committee on workers' capital

Trustee Brief

Uber Technologies Inc. (NYSE:UBER)

Dear CWC Trustees,

Your fund may be considering an investment in Uber Technologies, Inc. ("Uber"), which has filed its Initial Public Offering prospectus and is expected to list its shares on the New York Stock Exchange in May 2019. With its IPO roadshow in full swing, Uber is approaching institutional investors, possibly including your pension fund and/or its managers. As a fiduciary, you may have some questions about whether investing in Uber is in the best interests of the members of your fund.

Uber's business model has profound implications for workers – both in and beyond the sectors it impacts directly. Uber's IPO is set to be the third largest in US tech IPO history after Facebook and Alibaba. Its flotation and subsequent stock performance will determine whether Uber's *modus operandi* of relying on a vast workforce of independent contractors towards whom it has no responsibilities with regards to wage and hour laws, employee benefits and social security contributions is a successful business model.

About Uber

Uber Technologies Inc. operates a rideshare business that connects passengers with cars for hire in 63 countries using an application that can be downloaded onto mobile phones. In addition to its rideshare business, it operates a series of related businesses and ventures including food delivery, freight logistics and self-driving vehicles. Uber's core business model is based on classifying drivers as independent contractors rather than employees.

UBER AT A GLANCE

	2016 (USD mn)	2017 (USD mn)	2018 (USD mn)
Revenue	3,845	7,932	11,270
Adjusted EBITDA loss	2,800	2,200	1,850
Net income (loss)	(370)	(4,033)	997
Proposed valuation:		USD 90-100bn	

This brief summarizes some key considerations and risks associated with a potential investment in Uber. At the end of the brief you will find steps you can take and questions you can bring forward to your boards, consultants, managers and staff. Please note that this brief is for informational purposes only, and is not intended to provide and should not be relied on for investment, legal, tax or accounting advice. Trustees should consult their own advisors and investment professionals to evaluate the merits and risks of any investment.

Can Uber be profitable while upholding fundamental principles and rights of workers?

Official filings show that Uber has and will continue to struggle to be a profitable firm. It recorded a gain of USD 997 million in 2018, the first net gain since the company began reporting figures in 2014. The net gain figure is due, in large part, to the sale of Uber's businesses in Russia and Southeast Asia, as well as a gain on the value of its 2018 investment in its former Chinese competitor DiDi, to which Uber sold its business in exchange for a minority stake. These are non-recurring gains.

The company uses "Adjusted EBITDA" as a key measure to evaluate its operating performance. According to this measure, the company has not made a quarterly gain since this figure was first reported in Q1 2015. Its adjusted EBIDTA was a USD 1.85 billion loss in 2018, USD 2.64 billion loss in 2017 and USD 2.51 billion loss in 2016.

It is unclear whether Uber can make profits with its core rideshare business, through which it generates 81% of its revenue. Uber's main revenue driver is the fee that it generates on passenger fares. The fee model means that Uber requires increasing scale to generate revenue growth, which it can achieve by attracting more drivers. Drivers are considered contractors by the company and can switch between rideshare platforms. A number of lawsuits and regulatory pressure that the company faces around the world present challenges for this business model.

These headwinds will continue to fundamentally challenge Uber's ability to generate enough revenue on rideshare services to a) provide adequate compensation to drivers, b) maintain customers satisfied with low fares and c) deliver value to shareholders.

What risks should investors consider?

1. Legal risks

Uber has faced a large number of lawsuits related to various aspects of its operations. The onset of new court cases means that Uber may need to set aside significant and variable reserves every year into the medium term. The company increased legal, tax and regulatory reserves and settlements by USD 598 million 2017 before decreasing it by USD 325 million in 2018.

The company cites costs associated with lawsuits as a risk in its prospectus. Recent examples include:

- **Misrepresentation:** In 2017, Uber paid a USD 20 million settlement to the US Federal Trade Commission for driver redress to settle an investigation into whether the company exaggerated possible earnable income and misrepresented the terms of its vehicle financing options.
- **Misclassification:** At least 12 lawsuits alleging Uber misclassified drivers as independent contractors have been filed in jurisdictions across the world. In some of these cases, Uber has prevailed in having the lawsuits dismissed.

2. Regulatory risks

Misclassification and driver status
Misclassification suits and other legal challenges related to Uber's use of independent contractors as drivers have resulted in case law and rulings with broader consequences for employment standards. Present and future regulatory risks posing fundamental challenges to the company's business model include:

- **California:** Legislation to both codify and expand a state Supreme Court ruling establishing a stricter test on worker classification as employees is now moving through the California legislature, with significant potential implications for Uber drivers in California.
- **UK**: In Uber's biggest market in Europe, a UK employment tribunal ruled that Uber drivers are considered workers and entitled to benefits such as holiday pay and minimum wage. Uber has appealed the decision to the UK Supreme Court.
- **EU:** The Court of Justice of the European Union (ECJ) classified Uber's UberPOP product as a transport service rather than a digital platform in 2017, removing protections against national regulation that its classification as a digital service would have offered.

Regulations banning certain ridesharing products or imposing extensive operational restrictions have been adopted in key markets, including Argentina, Germany, Italy, Japan, South Korea, and Spain. New

York City imposed a rate structure for for-hire drivers and limited the expansion of new vehicle licenses for car services in 2018.

Tax avoidance

- Beyond misclassification, Uber faces risks related to tax avoidance. The OECD is developing a framework to address tax issues raised by the digital economy and is seeking consensus by the end of 2020 on new international tax rules for digital multinationals. Furthermore, Uber faces investigations into its compliance with tax rules and may become subject to sales tax rates in certain jurisdictions.

3. Reputational risks

Uber faces reputational risks generated by media coverage of the following issues:

- **Driver dissatisfaction**: Uber drivers have protested in Australia, India, Kenya, the UK and the US. Uber's prospectus asserts that it expects driver dissatisfaction to increase as it aims to move towards profitability by reducing financial incentives to drivers. Its ability to increase fares while still retaining customers and moving towards profitability in a competitive market is questionable.
- **Community impacts:** Taxi drivers in various jurisdictions have organized against Uber, generating reputational risks that have, in some cases, triggered regulatory restrictions. Argentina, Germany, Italy, Japan, South Korea, and Spain are among the jurisdictions where laws and regulations on ridesharing have been adopted. A series of driver suicides were attributed to the spread of Uber in New York City, contributing to pressure on the city to limit the expansion of ridesharing.
- **Alleged sexual harassment**: A former Uber employee wrote a blog post detailing allegations of sexual harassment and gender discrimination in 2017. This and other negative publicity led to platform users deleting Uber's app. Its prospectus acknowledged that this contributed to the hiring of a new Chief Executive Officer, Dara Khosrowshahi, to replace Travis Kalanick in 2017.

Trustee Guidance: What can trustees do about Uber??

Trustees should ask their fund staff how an investment in Uber is in the interests of pension plan members – in the short and long term. If you are concerned about Uber, consider taking the following steps:

- **Ask for due diligence before investing in Uber:** Ask your consultants, managers and/or fund staff to carry out some due diligence on the issues in this letter and report back to the board if an investment in Uber is being considered.
- **Initiate a board discussion on digitalized companies and business models:** Ask your consultants, board colleagues and/or staff to work with you to set up an agenda item at a future board meeting where the implications of emerging digital business models on workers' rights and pension fund members would be discussed, with a variety of presenters sharing information. If your fund has an investment belief statement or an ESG policy, you might propose discussing investments in digital businesses in this context.
- **Request an engagement with Uber:** If your fund has invested in Uber, ask your manager or staff to engage Uber on the issues outlined in this brief and report back.

For more information, please contact the CWC Secretariat.