i>Calibrating for Lead Underwriters' use of "favorite" law firms</i>		
(10) Removing Lead Underwriters' most frequently used law firm in the dataset	0.059** (0.028)	0.019 (0.021)
(11) Removing anecdotally reported "favorite" law firm-bank relationships	0.059** (0.021)	0.022 (0.018)

Appendix Table 8 continued

	(1)	(2)
	Underwriter- Underwriter's Counsel: Deals in the Past 1 Year	Underwriter's Counsel- Issuer's Counsel: Deals in the Past 1 Year
<i>Calibrating for availability of information about the Issuer/issuer risk</i>		
(12) Controlling for the age of the Issuer in the number of years since founding	0.072*** (0.019)	0.025 (0.019)
(13) Controlling for the age of the Issuer in the log of the number of years since founding	0.072*** (0.019)	0.025 (0.019)
(14) Controlling for the presence of venture capital investors prior to IPO	0.065*** (0.020)	0.014 (0.018)
<i>Altering year controls</i>		
(17) IPO quarter instead of year	0.084*** (0.020)	0.026 (0.021)
(18) Removing the year 1999	0.080*** (0.022)	-0.0007 (0.020)
(19) Removing the year 2000	0.060* (0.022)	0.005 (0.19)

Marginal effects reported. Alternative specifications for other models and outcomes of interest similarly support the estimates from the preferred specifications discussed in this Article. Those alternative specifications are not reported here for the sake of space economy.

*Appendix Table 9:
Limiting to IPOs Managed by Largest Banks—
Underwriter & Underwriter's Counsel*

	Dependent Variable: Opening Day Price Jump %					
	(1)	(2)	(3)	(4)	(5)	(6)
Deals Together in the Past Year	0.029* (0.013)	0.041* (0.018)				
Deals Together in the Past 2 Years			0.019* (0.008)	0.026* (0.011)		
Deals Together in the Past 3 Years					0.013* (0.0064)	0.019* (0.008)
Log Gross Proceeds	0.049* (0.019)	0.056** (0.0212)	0.0487* (0.0192)	0.055** (0.0210)	0.0485* (0.0191)	0.056** (0.0211)
Industry Dummies	X	X	X	X	X	X
IPO Year Dummies	X	X	X	X	X	X
Industry*Year Dummies	X	X	X	X	X	X
Bank Dummies	X	X	X	X	X	X
Manager \geq 40	X		X		X	
Manager \geq 80		X		X		X
Adj. R ²	0.28	0.26	0.28	0.26	0.28	0.26
Number of Observations	1,534	940	1,534	940	1,534	940

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases.

The table above reports the results of OLS regressions testing the possibility that selection is driving the observed increase in IPO market performance in the periods studied. The table reports tests using the main specification for the opening day price jump and repeated interactions between the Lead Underwriter and its counsel, but this time limiting the sample to banks that manage at least 40 issues in the dataset (the top 18 banks), and to banks that manage at least 80 issues in the dataset (the top 7 banks).

*Appendix Table 10:
Negative Disclosure*

<i>Panel A: Underwriter & Underwriters' Counsel</i>			
Dependent Variable: Proportion of Prospectus Devoted to Risk Factors			
	(1)	(2)	(3)
Deals Together in the Past 1 Year	0.309*** (0.057)		
Deals Together in the Past 2 Years		0.200*** (0.040)	
Deals Together in the Past 3 Years			0.150*** (0.035)
Industry Dummies	X	X	X
IPO Year Dummies	X	X	X
Industry*Year Dummies	X	X	X
Adj. R ²	0.14	0.14	0.14
Number of Observations	2,247	2,247	2,247

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases.

Appendix Table 10 continued

<i>Panel B: Underwriter's Counsel & Issuer's Counsel</i>			
Dependent Variable: Proportion of Prospectus Devoted to Risk Factors			
	(1)	(2)	(3)
Deals Together in the Past 1 Year	0.190*** (0.043)		
Deals Together in the Past 2 Years		0.173*** (0.031)	
Deals Together in the Past 3 Years			0.151*** (0.024)
Industry Dummies	X	X	X
IPO Year Dummies	X	X	X
Industry*Year Dummies	X	X	X
Adj. R ²	0.09	0.09	0.09
Number of Observations	2,247	2,247	2,247

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases.

*Appendix Table 11:
Lawyer Experience on IPO Deals—
First Day Price Increase*

	Dependent Variable: Opening Day Price Jump %					
	(1)	(2)	(3)	(4)	(5)	(6)
IPO Deals Done in the Past Year	0.0013 (0.0018)	0.0013 (0.002)				
Deals Done in the Past 2 Years			0.0008 (0.0011)	0.0007 (0.0011)		
Deals Done in the Past 3 Years					0.0009 (0.0009)	0.0007 (0.0009)
Log Gross Proceeds	0.072*** (0.012)	0.068*** (0.012)	0.068*** (0.012)	0.068*** (0.011)	0.069*** (0.011)	0.049*** (0.014)
Repeated Past Client Interactions in Corresponding Number of Years	0.049*** (0.0116)	0.029* (0.013)	0.033*** (0.008)	0.019* (0.008)	0.024*** (0.006)	0.012+ (0.007)
Industry Dummies	X	X	X	X	X	X
Industry Dummies	X	X	X	X	X	X
Industry* Year Dummies	X	X	X	X	X	X
Bank Dummies		X		X		X
Adj. R ²	0.20	0.27	0.20	0.27	0.20	0.26
Number of Observations	2,725	2,719	2,725	2,719	2,725	2,719

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases, and the weight of each such observation is reduced.

This table reports the results of OLS regressions testing whether the results in the main specification are driven by the law firm's level of recent experience (and thus are selection-driven). Law firm experience is measured by the number of IPOs done by a particular law firm within the past 1 year, 2 years, and 3 years. The number of deals is a variable constructed by looking at the number of IPOs done by the law firm in the relevant timespan prior to the offer date of every IPO that comprises an observation. Industry and year-fixed effects, as well as a fixed effect for the interaction of year and industry, are used to isolate the effect of lawyer experience regardless of industry and time period. As shown, the effect of law firm deal experience in the recent past (accounting for industry and time period) is very small and disappears when the variable for repeated interactions is introduced as a control. The same analysis with respect to other outcomes of interest yields similar results, but is not reported here for space economy.

*Appendix Table 12:
Price Performance and Counsel Experience
(by Number of Recent Deals)*

Dependent Variable: Percentage Price Change Relative to S&P Index									
	(1)	30-Day (2)	(3)	(4)	60-Day (5)	(6)	(7)	90-Day (8)	(9)
Deals Done in the Past Year	0.0021 (0.0035)			0.0090 (0.0060)			0.0071 (0.006)		
Deals Done in the Past 2 Years		0.0014 (0.0024)			0.0054 (0.0038)			0.0055 (0.0042)	
Deals Done in the Past 3 Years			0.0021 (0.0018)			0.0054 (0.0029)			0.0053 (0.003)
Industry Dummies	X	X	X	X	X	X	X	X	X
IPO Year Dummies	X	X	X	X	X	X	X	X	X
Industry* Year Dummies	X	X	X	X	X	X	X	X	X
Adj. R ²	0.09	0.09	0.09	0.13	0.13	0.13	0.13	0.13	0.13
Number of Observations	2,719	2,719	2,719	2,715	2,715	2,715	2,714	2,714	2,714

Robust standard errors are in parentheses. Estimates marked with *, **, and *** are statistically significant at the 5%, 1%, and 0.1% level, respectively. The number of observations is greater than the number of IPOs due to IPOs with joint bookrunners; each bank is treated as being a manager in such cases.