PRICEWATERHOUSECOOPERS

Entering the United States Securities Markets

A Guide for Non-U.S. Companies

ENTERING THE UNITED STATES SECURITIES MARKETS

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Foreword from the Partner in Charge of the Global Capital Markets Group

In order to achieve their ambitions and goals, companies all over the world need access to competitively priced capital. Due to its size, perceived credibility, and the eagerness of its participants to invest, the United States (”U.S.“) securities markets represent the richest source of capital in the world. A private or public offering in the U.S can provide an infusion of long-term capital that can fuel growth and greater shareholder value, with the added attraction of potentially lowering the overall cost of capital. A public offering may also enhance a company’s reputation and profile through the prestige of listing on the New York Stock Exchange (”NYSE“), National Association of Securities Dealers Automated Quotation (”NASDAQ“) or the American Stock Exchange (”AMEX“). The demands of U.S. investors, complex registration requirements, and the nuances of the U.S. offering process, present significant challenges for non-U.S. companies entering the U.S. securities markets for the first time. Selecting the right team of advisors to assist you in managing the process is critical.

At PricewaterhouseCoopers, we have an established Global Capital Markets Group that is dedicated to helping you enter the U.S. securities markets. The individuals who comprise our Global Capital Markets Group know both the formal rules and procedures and the current points of focus of the Securities Exchange Commission (”SEC“) and of U.S. investment bankers and investors. Our credentials include the decade of experience we have gained through assisting many prestigious non-U.S. companies to raise funds and/or obtain listings in the U.S. securities markets. To ensure that there is someone with experience from your region to assist with raising funds and/or obtaining listings in the U.S. securities markets, we have a network of advisors around the globe.

The Global Capital Markets Group is supported by an experienced group of technical consultants led by Wayne Carnall. Wayne is one of the most knowledgeable and highly regarded cross border filing specialists in the world and he and his group are a vital source of technical advice and counsel to the members of the Global Capital Markets Group and prospective registrant clients.

We hope you will find this guide to be an invaluable and easy-to-use guide to entering the U.S. securities markets.

For more information or assistance, we encourage you to contact the Global Capital Markets Group at PricewaterhouseCoopers.

William E. Decker
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PricewaterhouseCoopers

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Chapter 1
Attraction of the U.S. Markets

There are many reasons why accessing the U.S. securities markets is of interest to non-U.S. companies, among which are the following:

RAISING CAPITAL

The volume, breadth and sophistication of the U.S. markets make them an ideal place to raise capital. Indeed, U.S. institutional investors increasingly have sought to obtain international diversification of their portfolios. Many of these institutions are not permitted to acquire securities that are not listed in the U.S. Further, for large or innovative issues, access to the U.S. markets may be critical, since the home markets may lack the capital for such issues.

The volumes traded on the U.S. markets reach high levels. The NYSE and the inter-dealer electronic quotation system known as NASDAQ had a market capitalization in January 1999 of approximately U.S. $11.1 trillion and U.S. $2.9 trillion, respectively. In the same month, the share volume traded on NASDAQ was approximately 21 billion while 16 billion shares were traded on the NYSE.

ACCESS TO U.S. COMMERCIAL PAPER MARKETS

Non-U.S. companies generally do not possess U.S. commercial credit ratings so they experience difficulty in obtaining access to this market. Securing a U.S. equity listing can be an important step toward obtaining a U.S. credit rating.

ENHANCE SHARE VALUES

A larger, more liquid trading environment may enhance share values in the home country and globally. An offering in the U.S. gives access to a sophisticated pool of investors who may give the company a more favorable rating than it enjoys in its domestic markets. This could substantially decrease a company's cost of capital.

The U.S. capital markets sometimes place a lower price on certain cyclical or industry stocks than do markets in a non-U.S. company's domestic markets. Clearly, such companies need to differentiate themselves to achieve a more favorable price in the U.S.

TIMELY ACCESS TO FAVORABLE MARKETS

As a general rule, companies whose securities are already registered with the SEC can utilize an expedited approach to register additional securities that they reasonably expect to offer for sale during the following two years ("shelf offerings"). Under this method, companies can capitalize on favorable market conditions by pricing their securities on much shorter notice.

For many non-U.S. companies, a public listing of securities in the U.S. (without raising funds) is a preliminary step to raising debt or equity funds. This allows such companies future timely access to the U.S. markets with reduced cost and effort.

MIGRATION TO THE U.S.

For structural, business, tax and management reasons, many companies are motivated to consider moving their principal business to the U.S. In a typical case, the founders of a high-tech company are located in a relatively small market for their products while the primary growth potential is in the U.S. An equity offering in the U.S. may be used to fund expansion of the U.S. operations and be a prelude to relocating the principal business to the U.S. Another example may arise where a multinational with U.S. operations has tax imbalances that cannot be resolved

without reorganizing the business to establish its principal operations in the U.S. This can be achieved via a carve-out of certain operations and taking the carve-out business public in the U.S.

MERGERS WITH U.S. BUSINESSES

A non-U.S. company needs to consider registering and listing its common stock in the U.S. to improve the attractiveness of its offer to the target's shareholders when acquiring a publicly listed U.S. company in a stock-for-stock transaction. The acquisition of U.S. businesses with U.S. dollars obtained from U.S-dollar-denominated source funding may also provide a natural hedge of the resulting foreign currency exposure of the foreign investor.

Strategic buyers, such as U.S. multinational corporations, may also be potential acquirers of non-U.S. businesses. Such companies are typically very focused on the likely accounting impact of the acquisition, as determined under U.S. accounting rules. Depending on the significance of the acquisition under Rule 3-05 of Regulation S-X, the separate audited financial statements of the target business may be required to be reconciled to generally accepted accounting principles in the U.S. ("U.S. GAAP").

Financial buyers, U.S. mutual funds, pension funds, life insurance companies and other forms of financial buyers are increasingly finding ways to invest in non-U.S. companies. For certain pension and other reporting requirements, financial buyers may need the financial results of operations to be measured in accordance with U.S. accounting rules. While they may have a long-term investment view, a key consideration for financial buyers is securing an exit strategy for their security holdings, for example, by taking the non-U.S. company public in the U.S. at a later stage. Generally, the acquisition structure may largely be tax-driven, although some financial buyers are as much concerned with the accounting issues and therefore seek to employ innovative leveraged recapitalization and other structures that minimize goodwill.

PRODUCT MARKETING

A presence in the U.S. markets provides international exposure for a company's name, services and products. This exposure may help a company increase its export base.

PRIVATIZATION OR EXIT STRATEGY

A government can sell its holding in enterprises in markets where liquidity and greater shareholder value may be achieved. Entrepreneurial companies can use the U.S. markets to allow founding shareholders to convert their investment into cash.

ACCESS TO ADDITIONAL CAPITAL

Additional equity may be more easily obtained at favorable prices after the completion of a successful offering.

Chapter 2
Initial Considerations

Non-U.S. companies wishing to enter the U.S. securities markets have a range of alternatives to consider, each with different opportunities, planning requirements and costs.

ARE YOU READY?

The decision to raise capital in the U.S. results from a thorough technical evaluation, a vision to succeed and a dash of instinct. However, there are certain factors that you need to consider because the investment community will base its judgment of your company in part on these factors. These factors include the visibility of products and services, the revenue growth rate, profitability, the experience of the management team, the strength of the company's systems and the availability of audited financial statements prepared in accordance with U.S. GAAP or reconciled from local GAAP or International Accounting Standards ("IAS") to U.S. GAAP. Some of the positive characteristics that the investment community will be looking for are:

- Highly visible products and services. The markets like companies with a niche product or service that is easily recognized by the investing public and can provide a solution to a previously unmet need. This can include a dominant market position in a country or industry, access to natural resources or a proprietary technology.
- Significant and sustainable revenue growth rate. A company should either have a history of strong and sustainable revenue growth or a unique position in its marketplace. However, development stage and non-U.S. companies with less of a track record are coming into the markets in increasing numbers. These companies often have either sole access to a market or ownership of natural resources.
- Demonstrated profitability. An established history of profits is preferable, but even short-term profits can be acceptable for a high-growth company or market.
- Experienced management team. It is essential to have a strong management team with a proven track record in both operational and financial markets.
- Strong systems. A company's internal controls, accounting and information systems should be fully capable of handling growth and increased financial reporting requirements.
- Audited financial statements. Audited financial statements for public offerings are required under most circumstances for the latest three years, and a reconciliation to U.S. GAAP is required for at least the latest two years. Alternatively, audited financial statements may also be prepared in accordance with U.S. GAAP for all the years presented. Only two years of U.S. GAAP financial statements are required for first-time offerings. Few large private placements occur without audited U.S. GAAP or local GAAP financial statements. Investment banks often require that an international accounting firm audit the financial statements to make the offering more attractive to investors.
- Purpose. A company's need for capital should typically be long-term rather than short-term and should be supported by a good business plan.

If your company has all the positive characteristics listed above, you may be ready for a full public offering and listing on a major stock exchange in the U.S. If your company has some of the positive characteristics and a sound business plan, you might consider a substantial private placement as an alternative or an interim step to a later full public offering. Many substantial and well-established non-U.S. companies have chosen this option.

IS THE MARKET READY FOR YOU?

The performance of the stock markets is often one of the most unpredictable factors in choosing whether to raise capital in the U.S. A strong, rising market generally raises investors' demand for new issues and increases interest in private placements as well. In addition, the markets can be affected by trends, giving high values to particular industries that are predicted to show long-term profits and strong performance.

Assessing the state of the markets and the right timing for your company to raise capital in the U.S. is more art than science. Develop a relationship with one or more investment banks and talk with them regularly if you are considering raising capital. Follow the performance of companies in your industry, country or markets to develop judgement about how your company might perform.

FOREIGN PRIVATE ISSUER

When a non-U.S. company that meets the definition of a "foreign private issuer" initially offers securities for sale in the U.S, it can avoid certain requirements for domestic registrants, such as U.S. proxy rules, quarterly reporting and certain executive compensation disclosures. As a general rule, a non-U.S. company qualifies as a foreign private issuer unless more than 50 percent of the outstanding voting securities are held by U.S. residents and any one of the following conditions also exists:

- the majority of the executive officers or directors are U.S. citizens or residents; or
- more than 50 percent of the assets are located in the U.S.; or
- the business of the issuer is administered principally in the U.S.

If a non-U.S. company does not qualify as a foreign private issuer, its registration and reporting requirements are the same as for U.S. companies. Non-U.S. companies entering the U.S. markets for the first time generally use the Form F-1, essentially a full prospectus. The final decision as to which registration form must be used needs to be made in consultation with the U.S. attorneys.

NATURE OF SECURITY

For companies planning to list on the NYSE or to be quoted on NASDAQ, a determination must be made, based on the Company's needs, goals and objectives as to the nature of the security to be listed. For equity securities, a determination must be made whether to offer the company's common stock for sale directly to the public, or to establish an American Depository Receipt ("ADR") or Global Depository Receipt ("GDR") program. However, a company may list other types of securities depending on its desired capital structure, the financing or refinancing needs of its current business, as well as the expected financing requirements for its planned expansion. These may include debt, preferred shares, convertible debt, debt with warrants or puts, common equity, employee stock options, or other innovative capital-raising instruments.

SEC REGISTRATION OF PUBLIC OFFERING VS. LISTING

In accessing the public debt markets, many non-U.S. companies have registered with the SEC without listing their equity securities on the NYSE or obtaining a NASDAQ quotation. Such SEC registration is necessary if a company wants to avoid the distribution restrictions that apply to private placements. However, debt is frequently not listed and can be offered in the form of a registered offering,

a private (unregistered) placement, or, increasingly, as a private placement with registration rights. Once the initial SEC registration has been completed, your company will have the flexibility to pursue other types of offerings.

Some non-U.S. companies find it desirable to list their existing securities, as a prelude to a U.S. public offering. Among the advantages of this approach is that it allows a non-U.S. company to complete the SEC registration process in a more controlled and organized manner without the pressures of a capital-raising exercise. Another advantage is that it allows the company to begin to establish a U.S. market following before commencing a public offering. Finally, the filing required to accomplish the listing places the company into the SEC's periodic (1934 Act) reporting cycle. After one year in the system, a non-U.S. company can take advantage of an abbreviated system to accomplish a public offering. In some situations, exchange listings are preceded by a private placement of securities.

PUBLIC VS. PRIVATE OFFERING

Financing objectives, cost and timing are among the many factors that need to be considered in deciding whether to initiate a public or private offering. A public issue allows a company to establish a wider trading market for its securities, as well as broader exposure to the business and investing public than is possible in a private offering. The advantages of a private issue include potentially lower costs of preparing the offering document and faster processing.

CHOICE OF STOCK EXCHANGE

There are a number of stock exchanges in the U.S., but the majority of foreign companies want to be traded on the NYSE or the NASDAQ. Each exchange has minimum entry requirements, including profit history, net tangible assets, size of market capitalization, number of expected shareholders and corporate governance. Each exchange is also known for attracting certain types of companies, and their entry requirements are designed to attract companies in certain industries and stages of development.

The NYSE is interested in attracting large and well-established companies such as those in infrastructure industries, energy, telecommunications, banking and capital-intensive manufacturing. Its entry requirements include a number of years of profitable operating history and a relatively high number of shares in the public markets, among others. As of January 31, 1999, 3,105 companies had stock listed on the NYSE, including 388 non-U.S. companies headquartered in 48 countries. These companies had more than 242 billion shares worth U.S. $11.1 trillion available for trading, giving the NYSE the world's largest market capitalization.

NASDAQ also has minimum entry requirements but these are generally less stringent than the NYSE. It aims to attract fast-growing companies such as those in high technology and biotech. As of January 31, 1999, there were 5,021 companies listed on NASDAQ, with 467 non-U.S. companies representing 40 countries. While the market capitalization of the NASDAQ is significantly below the NYSE at U.S. $2.9 trillion as of January 31, 1999, the trading volume of NASDAQ was 26% higher than the NYSE for the month of January 1999. The listing criteria for the major exchanges are set forth in Appendix A. While each exchange has its objective listing criteria, each also competes for listings and may consider relaxing the requirements in some cases. With your legal advisors, you should approach the exchanges early in the process of raising capital in the U.S. Both the AMEX and the NASDAQ have second-tier listings with less stringent requirements for small and developing companies. In choosing the right exchange, the investment bank should provide expert knowledge in each market of the investor base and the appetite for shares in your company.

Until recently, some companies used the Over-The-Counter ("OTC") Bulletin Board to test U.S. investor appetite for their stock. Typically, an unregistered Level I ADR

program (see "Level I: Sponsored ADR" in chapter 5) was sufficient to appear on this Board which provided firm quotes, non-firm quotes or other unpriced indications of interest displayed by market makers on the same workstations used for NASDAQ trading. This represents an automation of part of the securities activity previously quoted only on the "pink sheets" (distributed daily by a privately operated listing service for microcap securities, listing the latest price for a stock as well as the brokers that deal in that stock). SEC rule changes now require companies to be registered in order that they may be listed on the OTC Bulletin Board.

NASD/AMEX ALLIANCE

On October 30, 1998, the National Association of Securities Dealers, Inc. ("NASD") and the AMEX approved the merger of the AMEX into the NASD family of companies. The NASD is the largest self-regulated securities organization in the United States. Through its subsidiaries, The NASDAQ Stock Market, Inc. and NASD Regulation, Inc., the NASD designs, operates and regulates securities market, develops rules and regulations, provides a dispute-resolution forum and conducts regulatory reviews of member activities, all for the benefit and protection of the investor.

AMEX operates as a separate specialist-based auction market with its own members and listed companies. AMEX offers a marketplace in the U.S. for equities, options and derivative securities. In addition, the AMEX lists warrants on foreign currencies and indexes, as well as hybrid instruments and other structured products.

The AMEX equity market will be enhanced through a new electronic limit order book where investors and market professionals will be able to automatically execute orders from the trading floor.

SECURITIES AND EXCHANGE COMMISSION

The SEC, based in Washington D.C., is the principal regulatory body for U.S. securities. The SEC is charged with ensuring a fair and level playing field for public companies and their investors. One of its major roles is ensuring that investors are provided with all relevant material information necessary to make their investment decisions.

The SEC will review your company's prospectus and decide whether to allow the registration statement to "go effective" (effectiveness is required before any sale to the public). The SEC staff is comprised of lawyers and accountants, and sometimes industry specialists will participate in the review to provide assurance that the prospectus adequately informs potential investors about your company.

THE SHAREHOLDER CULTURE

The U.S. has a long tradition of personal shareholding. Individuals see the stock markets as a way to build personal wealth. Private and employer-funded pensions provide a substantial pool of capital. Over the last 15 years, individual investors have invested increasing amounts through mutual funds.

A substantial portion of publicly traded stocks are owned by institutional investors, including mutual funds and pension and retirement funds. The managers of these funds and their supporting research teams have brought an increasing level of sophistication to the markets.

The demands of the markets for timely and accurate information on companies have increased substantially. The response of the markets to unexpected information can be quick and punishing. However, the efficient functioning of the markets is a great benefit to those companies that perform well and keep the markets informed.

POINTS TO BEAR IN MIND

- Management time and attention. Senior executives must focus their attention on the offering process for months. It always consumes more time than expected.

This can mean that management loses focus on business problems.

- Loss of privacy. Public companies may view the extensive disclosures required by the SEC as a drawback. Management must disclose profits, competitive position, salaries and employee benefits, major contracts, dealings with related parties, results by business segment, potential liabilities and other information.
- Investor relations. Investor inquiries, investment community presentations and periodic financial reports require a significant time commitment by management. A public company in the United States must, in practical terms, meet the financial community face-to-face at least once a year. These efforts have costs and may require additional internal resources or an external public relations firm.
- Reporting requirements. The company must satisfy the ongoing informational needs of U.S. regulators. In particular, it will be required to prepare financial statements in accordance with (or reconciled to) U.S. GAAP.
- Evaluation of alternative approaches. Senior executives, with the assistance of the registration team, must evaluate the various alternative approaches for entering the U.S. markets. Part of this evaluation should involve consideration of the different disclosure levels for public offerings as compared to public listings of equity securities; for public offerings of investment grade debt as compared to public equity or non-investment grade debt; and for exempt offerings as compared to public offerings.
- Exchange offering rules. A non-U.S. company may obtain U.S. shareholders by offering its shares in exchange for shares or assets of U.S. companies. Such an offer would be governed by the rules and disclosure standards applicable to U.S. securities offerings, unless an exemption from registration is available.
- Restrictions on insider trading. Market forces or state laws can restrict the number of shares that insiders (management, owners) can sell in the initial offering or for a period thereafter. This is called a “lock-up.” Management will be expected to act at all times in the best interests of the shareholders. Any indications that management has taken advantage of its position to benefit itself could be investigated and result in a great deal of adverse publicity.

Chapter 3
The Registration Team

The preparation of a SEC registration statement requires the combined efforts of management personnel and their key advisors. The value of a strong, experienced team to assist you when raising capital in the U.S. cannot be overstated. Most companies considering entering the U.S. markets already have advisors. These advisors should be re-evaluated in light of their ability to assist management throughout the entire process of raising capital in the U.S. and beyond. There are major advantages from using advisors experienced in dealing with the complex and often confusing regulatory and legal environment of the U.S.

COMPANY PERSONNEL

The level of your company's participation in preparing the registration document often depends on the expertise of the company's personnel although typically, outside counsel will also play a large part in the drafting process.

You should not underestimate the level of commitment a public offering will require of you and your staff. It will likely distract you from the day-to-day operations of your business and it may necessitate hiring additional staff. Your team's commitment to the offering could be the difference between a successful initial public offering ("IPO") and a failed attempt.

THE INDEPENDENT ACCOUNTANTS

The independent accountants play a lead role throughout the entire registration process as strategic and technical advisors. Selection of an accounting firm should be based upon experience with the U.S. capital markets; expertise in U.S. GAAP and generally accepted auditing standards in the U.S. ("U.S. GAAS"); and the firm's reputation and its experience with international offerings. Some of the specific services provided by the independent accountants include:

- Strategic advice in the planning stage of the registration process to evaluate the alternative approaches and establish a realistic plan for entering the U.S. markets.
- Technical expertise with respect to U.S. GAAP and SEC requirements to help the company prepare the registration statement and clear it with the SEC. This includes assisting in the identification and quantification of all U.S. GAAP differences in the home country financial statements and identifying potentially problematic financial disclosure issues due to sensitivity or a lack of information.
- Performing audits of the financial statements including disclosure and reconciliation requirements, which can be extensive and complicated for public offerings. Investors in private placements routinely demand several years of audited financial statements prepared under a comprehensive framework such as local GAAP, IAS or U.S. GAAP. An established audit relationship and the accountant's knowledge of your business should translate into a quicker response time, which could be crucial to the success of the offering.

- Advisory services, including planning, organizing and leading the pre-filing meeting(s) held to address significant financial reporting issues, and working with the SEC staff.
- Assistance in resolution of financial reporting questions raised by the SEC during the review process.
- Due diligence services including the issuance of comfort letters to underwriters.

The independent accountants should have first-hand international expertise and experience with U.S. cross-border offerings. It is essential that they be contacted as early as possible in the process to help the company create a realistic strategy and timetable for the successful completion of the registration project.

THE ATTORNEYS

Normally at least two law firms will be involved - local and U.S. securities counsel. Usually, U.S. securities counsel will assume responsibility for coordinating the preparation of the textual (non-financial disclosure) sections of a registration statement or information memorandum.

Your U.S. securities counsel will draft large parts of the prospectus and negotiate the letter of intent and underwriting agreement with the investment bank on your behalf. They will act to protect the company's interests throughout the process of raising capital. In addition, they will be expected to:

- Interact with the legal sector of the SEC staff.
- Provide assurance that management meets all of its legal obligations and responsibilities under the U.S. securities laws.

The U.S. environment is litigious in nature, and expert counsel is crucial to protecting your company and its interests. To save money, companies that raise capital through private placements will sometimes utilize the same law firm as that used by the investment bank. This may not be desirable. We generally encourage a company to have separate legal counsel whose primary objective is to protect the company's interests, including its rights and obligation under the contractual arrangement with the investment bank. At times during the offering process, the interests of the company may be at odds with the interests of the investment bank. Using the same counsel might produce short-term cash savings but could cause your company to assume additional risk.

THE INVESTMENT BANKS

In a U.S. public offering, the investment banks:

- Act as managing underwriters.
- Form an underwriting syndicate.
- Advise on the pricing and timing of the issue.
- Ensure demand for the securities by promoting them.
- Organize the "road show" in which the company is presented to potential investors.

See Chapter 4 for a detailed discussion of the issues involved in choosing an investment bank.

THE UNDERWRITERS' COUNSEL

The underwriters appoint counsel whose principal role is to ensure on behalf of the underwriter that the registration statement is complete and not misleading. The underwriters' counsel will also:

- Review the registration statement and any related agreements, contracts and exhibits.
- Conduct "due diligence" meetings.
- Draft the underwriting agreement.
- Request comfort letter(s).

INVESTOR RELATIONS

Many non-U.S. companies offering shares in the U.S. employ a specialist communications company to raise the profile of the offering and the company. It is important to maintain a good relationship with the financial community, which can be relentless in its demands for timely information.

It is important to keep lines of communication open. As a rule, you should disclose material information – good and bad – as quickly as possible. Material information, which includes financial results, dividend information, news of new products or services, acquisitions, sales of securities, large new contracts and top management changes is usually disseminated through a press release.

OTHER EXPERTS

There may be other experts involved with your capital raising efforts, depending on the nature of the business. Oil and gas companies will want independent expert reserve engineers on board. A property or shipping company will need appropriate experts to support asset values. Experts should have good credentials in their field and an understanding of the offering process.

THE PRINTERS

The importance of the document printers should not be underestimated. A SEC-experienced printer should be thoroughly versed in SEC rules and regulations on paper size, layout and other printing matters, and have a demonstrated track record in providing quick and accurate turnaround.

THE DEPOSITORY BANK

If the offering involves ADRs or other forms of depository receipts (see chapter 5), a depository bank will need to be appointed to provide those administrative and operational services associated with a “transfer agent” and “registrar.” While not directly involved in the SEC registration process for a public offering, the depository banker will:

- Assist with the closing.
- Issue, cancel and transfer ADRs.
- Maintain custody over the deposited underlying securities.
- Pay dividends and handle other corporate actions.
- Distribute shareholder reports.

Chapter 4
Choosing Your Investment Bank

You have assembled a team of experts with the necessary skills and talents to advise you. But it's the investment bank that actually makes the offering happen. It is critical that you understand the process of raising capital in the United States before you begin. This will help you select the right investment bank as an underwriter. You should also understand the basics of your underwriting agreement, valuation and pricing issues and the after-market support you can expect from your investment bank.

THE INVESTMENT BANK IN BRIEF

You can offer shares in the U.S. in the public markets or via a Rule 144A private placement without an investment bank underwriter, but the process is so complex and the know-how so specialized that it is rarely done. Complicated market issues are the stock-in-trade of underwriters. It is in the best interest of your company's offering to take advantage of their expertise. The "value added" by your investment bank underwriter should be the assurance that your offering will be properly managed and successfully marketed and supported, both before and after going public.

Your principal or "managing" investment bank will work with you to develop the prospectus, coordinate the road show, underwrite certain risks and, if necessary, form an underwriting syndicate. This syndicate is composed of an underwriting group, that bears the risk of the underwriting, and the selling group. The selling group solicits interest from its retail and institutional clients, sells your stock once the offering goes effective and provides after-market support.

The managing investment bank may also be called the managing underwriter, the global coordinator, lead book builder or similar terms. In any case, their roles and responsibilities are similar.

Good managing underwriters have a highly developed sense of what sells and for how much. They also have an instinct for timing an offering and they are able to anticipate pitfalls and calculate risks. Investment bankers contribute other skills and support, including:

- Experience in marketing, structuring the deal and facilitating syndications to create support for the stock after it is sold.
- Knowledge of market conditions and various types of investors.
- Experience in pricing stock so that it will be attractive to the company and the investor.
- The ability to help with future offerings.
- A research department with the ability to analyze your company, its competitors, the markets and the economy.

Generally speaking, investment banks come in three sizes: “major-bracket” or “wire-house” firms with well-known names; a middle-tier comprising mostly regional firms; and local firms. Not surprisingly, the size and scope of your company and your offering will, in part, determine the size of the investment bank enlisted for your IPO.

There will be few local or regional firms capable of supporting an international transaction. To raise capital through public or organized private channels in the United States, you will need a major-bracket investment house as your investment bank. These firms are not often interested in international transactions where the capital to be raised is below U.S. $50 million but may consider a smaller initial offering as the first step in a larger capital-raising plan.

THE LETTER OF INTENT

The letter of intent is the first of several documents you will enter into with your investment bank. The letter of intent usually prohibits you from dealing with other investment banks and binds you to reimburse the bank for certain expenses. The letter of intent does not bind the investment bank to sell your securities or obligate the company to go ahead with the offering. The second document, which is binding, is most commonly referred to as the underwriting agreement. Under normal circumstances, it is not signed until within 24 hours of the expected effective date of the registration statement. By this time, the investment bank has received commitments during the road show period or indications that commonly exceed the offering size.

After signing the letter of intent, but before the underwriting agreement (which can be from six months to a year apart), a company typically incurs substantial expenses with no assurance that the offering will take place. This is not an idle observation. Offerings can be close to the finish line only to be withdrawn or delayed because market conditions have changed or the investment bank has reconsidered.

THE UNDERWRITING AGREEMENT

Underwriting agreements come in two basic types: firm commitment and best efforts. Most offerings in the public and organized private placement market are firm commitment underwritings.

Under a firm commitment agreement, the investment bank pledges to buy all of the securities offered for sale and resell them to the public. This arrangement offers the company the most security because the company knows it will receive the full sales price of the issue, net of the underwriting discount. However, until the investment bank and the company establish the final pricing and execute the underwriting agreement, the only commitment is the investment bank’s reputation.

In contrast, under a best-efforts commitment, the investment bank uses its best efforts to sell the stock but is under no obligation to purchase the stock should any part of the issue remain unsold. An investment bank that considers the issue to be risky may choose this type of agreement.

If possible, avoid best-efforts underwriting, which can be negatively perceived and leaves the risk with the company. Additionally, best-efforts agreements can put you in an even worse position. You may raise less money than expected and still be liable for considerable expenses.

If the investment banks that your company is evaluating are only willing to proceed with a best efforts underwriting, you may wish to re-evaluate raising capital in the U.S.

VALUATION AND PRICING

You may be most concerned with one underwriting function in particular: valuing your company and setting a price for the securities to be sold. Valuation and pricing issues can involve a significant amount of time for both the investment bank and management and can have a multi-million dollar impact on the amount of proceeds from the offering. Although there is no standard formula, certain factors are always included in the valuation process. The investment bank must consider the conditions of the market as a whole at the time the offering is undertaken. Also, the final price will reflect the demand generated by the road show.

A company's trading price of its securities in other markets usually strongly influences the price at which similar securities are sold in the United States. Prices of other successful and similar offerings will also affect pricing, as will your company's projected earnings and cash flow at the time of the offering. Price/earnings ratios and return on sales of other companies in your industry may be used to extrapolate a price for your securities.

Finally, the investment bank will consider a host of other more subjective factors, such as expected growth, recent prices paid by sophisticated buyers in private transactions, inherent risks of the business, the company's stability and the after-market trading objectives.

PROJECTIONS

Companies often develop projections of financial results for confidential use with the investment bank in valuation discussions. Avoid sharing such projections with other parties, particularly target and takeover companies unless you are comfortable with the projections ending up in the public domain. If potential investors rely on your projections and actual results fall short of your projections, litigation could result. Consult with your accountant and attorney on the use of any projections during the offering process.

HOW MUCH TO SELL?

The final question involves just how much of your company should be sold in an equity offering. This is largely dependent on your company's needs for the proceeds, market conditions and the company's market valuation. As a general practice, companies sell 15 to 40 percent of the post-offering outstanding shares. This tends to be influenced by a variety of factors, including selling enough shares to justify the expenses of the offering and to interest the investment bank while not selling too many shares. Selling too high a percentage of shares could cause excessive dilution, be perceived as a bailout and create problems with state blue-sky laws.

AFTER-MARKET SUPPORT

After all the work has been done and your offering has succeeded, there is still more work for your investment bank. Competent after-market support entails providing research data on your company and its competitors to the financial community as well as financial and business advice to you. A quality road show, attractive pricing and good planning should leave unsatisfied demand that will help the after-market performance of your company's stock.

The quality of the firm you select and its ability to take large positions in your stock are important in supporting the after-market value of your shares. The investment bank's after-market support may be needed shortly after the offering, if speculators jump on the issue, hoping to turn it around and sell their stock quickly at a profit. If too many people sell their shares and flood the market, the stock's price may fall below the offering price. If this happens, the investment bank must have the financial resources to buy the stock and, if necessary, hold it until the stock's price recovers.

SEC rules permit investment banks to offer and sell to the public more shares than they are contractually obligated to buy (an overallotment). The investment bank

may take advantage of this provision to either stimulate demand in the after-market or to help maintain an orderly market for a “hot” stock. To stimulate demand, the investment bank sells shares directly to investors. To cover this short position, the investment bank will enter a bid to buy the stock in the after-market, which helps support the price. To help maintain an orderly market, the investment bank buys from the issuer a set number of additional shares (typically up to 15 percent of the offering) at the offering price, solely to cover overallotments. The investment bank remits proceeds at the offering price less commission, but it keeps any other profits from the sale of the overallotment.

The overallotment or “green shoe” option – so called because the first instance involved the Green Shoe Company – must be exercised within 30 days of the effective date. Thus, this additional supply of stock can help unsatisfied demand from causing a too rapid rise in the price of the stock.

Chapter 5
Securities Regulation

The selling and buying of securities in the United States is subject to significant regulation to protect the investors. The principal laws are the Securities Act of 1933 ("1933 Act") and the Securities Exchange Act of 1934 ("1934 Act"). The 1934 Act created the SEC, which administers the provisions of both laws.

THE 1933 ACT

The 1933 Act requires the registration of securities with the SEC prior to their sale to the public, unless an exemption from registration exists. The law requires disclosures designed to protect investors from misrepresentation and fraud.

The disclosures are made in a registration statement. The prospectus forms the core of the registration statement and is eventually used by companies to market their securities. The prospectus must be furnished by anyone who requests it in writing. The registration statement is also a public document, available for inspection by anyone.

The 1933 Act provides some exemptions from registration. The exemptions typically used by non-U.S. companies include: sales to qualified institutional buyers ("QIBs") under Rule 144A; Regulation D; and the private sale exemption. With few exceptions, an issuer that has issued securities under the 1933 Act becomes subject to the ongoing periodic reporting requirements of the 1934 Act.

All registrants making an offering of securities in the U.S. are subject to the anti-fraud provisions of the 1933 Act. These provisions impose civil and criminal liabilities for material untrue statements or omissions.

THE 1934 ACT

The 1934 Act created the SEC. The overall responsibility of the SEC under both the 1933 Act and the 1934 Act is to protect the public, not the issuer, broker or dealer. In contrast to the 1933 Act, which is concerned with the initial public offering and distribution of securities, the 1934 Act governs trading in existing securities. Among the principal objectives of the 1934 Act are to maintain a system of providing investors with significant financial and other information about securities traded on exchanges or in the OTC market, and to regulate the markets, including controlling the amount of credit.

The 1934 Act's registration and reporting requirements cover foreign private issuers with total assets in excess of U.S. $10 million and a class of equity securities held of record by 500 or more persons, of which at least 300 reside in the U.S. Foreign private issuers may also be subject to the 1934 Act's registration and reporting requirements if they register and list securities on a U.S. exchange or register securities under the 1933 Act.

Registration under the 1934 Act is accomplished by filing Form 20-F. (See Appendix B for a discussion of the information required by Form 20-F.) The information required by Form 20-F is generally the same as the information included in the 1933 Act registration statement. A registration statement filed under the 1934 Act is a public document and is available for inspection.

Since April 1998, non-U.S. companies have been required to register under the 1934 Act in order to be quoted on the NASD electronic bulletin board. Although the bulletin board is not a market, there is a misconception that companies quoted on the bulletin board are NASDAQ registrants.

The 1934 Act prohibits insider trading and markets manipulation. It also requires corporate insiders and certain beneficial owners to file statements of their holdings and changes in holdings.

EXEMPTIONS FROM REGISTRATION

Issuers may be exempt from 1934 Act registration if their securities are not listed on a U.S. exchange or traded OTC and quoted on the NASDAQ system and they receive an exemption from the SEC prior to otherwise having to register (e.g., reaching 300 U.S. shareholders). Issuers whose securities are traded OTC and quoted on NASDAQ may qualify for an exemption if they have been exempt continuously since October 4, 1983. Such exemption requires promptly furnishing the SEC with all information that it:

- Has made or is required to make public under certain foreign laws and regulations.
- Has filed or is required to file with a stock exchange on which its securities are traded and which that exchange has made public.
- Has distributed or is required to distribute to its shareholders.

"BLUE SKY" LAWS

Individual states in the United States have their own securities laws, known as "blue sky" laws. These vary in content, and some even disallow offerings that are not "fair, just or equitable." Accordingly, any offering of securities in the United States must be made after consideration of state as well as federal regulations.

STOCK EXCHANGES

Although regulated by the 1934 Act, the operation of the exchanges is independent of the SEC. Each exchange has reporting requirements that are generally less onerous than those of the SEC. But, each registrant will need to consult the listing agreements for the specific requirements of the exchange on which it is listed. See Appendix A for a summary of some of the major stock exchange listing requirements.

Chapter 6
The Right Option

Your company has decided to access the U.S. capital markets, but how? There are three key factors to consider when making this decision.

- Does your company want new capital or simply a liquid market for its shares?
- Is your company ready to be a public company in the United States?
- Should your company's securities be sold and traded in multiple markets?

The answers to these questions determine how you should approach the U.S. markets, including whether the company should offer shares for sale or whether listing existing shares will meet your Company's needs.

WHAT IS AN ADR?

A significant portion of public offerings by non-U.S. companies (excluding Canadian registrants) in the United States are in the form of depository receipts – usually ADRs (also called American Depository Shares or ADSs). These are negotiable receipts issued to investors by an authorized depository, normally a U.S. bank or trust company, and are evidence that the depository owns the securities of a foreign company. The depository is empowered to transfer ownership of the ADRs between investors but continues to be the registered holder of the underlying securities. ADRs are quoted in U.S. dollars and are generally structured so that the number of the foreign company's securities will result in a trading price for each ADR in the range of U.S. $10 to U.S. $30. In order to achieve such a trading price, each ADR typically represents a multiple or fraction of the underlying securities.

Investors in ADRs have substantially the same rights and voting privileges as owners of the underlying securities. Further, they may choose to return ADRs to the authorized depository at any time for cancellation and take delivery of the actual securities. ADRs are considered to be the preferred vehicle for non-U.S. issuers entering the U.S. securities markets in most countries. Advantages they offer over a direct offering of a company's securities include:

- Convenience. ADRs simplify the sale and purchase of securities. Their popularity with U.S. investors stems from the fact that ADRs trade and settle just like U.S. securities. Investors holding ordinary non-U.S. shares, in contrast, are subject to the settlement practices that govern non-U.S. markets. These differ from U.S. practices.
- Currencies. The depository receives dividends directly from the foreign company in its local currency and issues dividend checks in U.S. dollars.
- Local links. The depository provides U.S. investors with a local liaison with the issuing company, through which they receive that company's annual and interim reports and other information.
- Familiarity. ADRs are a widely accepted corporate vehicle for issuers wanting to tap the U.S. markets. They can trade on any of the major stock exchanges or in the over-the-counter market. An ADR makes accessing the U.S. capital markets easier for foreign companies but is not a magical shortcut around the U.S. securities laws and regulations.

ADRs serve two primary functions. They support distribution and trading of existing shares (Level I and Level II), and they support raising capital through a public offering, private placement or as part of a global offering (Level III).

In certain jurisdictions, different depository receipt terminology is used, usually for political and/or marketing reasons. A common example is Global Depository Receipts or GDRs. Despite the different terminology, all depository receipts operate in the same manner as ADRs.

	PROGRAMS FOR EXISTING SHARES		PROGRAMS FOR RAISING CAPITAL WITH NEW SHARES		
	LEVEL I	LEVEL II		LEVEL III	
	Sponsored ADR Facility	Listed ADR Facility	Public	Rule 144A	Global Depository Receipts (GDRs)
DESCRIPTION	Over the counter trading of existing shares which are publically traded in the home market	Listing of existing shares on a recognized U.S. exchange	Public equity or debt offering of new shares or debt	Private Placement to Qualified Institutional Buyers (“QIBs”) of new shares or debt	Public offering of new shares or debt outside the U.S.; can be offered to the public or privately placed in the U.S.
TRADING	OTC	NYSE, AMEX, NASDAQ	NYSE,AMEX, NASDAQ	PORTAL	On one or more non-U.S. Exchanges and simultaneously in the U.S. on public or private markets
SEC REGISTRATION REQUIREMENTS	Registration of ADR facility on Form F-6	Registration of ADR facility on Form F-6 and registration of the company on Form 20-F	Under 1933 Act, Form F-1 for initial public offering and under 1934 Act on Form 20-F. Forms F-2 and F-3 may be used for subsequent offerings	None	None if offering in U.S. is private. Otherwise, see description under ”Public“
SEC PERIODIC REPORTING REQUIREMENTS	Exempt under Rule 12g3-2(b) of 1934 Act. Exemption must be requested and company must provide to the SEC in English the same information that is made available to its shareholders	Form 20-F filed annually. Audited financial statements must be reconciled to or prepared in accordance with U.S. GAAP	Form 20-F filed annually. Audited financial statements must be reconciled to or prepared in accordance with U.S. GAAP	None	See description under ”Public“ if public and under Rule 144A if private

LEVEL I: SPONSORED ADR

This is when existing shares publicly traded in your home market are converted into U.S. dollar-denominated ADRs. The ADRs will trade over the counter on the pink sheets. A short registration statement on Form F-6 that describes the ADR facility is filed with the SEC. This is not a public listing of the securities, and your company is not considered an SEC registrant. However, the issuer of the securities must comply with certain SEC information rules (hereinafter referred to as the ”Information Rules“) and should also file a request with the SEC for exemption from registration under Rule 12g3-2(b). Under the 1934 Act, compliance with the Information Rules entails providing the SEC with English translations or summaries of all information sent to shareholders.

This type of ADR does not result in any new capital raised for the company. However, it does generate interest in your company and broadens the shareholding of the company.

LEVEL II: LISTED ADR

In a listed ADR, your company's shares are listed on one of the major exchanges. The company must file a Form 20-F upon application for listing and is considered to be a publicly traded SEC registrant. A listed ADR requires the company to disclose a great deal of information, prepare its accounts in accordance with (or reconcile to) U.S. GAAP and comply with the periodic reporting requirements of the 1934 Act. A Form F-6 must also be filed for the ADR facility.

This type of ADR does not result in any new capital raised for the company. It does help generate interest in the company's shares among the investment community and can provide substantial liquidity in trading. The company also becomes familiar with the requirements of the SEC but in a process that is more manageable than a full public offering.

LEVEL III: ADR PUBLIC OFFERING

A full public offering of ADRs, uses new shares to raise capital for the company. This is similar to an initial public offering of a U.S. company. The ADRs are listed and traded on a major exchange. Full registration with the SEC is required: a Form F-1 must be filed for the initial public offering and a Form 20-F annually thereafter. The disclosures are extensive, and a reconciliation to U.S. GAAP is required. Alternatively, full U.S. GAAP financial statements may be presented. This is generally the most difficult type of offering.

LEVEL III: PRIVATE PLACEMENT VIA A RULE 144A ADR ("RADR")

This is a private offering of ADRs to institutional investors eligible to participate in the Rule 144A market, referred to as qualified institutional buyers ("QIBs"), and supported by new shares in the U.S. The RADRs trade among the QIBs through Private Offerings, Resales and Trading through Automated Linkages ("PORTAL"), the market for privately placed securities. A RADR is exempt from registration with the SEC. The company should, however, comply with Level I ADR Information Rules and with the 144A requirements.

While a private placement of this type does not require a registration statement, an offering memorandum is prepared for potential investors, management will participate in the road show, the offering is underwritten and the investment bank will undertake a form of due diligence. The offering memorandum generally contains much of the same information as a registration statement, as this is the type of information that sophisticated investors will expect.

A successful RADR offering raises new capital for the company and can be a good step toward a full public offering in the U.S.

LEVEL III: ADR GLOBAL OFFERING ("GDR")

This is a simultaneous global equity offering generally structured as a Rule 144A private placement in the United States and a public offering in the company's home country, often with an additional international offering in London or Luxembourg. GDRs trade across many markets and settle in the currency of each market. Registration with the SEC is not required if the U.S. portion of the transaction is private, but compliance with the Level I ADR Information Rules is recommended.

New capital is raised for the company, and this type of offering can be good preparation for moving on to a full public offering and trading on a major stock exchange in the United States.

A POSSIBLE PROGRESSION

Many companies have used ADRs gradually to access the U.S. capital markets over several years. A typical pattern is:

- Step one. Raise capital in the U.S. private markets and European public markets:
  - Establish a GDR to raise capital at the same time in multiple markets without SEC registration.
  - Access QIBs eligible to purchase Rule 144A securities.
- Step two. Enhance liquidity of the issue by supporting OTC trading in the U.S.:
  - Establish a Level I ADR program.
  - Access investors not eligible to buy Rule 144A securities.
  - Broaden shareholder base and enhance trading liquidity.
- Step three. Raise capital in the public market and list on a major exchange:
  - Build on information, financial statements and work done to access Rule 144A market to meet standards for a public company in the United States.
  - Raise capital via a public offering of ADRs.
  - Obtain listing on major stock exchange.

This process requires careful planning, time and a solid understanding between the company, the investment bank and the advisors. Many of the non-U.S. companies now publicly traded in the U.S. have followed a similar path, but many others may have gone directly to a public offering or raised capital privately through a RADR and not taken the process any further. Choosing the right option is the most important decision.

Chapter 7
Public Offerings

An IPO by a non-U.S. company will involve the issuer throughout the entire SEC registration process, beginning with making the decision to enter the U.S. capital markets and ending with the receipt of the cash proceeds. The following discussion assumes the company is seeking new capital, has chosen its registration team (counsel, independent accountant and investment bank) and is an attractive candidate for the U.S. markets.

GETTING READY

You may believe that your company is ready for the demands of U.S. investors and that the market is ready to give your company a proper value. However, to avoid roadblocks and maximize success, an offering in the United States requires planning. Ideally, planning should begin up to two years before a public offering. This important lead time will enable you to reduce expenses, limit surprises, condense the timetable and put you in a better bargaining position when choosing your investment bank.

Important issues to consider during preparation include:

- Various corporate actions such as the sale of non-performing assets, resolution of contingencies, and tax planning may require extensive lead times to be implemented prior to the IPO.
- A good reputation is years in the making. Consider hiring an investor-relations firm to develop your profile with the financial press and the investment community.
- A number of legal matters may need to be resolved before the offering. The legal structure of the group may need to be streamlined. Sufficient shares should be authorized to cover the offering, which should be of an appropriate type. Stock splits or reverse stock splits are often used to adjust the initial offering price to a more marketable price per share. Significant contingencies and material litigation should be resolved. Any shareholder control agreements need to be dissolved along with any rights of first refusal. The corporate charter and other major agreements should be catalogued and reviewed.
- The development of a long-term compensation plan is critical to keeping a management team motivated. Many investment banks like to see option plans in place with options issued to the management team. If a significant portion of management's wealth is associated with the growth of the company and the value of the unexercised options, the underwriter will see a long-term commitment, and this may help the valuation of your company. However, many such plans may result in a charge to your company's earnings and may also have adverse tax consequences. You should consult with your independent accountant prior to establishing any plan or combination of plans.

- U.S. investors will expect regular and prompt publication of the company's financial results. Improving financial reporting systems and controls can help to produce timely and accurate information.
- Companies with robust corporate governance procedures will be more attractive to U.S. investors. Certain procedures, such as the involvement of outside, independent directors and the establishment of an audit committee, are entry requirements to the major U.S. stock exchanges. A strong board of directors with skilled non-executive directors will be a major asset when raising capital in the U.S.
- An offering will generally require three years of audited financial statements, with the latest two years reconciled to U.S. GAAP (alternatively, two years of U.S. GAAP audited financial statements may be presented). All necessary audits should be completed and your company's financial position and results under U.S. GAAP should be assessed. This will require data gathering and decision-making well in advance of the preparation and audit of the actual reconciliation or U.S. GAAP accounts.

PLANNING THE OFFERING

You and your management team, with the help of the registration team, have made the decision to raise capital in the United States. At this point, you should have chosen your lead investment bank, executed the letter of intent for the securities offering and chosen the type of offering such as Rule 144A, ADR, GDR or a public offering. The following discussion assumes you are undertaking a public offering.

The first "all hands" meeting will be convened to plan the offering. This meeting should be attended by all members of the registration team – the company's management, the company's counsel, the independent accountant, the investment bank and the investment bank's counsel. A timetable is drafted, tasks are assigned, administrative details are sorted out, potential bottlenecks are identified and the structure of the offering document is discussed. Areas for immediate action such as financial statements from prior periods, which might need to be audited, are identified and necessary remedial actions taken. Once these matters are addressed, the preparation of the prospectus becomes the primary task.

The following is a sample timetable that may apply to an IPO in the United States by a non-U.S. company. The timetable is usually a joint product of the registration team. The sample timetable is based upon certain important assumptions:

- Financial statements for all required periods are available.
- Such financial statements have been audited by an independent accountant in accordance with U.S. GAAS.
- The company has the capacity to provide the information required by the SEC without unnecessary delay.

PRIOR TO CLOSING	EVENT	PARTICIPANT(S)
TWO YEARS TO SIX-MONTHS	Select registration team (counsel, independent accountant, investment bank and public relations firm)	Company and company's board of directors
	Evaluate the plans, needs and financing alternatives of the company	Company, independent accountant and investment bank
	Consider the advantages and disadvantages of a securities offering in the U.S.	Company, company's board of directors, company's counsel, independent accountant and investment bank
SIX-MONTHS	Sign letter of intent for securities offering	Company, company's counsel, investment bank and investment bank's counsel
	Authorize issuance of securities	Company's board of directors
	Hold organizational meeting ("all hands" meeting) to discuss plans and develop strategy	Company, company's counsel, independent accountant, investment bank and investment bank's counsel
	Commence due-diligence review	Investment bank and investment bank's counsel
	Establish and distribute timetable for registration process	Company, company's counsel, independent accountant, investment bank and investment bank's counsel
FIVE-MONTHS	Commence drafting registration statement	Company and company's counsel
	Prepare initial draft of U.S. GAAP reconciliation or U.S. GAAP financial statements	Company with assistance of independent accountant
	Prepare and distribute first draft of underwriting agreement	Investment bank and investment bank's counsel
	Distribute questionnaires to directors and officers relating to registration requirements	Company's counsel and investment bank's counsel
	Review corporate legal documents	Company's counsel
FOUR-MONTHS	Distribute first draft of textual (non-financial) portion of registration statement	Company's counsel
	Distribute first draft of financial statements to be included in registration statement	Company and independent accountant
	Review complete draft of registration statement	Company, company's counsel, independent accountant, investment bank and investment bank's counsel
	Appoint stock transfer agent and registrar and arrange for preparation of stock certifications	Company
	Discuss comfort letter requirements and procedures	Company, independent accountant, investment bank and investment bank's counsel
	Finalize textual (non-financial) portion of draft registration statement	Company, company's counsel, investment bank and investment bank's counsel
	Finalize financial statements to be included in registration statement	Company and independent accountant
	Forward complete draft of registration statement to printer	Company or company's counsel
	Obtain and approve final proofs of draft registration statement from printer	Company, company's counsel, independent accountant, investment bank and investment bank's counsel
	Submit draft registration statement to the SEC for a pre-filing confidential review (this submission is not technically filed with the SEC and is not available in the public domain)	Company or company's counsel

PRIOR TO CLOSING	EVENT	PARTICIPANT(S)
THREE-MONTHS	Receive comment letter from SEC regarding draft registration statement	Company's counsel
	Hold meeting to review and discuss SEC comment letter	Company, company's counsel, independent accountant, investment bank and investment bank's counsel
	On significant SEC comments, have discussions with SEC staff to clarify the comments and to obtain SEC agreement with company's proposed disposition of comments	Company, company's counsel and independent accountant
	Prepare response to SEC comment letter and revisions to registration statement resulting from the SEC comment letter	Company, company's counsel, independent accountant, investment bank and investment bank's counsel
	Hold board of directors meeting to approve and sign registration statement	Company's board of directors and company's counsel
	File registration statement with SEC	Company's counsel
TWO-MONTHS	Receive comment letter from SEC regarding registration statement	Company's counsel
	Prepare response to SEC comment letter and make changes to registration statement	Company, company's counsel, independent accountant, investment bank and investment bank's counsel.
	Seek listing on major U.S. securities exchange	Company and company's counsel
	File amended registration statement with the SEC, NASD (if applicable) and states	Company's counsel
	Distribute preliminary ("red herring") prospectus to the proposed underwriting syndicate	Investment bank
	Provide draft comfort letter to investment bank	Independent accountant
	Publish tombstone ad	Company and investment bank
	Begin road show	Company and investment bank
ONE-MONTH	Receive comment letter(s) from SEC and amend registration statement(s) as appropriate	Company, company's counsel, independent accountant, investment bank and investment bank's counsel
	File amended registration statement with the SEC	Company and company's counsel
	Notify SEC in writing that a final (price) amendment will be filed and the company requests acceleration of the effective date	Company's counsel
ONE WEEK	Resolve any final comments and changes with the SEC by telephone	Company, company's counsel and independent accountant
	Hold due diligence meeting	Company, company's counsel, independent accountant, investment bank and investment bank's counsel
	Finalize offering price	Company and investment bank
	Deliver first comfort letter to investment bank	Independent accountant
	Sign underwriting agreement	Company, company's counsel, investment bank and investment bank's counsel
	File price amendment to the registration statement with the SEC	Company and company's counsel
	Receive notification from SEC that the registration has become effective	Company and company's counsel
	Notify securities exchange of effectiveness and begin trading	Company's counsel
CLOSING DATE	Deliver updated comfort letter ("bring down" letter) to investment bank	Independent accountant
	Complete settlement with underwriter, issue stock, collect proceeds from offering and sign final documents	Company, company's counsel, investment bank and investment bank's counsel
	Issue press release	Company and investment bank

PREPARING THE REGISTRATION STATEMENT

The disclosures required by SEC rules and regulations and U.S. GAAP are surprising to many owners and executives of non-U.S. companies. While your potential investors have a right to know the details of the business in which they place their money, this transition to a U.S. public company is a challenging one.

The cornerstone of an offering is the prospectus, which presents the company to potential investors. The most important aspect of preparing the prospectus is understanding the nature of information required and then presenting it in a clear, forthright manner.

The prospectus contains information that the SEC considers necessary for investors to make an informed decision, including the company's financial statements and related financial statement disclosures. In addition to the financial information, the prospectus must include extensive non-financial information as required by the SEC. Some of the required disclosures include a description of the business (organization, operations, principal properties and historical background), regulations applicable to the company, management structure (including identification of the directors and executive officers), capital structure and shareholders' rights.

Although its exact content and format will vary depending on the offering, the registration statement is basically a two-part document, the main portion of which is the prospectus in Part I. Part II contains additional detailed information required by the SEC, such as the company's by-laws, articles of association and significant contracts. The SEC does not view this supplementary data as essential to a prospective investor and therefore does not require it to be distributed with the prospectus. However, the content of Part II is considered public information and is available to interested parties on request through the SEC.

DRAFTING THE REGISTRATION STATEMENT

Following the first planning meeting, "all hands" meet from time to time to review progress, adjust the timetable if necessary and draft the actual prospectus. All-hands meetings will also include a review of the draft underwriting agreement, which should be examined closely for its impact on all parties.

You will likely need several sessions to draft the prospectus. Deadline pressures and potential legal liability can build considerable tension at these sessions. Relationships among the team members can become strained.

The prospectus has two primary but very different functions. As a selling document, it is used to persuade the public to purchase shares. At the same time, it must adequately inform the investor of the offering's risk factors and disclose all relevant information to protect against management's potential liability for material misstatements or omissions.

Management knows the business better than anyone and must have an active role in the drafting process. Resist the temptation to allow the investment bank or its lawyer to completely control the drafting, which could result in a prospectus that does not fairly present the company to potential investors.

CONTENTS OF THE REGISTRATION STATEMENT

The prospectus is the most important part of the registration statement on Form F-1. This is the basic document for listing securities in the U.S. and the most comprehensive initial offering registration statement for non-U.S. companies. Forms F-2 and F-3 require less detail than the Form F-1 and may be used by foreign private issuers that are already listed in the U.S. and meet specific requirements. See "Short-form registration statements" for additional information.

Part I – Information Required in the Prospectus

Summary. This appears at the beginning of the prospectus and describes the company, its business, the type of securities being offered, the amount of estimated proceeds, the intended use of the proceeds and occasionally, certain summary financial information. Although not required, many companies are including their Internet address.

Risk factors associated with the offering. Any factors that make your offering speculative or risky must be disclosed. These may include recent adverse developments or operating losses, the need for additional financing, the dilution to public investors, significant competition, dependence on a few customers or suppliers, dependence on key members of management, significant contracts or licenses, the impact of current or proposed legislation and technological changes.

Although negative factors are required to be disclosed, you should also disclose any positive mitigating factors that may be present. For example, in discussing dependence on key members of management, a company may state that the loss of one or more members of management may adversely affect the company. A company might also disclose that the company plans to continue to recruit qualified managers who possess substantial expertise and experience or that the company has key man life insurance.

Use of proceeds. Your company must disclose and discuss the planned use of the proceeds from the offering. This section of the registration statement should be carefully drafted because the SEC requires reports on the actual disposition of the proceeds after the offering is complete. Because the company's plan may change, the actual use of proceeds may also change between the filing date and the effective date. This may require a revision in this section of the registration statement on the effective date. Typical uses of proceeds include debt reduction, acquisitions, research and development expenditures and marketing expenses.

Dividend policy and restrictions. Your company must disclose its current dividend policy, any anticipated changes to that policy and any restrictions on the company's ability to pay dividends. Many new public companies do not pay dividends, but rather retain earnings to finance operations and the company's expansion. Other restrictions might be based on debt, contractual agreements or regulations.

Dilution. When a disparity exists between the IPO price and the net book value per share of tangible assets, dilution results. The effects of any material dilution to prospective investors must be disclosed. This is usually presented in a dilution table.

Capitalization. Although not a requirement of the SEC, the capital structure of a company is usually presented in a tabular format, both before the offering and after all securities offered are sold.

Underwriting and distribution of securities. Information must be provided about the price of the securities being offered, the members of the underwriting syndicate, the type of underwriting and any relationship between your company and any of the underwriters.

The company's business. Your company must make extensive disclosures about its business, including information about:

- The business plan, particularly if the company has less than three years' operating results.
- A description of its properties.
- Any foreign operations.

- Research and development expenditures.
- Regulations affecting the company industry.
- Pending or threatened legal proceedings.
- Revenues, profits, assets, products and services, product development, major customers, order backlog, inventory, patents, suppliers and the competitive position of each major industry and geographic segment of the company.

FINANCIAL INFORMATION. The SEC has specific and sometimes complex rules regarding the content and age of the financial statements that must be presented in a registration statement. Your company's independent accountants can be invaluable in helping you comply with these rules. In a Form F-1 registration statement, a company must generally present the items listed below.

- If the company prepares its financial statements in accordance with domestic accounting principles, balance sheets as of the last two fiscal years and statements of operations (income statements), cash flows and movements in shareholders' equity for the last three fiscal years are required. These financial statements must be audited and reconciled to U.S. GAAP for the two latest fiscal years. Most companies will be required to reconcile net income and shareholders' equity and provide all U.S. GAAP and SEC disclosures not included in the basic financial statements. Offerings of certain investment grade, non-convertible debt securities allow the quantitative reconciliation without the additional disclosures. A company that prepares its financial statements in accordance with U.S. GAAP may present audited financial statements for only the two most recent fiscal years.
- Selected financial information (summarized from the balance sheets and income statements) for the lesser of five years or the company's period of existence is required. This information can either be presented under domestic accounting principles for all five years (or the company's period of existence, if less) and reconciled to U.S. GAAP for the latest two years or presented in accordance with U.S. GAAP for five years (or the company's period of existence, if less).
- Separate financial statements of businesses acquired or to be acquired may be required by Rule 3-05 of Regulation S-X. The annual audited financial statement requirement ranges from one year to three years depending upon whether certain criteria are met. Additionally, unaudited acquiree interim financial statements can be required to meet timeliness requirements. See Appendix C for a summary of matters covered by SEC Regulation S-X.
- Interim financial statements, also referred to as stub-period financial statements, are required if the fiscal year-end financial statements are more than 10 months old. Interim financial statements can be presented in a condensed format and must be reconciled to U.S. GAAP. The interim financial statements are generally not audited, but the underwriter may request that the independent accountant review them. It should also be noted that if the effective date falls more than six months after year end, financial statements for the most recent fiscal year are required to be audited.
- Pro forma financial information may be required depending on the occurrence of certain events or transactions. The objective of pro forma financial information is to provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. While the need for pro forma financial information most frequently occurs in connection with business combinations, the rule also applies to other events such as:
  - The disposition of a significant portion of a business.

- The registrant was previously part of another entity and such presentation is necessary to reflect operations and financial position of the registrant as an autonomous entity.
- Redeemable preferred stock or debt converts to common stock at either the effective or closing date of an IPO.
- Other changes in capitalization occur at or before the closing date of an IPO.
- An issuer was formerly a government entity, a partnership or a similar tax-exempt enterprise.

■ Pro forma financial information may also be required if other events or transactions have occurred — or are possible — that would be material to investors. Separate financial statements of an investee accounted for by the equity method and financial guarantors are required if certain conditions are met.

THE COMPANY'S OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS. Form F-1 requires that the company identify and describe the business experience of its executive officers and directors; their aggregate compensation; the security holdings of directors and principal shareholders; transactions with and indebtedness of officers, directors and principal shareholders; and the identity of transactions with and compensation paid to its promoters.

MANAGEMENT'S DISCUSSION AND ANALYSIS ("MD&A"). In this section, management provides investors and users with information relevant to the assessment of the liquidity, capital resources and results of operations of the company with particular emphasis on future prospects. The SEC continues to focus on MD&A in its review of registration statements so it is important that this section be carefully drafted. It must be written objectively, disclosing both favorable and unfavorable developments.

■ RESULTS OF OPERATIONS. MD&A should include a comparison of the income statement amounts for each period, with an explanation of any material changes. The MD&A should also discuss the quality of the company's earnings, reasons for any recent positive or negative trends, and any known trends or uncertainties that have had, or are expected to have, a material impact on the company.

■ LIQUIDITY. MD&A should identify any known trends, demands, commitments, events or uncertainties that will result in — or that are reasonably certain to result in — a material change in the company's liquidity. Any course of action the company has taken or proposes to take to remedy any deficiencies should be indicated. Also, MD&A should identify the internal and external sources of liquidity and discuss material unused sources of liquid assets.

■ CAPITAL RESOURCES. MD&A should describe the company's material commitments for capital expenditures, their purpose and the anticipated source of funds needed to fulfill the commitments. It should also cover any known material trends, favorable or unfavorable, in the company's capital resources.

■ SEGMENT AND GEOGRAPHIC DATA. Companies should also discuss any segment and geographic data that is important to understand the business.

OTHER DISCLOSURES. Legal proceedings, interests of named experts and counsel and certain relationships and related transactions must also be disclosed in the prospectus.

Part II – Information Not Required in the Prospectus

This part includes disclosures regarding the expenses associated with the issuance and distribution of the securities, the indemnification of directors and officers acting for the company, any sales of unregistered securities within the last three years, undertaking representations made by the company acknowledging that it will keep the registration statement and prospectus current, various exhibits (such as certain

material contracts entered into by the company, articles of incorporation and by-laws, underwriting agreement and opinions from experts), and various required financial statement schedules.

DUE DILIGENCE

Due diligence efforts will take place primarily during the prospectus drafting and the road show. During due diligence, the investment bank investigates and attempts to verify the accuracy of the factual information in the prospectus. Also, the investment bank will attempt to determine that all material information relevant to investors has been included in the prospectus.

Subsequently, if it becomes clear that a prospectus includes materially misleading statements or omissions, the investment bank will not be liable for these misstatements if it can prove that it exercised "due diligence" with regard to such information.

Everyone involved in the offering process usually participates in one or more due diligence meetings. The investment bank's lawyer will ask to visit the company facilities and interview members of management and directors. The lawyer will also review the company's legal documents for potential problems or inconsistencies with what has been learned from the due diligence meetings.

The investment bank's due diligence efforts serve to protect both the company and management. Due diligence should not produce any surprises which could delay or affect the offering; it should confirm information already provided to the investment bank.

COMFORT LETTERS

The comfort letter is meant to help the investment bank perform due diligence in relation to financial matters. This letter will describe certain procedures performed by the company's independent accountant as well as other representations made about the financial statements and other financial information in the prospectus. The accountant normally gives the investment bank two formal comfort letters: the first on the effective date of the registration statement and the second on the closing date of the offering. The required work and the contents of the letter are usually extensive.

The investment bank's lawyer will often request as much comfort as possible – far more than an accountant may provide under professional accounting standards. The company, however, bears the cost of this extra work. Management should be involved in the negotiation of the contents of the comfort letter.

REGULATORY REVIEW

Once the draft prospectus has been completed and approved by senior management and preliminary due diligence has been performed, it is time to submit the prospectus for regulatory review.

SEC. In the United States, the registration statement is submitted to the SEC and comments are provided in approximately four weeks. Inevitably, the SEC will issue a comment or deficiency letter. Some comments can be answered via correspondence with the SEC, but others will require amending the registration statement. There may be more than one series of comments on a registration statement, lengthening the review period to five or more weeks.

Major areas of the prospectus that typically generate SEC comments are risk factors, MD&A, discussion of the business and accounting and reporting. The SEC staff encourages non-U.S. companies to discuss unusual or difficult issues with them in advance, and it has established a practice of performing a confidential pre-filing review of the registration statement. The offering document is not technically filed and therefore is not available to the public. Pre-filing review allows

companies to incorporate SEC comments into the registration statement before the preliminary prospectus is distributed and used on the road show.

Your company should take advantage of the pre-filing review process and clear significant issues in advance. Doing so will save time and expense and help your company go to market with a quality prospectus.

If later amendments are so significant that they should be known by investors, a company may be advised by its legal counsel to re-distribute the "red herring" (see "The selling effort"). This is not only costly but also embarrassing. It is therefore important that the red herring used in the road show has addressed all significant comments made by the SEC.

States. Because individual states in the United States have blue-sky laws, you must also file the prospectus in the various states where the investment bank believes its customers live. The state laws range from simple notification to more onerous requirements such as a lock-up of insider stock to prevent them from selling too quickly after the offering.

Domestic regulatory authorities. Companies that are undertaking a GDR also may be required to seek approval of the prospectus from domestic regulatory authorities. This can lead to conflicting information requirements and logistical problems such as the preparation of the prospectus in more than one language.

Certain regulators may require the inclusion of prospective financial information. This practice, however, is not commonly employed in the U.S. due to an increased litigation risk that might result. It is extremely rare to see such information included in registered U.S. offerings. Including this information in one country's offering material does not automatically create a requirement to include it in U.S. offering documents, but frequently a company is advised by its legal counsel to do so.

NASD. If the company elects to be listed on the NASDAQ, the prospectus must be subject to a review by the NASD Regulation Department of Corporate Financing. This focuses on the fairness of underwriting compensation, terms and arrangements. It reviews the amount of compensation paid to the underwriter and ensures that the terms and arrangements relating to the proposed distribution are just and equitable. The department may force the company and its underwriter to renegotiate the compensation terms and arrangements and to amend the prospectus. The SEC will not declare a registration statement effective until the NASD Regulation Department of Corporate Financing has concluded its review and issued a comment letter expressing no objection to the proposed compensation terms and arrangements.

EXCHANGE LISTING

If you are undertaking a public offering in the U.S., your domestic market or another international market such as London, you will need to prepare formal applications for listing the shares so that they can be freely traded after the offering. Company management, in concert with its securities counsel, should have already been in contact with the selected exchange(s) to ensure acceptability. Each exchange will have its own application process, and the company's counsel will play a key role in preparing the applications and ensuring that they are filed on time.

ROAD SHOW AND THE SELLING EFFORT

The road show is the core of your selling efforts. A company's senior management team and its lead investment bank will go on a whirlwind tour lasting one to three weeks. These presentations are crucial to selling efforts but can put a real strain on management as they will occur immediately after finishing the prospectus.

During the road show, executives meet with prospective members of the underwriting and selling syndicates, significant investors and securities analysts. These meetings are held to build interest in both the initial offering and the after-market and are an excellent way to tell your corporate story. The investment bank uses the road show to gauge the level of interest in a company's stock and help build an order book among the significant investors. The more interest a company generates, and the more credibility management earns, the higher the expected pricing of the offering.

When undertaking a public offering, there are restrictions on the promotional activities. The period from the commencement date of the offering until 90 days after the first sale of stock is referred to as the "quiet period." The opportunity to publicize your company, its products and geographic markets are limited in this period, since any publicity that creates a favorable attitude toward your company's securities could be considered illegal. The SEC can postpone any offering that it believes has been excessively promoted. In the United States, a company and its investment bank are generally prohibited from using any written material other than the red herring to market the offering. New information should not be disclosed during the road show. These stringent U.S. requirements differ from some countries, where significant advertising and publicity of a proposed offering may be accepted practice. Be sure to work closely with an experienced public relations firm and legal counsel to properly maintain the quiet period.

Preliminary prospectus or "red herring." A preliminary prospectus may be sent to interested institutions or individuals prior to the effective date of the registration statement. This preliminary prospectus is a key tool in the lead investment bank's ability to form an underwriting syndicate, made up of various brokerage companies, to distribute the stock.

SEC rules require that this prospectus substantially conforms to the requirements of the 1933 Act and that the cover page bears the caption "Preliminary Prospectus." The preliminary prospectus is commonly referred to as the "red herring" because the disclaimer, at one time, was required to be printed in red ink.

Tombstone ads. Companies may place tombstone ads in various periodicals announcing the offering and its U.S.-dollar amount, identifying certain members of the underwriting syndicate and noting where and from whom a copy of the prospectus may be obtained. Tombstone ads are not intended to be a selling document; their main purpose is to assist in locating potential buyers who are interested enough to obtain a statutory prospectus. Tombstone ads may be published once the registration statement has been filed, but typically they are not published until after the effective date of the registration statement.

PRICING AND OFFERING

The selling efforts are finished and final comments from regulators are cleared. Finally, your offering is priced and the final prospectus is filed with the necessary authorities. The underwriting agreement between the company and the managing investment bank is signed and the public offering begins. A formal announcement will appear in a press release. The company's independent accountant will deliver the comfort letter to the investment bank. Substantially, all of the work is complete at this point and only the formal closing remains.

CLOSING DATE

The offering is formally concluded on the closing date, usually three to five business days after the effective date of the registration statement. On that day, the company delivers the registered securities to the investment bank and receives payment for the issue. Various documents, including an updated comfort letter ("bring down" letter), prepared by the independent accountant, are also exchanged.

From start to finish, the process has probably taken at least six months. The investment bank often establishes a shorter time schedule for the offering. A company should not count on a record time frame for its offering; even the best planned IPOs have unexpected delays.

SHORT-FORM REGISTRATION STATEMENTS

Alternate registration statement forms (Forms F-2 and F-3), often called "short forms," require less detail than the Form F-1 and may be used by foreign private issuers that are already listed in the United States and meet specific requirements. These forms simplify the registration process, as only limited additional disclosures are required; most of the required information is incorporated by reference from previously filed reports with the SEC. The availability of these forms is based on certain registration and transaction requirements being met.

Form F-2

Form F-2, which permits the use of a short prospectus with the delivery of the latest annual report on Form 20-F, is available to foreign private issuers that do not meet the transaction requirements for the use of Form F-3 (see below) but have been subject to 1934 Act reporting requirements for at least three years or that have an aggregate market value worldwide of more than U.S. $75 million, and have filed the most recent Form 20-F. In addition, Form F-2 is also available if investment-grade debt securities are being registered and the foreign issuer has filed the most recent Form 20-F.

Form F-3

Form F-3 is a short-form registration statement available to foreign private issuers that have been subject to 1934 Act reporting requirements for at least 12 months, has timely filed all required reports for the preceding 12 months, have filed at least one annual report on Form 20-F and meet certain other requirements. Form F-3 relies heavily on the registrant's 1934 Act reports (Forms 20-F and 6-K) and requires the incorporation by reference of information about the registrant from these reports (See Appendices C and E for the information requirements of Forms 20-F and 6-K). Disclosure in the prospectus is limited to information dealing with the offering. The Form F-3 prospectus is, therefore, generally very brief, consisting primarily of a description of the offering involved.

Form F-3 is only available with respect to certain transactions:

- A primary offering for cash if the aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant is greater than U.S. $75 million.
- An offering of non-convertible securities that are rated as investment-grade securities by at least one nationally recognized statistical rating organization.
- A secondary offering.
- A rights offering, dividend or interest-reinvestment plan and conversions of securities or exercise of warrants.

SHELF-REGISTRATIONS

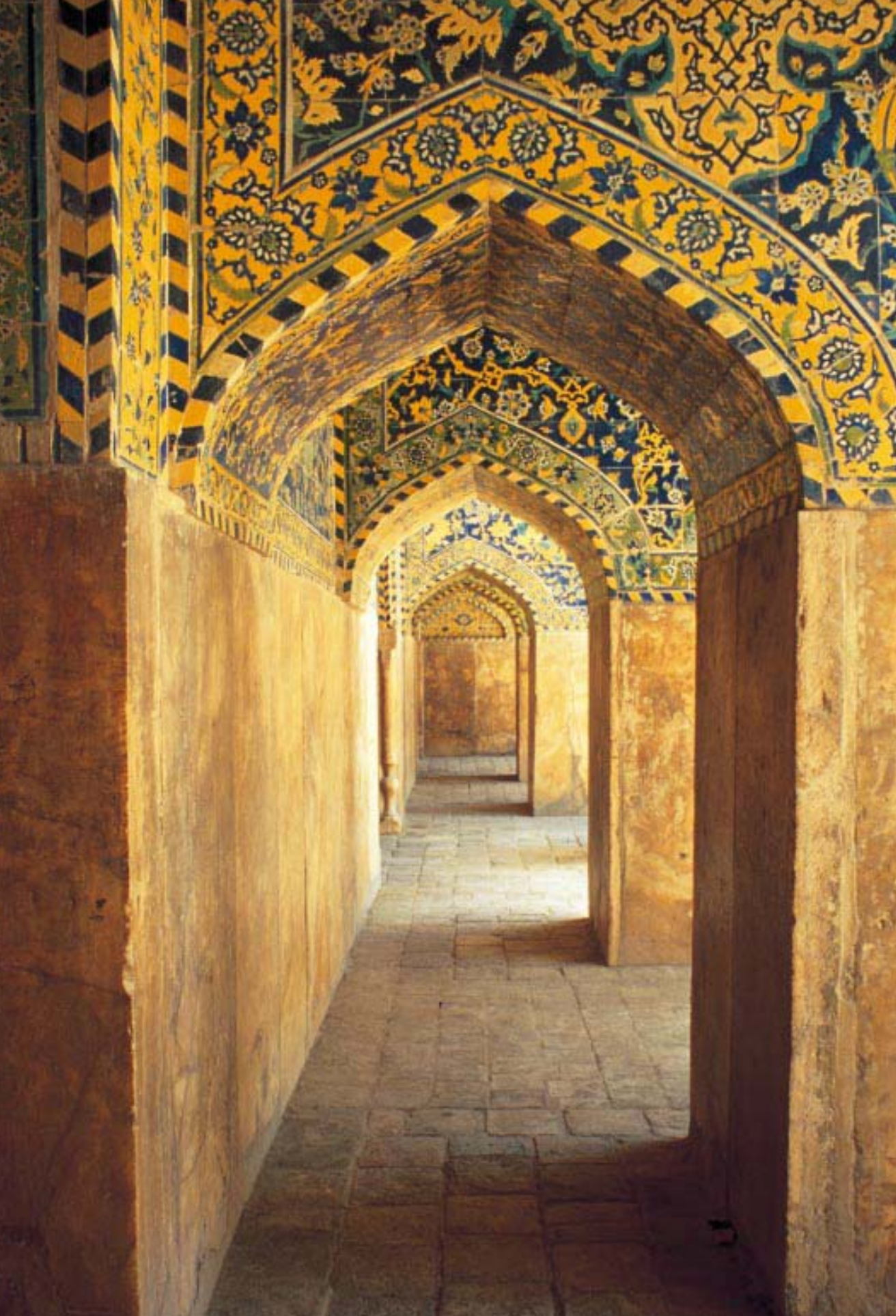
Under Rule 415 of Regulation C, commonly referred to as the shelf-registration rule, certain registrants may register the debt and equity securities they reasonably expect to sell during the next two years by filing a registration statement covering a specific class of securities. The registration statement can be used for future offerings immediately after the shelf-registration statement is declared effective, and the securities can then be priced and offered for sale when market conditions are favorable. However, if an offering is certain to occur at the time of effectiveness, relevant information such as the description of the securities, plan of distribution, and use of proceeds must be disclosed in the prospectus included in the registration statement at the time it is declared effective.

In primary offerings of equity securities, however, the benefits of the shelf-registration rule to foreign registrants, which permit an at-the-market offering, are limited to companies eligible to use Form F-3. This is primarily because a Form F-3 filing is automatically updated by the filing of Forms 6-K and 20-F. Consequently, post-effective amendments to update financial statements are not necessary, a method not available to registrants filing on Form F-1.

Advantages of a shelf-registration include reduced issuance costs and the flexibility to be able to take securities "off the shelf" whenever market conditions are favorable, generally without the filing of a post-effective amendment.

INTERNET OFFERINGS

As the Internet continues to grow in popularity as a tool for business, several companies have successfully offered their shares via the Internet. These offerings are often called "Direct Public Offerings" or DPOs. A DPO allows the issuer to sell shares directly to the investor without the assistance and fees associated with working with an underwriter. A significant amount of DPOs are filed under Regulation A where the offering is subject to SEC review but the issuer is exempt from the registration requirements of the 1933 Act. A few DPOs are registered offerings filed under the 1933 Act, whereas other DPOs do not require the filing of an offering document with the SEC. Companies should advise investors that the shares are not being listed on a regular exchange and therefore are less liquid.



Chapter 8
Significant Accounting, Reporting and Disclosure Issues

Audited historical financial statements prepared in accordance with U.S. GAAP or reconciled to U.S. GAAP must be included in the registration statement. For even those non-U.S. companies that have such audited financial statements, conforming the financial statements to the SEC requirements be cumbersome.

We do not intend to reproduce the provisions of U.S. GAAP or the rules, regulations and interpretations of the SEC staff. Rather, we have addressed below the key issues associated with financial statements that are presented in the registration statement for IPOs and subsequent periodic reports filed under the 1934 Act:

- Areas of SEC focus.
- "Carve-out" issues for subsidiaries/divisions going public.
- Pro forma issues.
- Principal U.S. GAAP differences.

AREAS OF SEC FOCUS

Certain accounting and reporting areas have elicited recurring comments by the SEC staff – so-called "hot topics."

EARNINGS MANAGEMENT. The SEC staff believes that the financial community is encouraging companies to manage the earnings process to meet earnings expectations of investors. Earnings management is causing erosion in the quality of earnings; and therefore, the quality of financial reporting. Common examples of earnings management that the SEC has encountered in reviewing registrant documents include:

- "Big Bath" charges. This involves the overstatement of one-time restructuring charges in order to provide a cushion for future earnings.
- Creative acquisition accounting. The most common involve the classification of an ever-growing portion of the acquisition price as in-process research and development ("IPR&D") and the creation of large liabilities for future operating expenses. Both practices protect future earnings.
- Miscellaneous "Cookie Jar Reserves." Many companies are using unrealistic assumptions to estimate liabilities for such items as sales returns, loan losses or warranty costs. In doing so, they stash accruals in "cookie jars" during the good times and reach into them when needed in the bad times.
- Materiality. This is another way to build flexibility into financial reporting. When companies intentionally record errors within a defined percentage ceiling, they are misusing the concept of materiality.
- Revenue recognition. Companies try to boost earnings by manipulating the recognition of revenue. This typically involves recognizing revenue before a sale is complete, before the product is delivered to a customer, or at a time when the customer still has options to terminate, void or delay the sale.

The SEC staff has called for an immediate and coordinated action plan to address the issue of earnings management. This action plan would entail technical rule changes by the regulators and standard setters to improve the transparency of financial statements, enhanced oversight of the financial reporting process by those entrusted as the shareholders' guardians and, a fundamental change on the part of corporate management and the financial community.

Revenue recognition. U.S. GAAP requires that revenue should not be recorded until it is realized or realizable, an exchange has occurred, and collection is reasonably assured. In many situations, the SEC staff has challenged registrants' revenue-recognition policies. The SEC staff has scrutinized revenue-recognition policies in situations including:

- "Bill and hold" arrangements.
- Arrangements where upfront payment (e.g. annual membership fees) or non-refundable cash payments are received.
- "Free on Board" destination sales recorded prior to product delivery.
- Software and software licensing or other technology licensing arrangements.
- Sales financed by the seller or, sales financed by the buyer but guaranteed by the seller.
- Sales that require performance of future obligations by the seller.
- Contractual arrangements for which all the terms of sale were not finalized.
- Maintenance contracts.
- Franchise-fee revenue.

Restructuring charges. In recent years a number of companies have recognized liabilities that have been characterized as "restructuring charges." The SEC staff has stated that amounts actually incurred in restructuring plans should be charged to the accrued liability only if they were specifically contemplated in the estimation of the liability. Otherwise, they should be charged directly to expense with appropriate explanation in MD&A. Management and auditors should evaluate restructuring liability balances at each balance sheet date to ensure that unnecessary amounts are reversed on a timely basis, with disclosure made of material reversals.

A common question about restructuring plans is the level of detail required. The SEC staff has indicated that there is a presumption that if the plan is not detailed enough, then the amount of the restructuring cannot be reasonably estimated and should not be accrued. For a plan to be sufficiently detailed to warrant accrual, individuals within the company who will be responsible for taking certain, specific actions must have an understanding of what these specific actions are and when they should be taken. In addition, the staff has also reiterated that in order for a company to accrue charges for certain employee benefits, the employees must be notified of the plan.

The SEC staff has also stated that the longer it takes to complete a restructuring plan, the more difficult it is to reasonably estimate the accrued costs. The staff noted that although U.S. GAAP does not provide for a specific time period, the staff generally believes that a time period beyond one year will be subject to challenge.

Additionally, the staff has challenged the characterization and classification of amounts presented as restructuring charges if they are costs of the exited activity but not the direct result of the decision to exit the activity, or if substantially identical costs will be recognized in periods after exiting the activity.

Further, the staff has required additional information to be included in MD&A regarding the effects of a restructuring of operations (e.g., if cost savings have been achieved; the effect on liquidity of carrying out the plan; and "what if" scenarios if the plan is not achieved as expected).

Asset impairments. U.S. GAAP provides different impairment-recognition thresholds depending on whether an asset is to be held and used or is to be abandoned or otherwise disposed of. It provides that an impairment loss shall be recognized for an asset to be held and used only if the sum of the undiscounted expected future cash flows is less than the carrying amount of the asset. An asset is classified as held for disposal only when management having the authority to approve the action has committed to a plan to dispose. The staff believes that a necessary condition of a plan to dispose of assets currently in use is that management has the current ability to remove the asset from operations.

Business combinations. Business combinations accounted for as a pooling of interests are receiving significantly increased scrutiny from the SEC staff. The staff has indicated that with few exceptions, it would require purchase accounting unless all of the criteria for pooling of interests accounting are met. In addition, the staff has publicly expressed the view that pooling of interests accounting should be substantially curtailed or eliminated. In this regard, the Financial Accounting Standards Board ("FASB") has added a "fast track" project to its agenda on business combinations. Business combinations, particularly pooling of interests, should be carefully evaluated and, in some instances, it may be necessary to discuss the accounting for such transactions with the staff on a pre-filing basis.

In-process research and development. In SEC filings that report business combinations using the purchase method, the amount of purchase price allocated to IPR&D has been increasing. This apparent trend has led the SEC staff to question whether some SEC registrants are abusing IPR&D accounting as an earnings-management technique due to its favorable impact on future earnings (see "Earnings management"). Although U.S. GAAP currently requires that IPR&D be expensed immediately, there is subjectivity involved in estimating the amount of IPR&D. The SEC staff is seeking to curb the abuse of IPR&D.

The SEC staff recently shared findings from various reviews of IPR&D estimates. Specifically, the staff stressed that it is important for registrants, their appraisers and their auditors to assess the overall reasonableness of IPR&D estimates once an appropriate valuation of IPR&D is completed. Additionally, the staff indicated that it will challenge valuation methods that appear to be improper. The staff asserts that unreasonable valuations of IPR&D are often the result of the improper allocation to IPR&D of a portion of capitalizable assets (e.g., existing proprietary technology that underlies the IPR&D).

The SEC staff will be specifically looking for the following disclosures in filings where IPR&D is included as a material element of the purchase-price allocation in a business combination.

- The nature of the specific projects acquired.
- A summary of values assigned to IPR&D by project when multiple products are involved.
- The status of the development and the complexity or uniqueness of the work completed at the acquisition date.
- The stage of completion at the acquisition date.
- The nature and timing of remaining efforts for completion.
- The anticipated completion date and the date that the company will begin benefiting from the IPR&D.
- The projected cost to complete the IPR&D by project.
- The material assumptions underlying the purchase-price allocation, such as projected revenue assumptions, cost assumptions, stage of completion, discount rate, etc.

- The risk and uncertainties associated with completing development within a reasonable period of time.
- The risks and consequences if the IPR&D is not completed on time.

This scrutiny of IPR&D will also be applied to companies that have taken charges in prior years. The staff also requires specific disclosures on IPR&D to be included in subsequent filings.

"Put together" transactions. These transactions typically involve a number of small, independent, and unaffiliated operating companies that are combined simultaneously in an IPO by the registrant exchanging stock (and frequently cash) for the stock of the combining companies. There is no controlling party after the merger (i.e., a party with greater than 50 percent voting interest in the combined entity). In many of these transactions, the newly formed entity has accounted for the combining of the individual entities by using the historical carrying values of the previously separate companies.

The SEC staff has indicated that purchase accounting should be applied to those operating companies deemed acquired in the merger. In the SEC staff's view, there is a rebuttable presumption that the accounting acquirer is the shareholder group receiving the largest ownership interest in the combined company, even if no single former shareholder group of the previously separate companies obtains more than a 50 percent ownership interest in the newly combined entity.

Goodwill. The issues surrounding goodwill primarily relate to impairment and amortization periods. For goodwill that is material relative to equity (or if goodwill amortization is significant relative to pre-tax income), the SEC staff has required companies to disclose their accounting policy governing the measurement of goodwill impairment and the manner in which recoverability is assessed. The staff expects companies to have an objective methodology for assessing the recoverability of goodwill at each balance sheet date.

The staff has expressed concern recently in situations where a long life is assigned to goodwill recognized in the acquisition of a business in an industry having little earnings variability and low barriers to entry. In those circumstances, the staff will challenge registrants to furnish evidence that the business is likely to generate above-average earnings for more than 10 years after the acquisition. Factors that the staff would find persuasive would be specific to the acquired business, and not the result of resources that the acquirer could bring to the business.

The SEC staff also stressed that registrants need to carefully consider the nature and range of products that are associated with acquired businesses in the high-tech industry. Amortization periods that do not exceed the five-to-seven-year period are often appropriate if the acquired business has products that are particularly susceptible to rapid, technological obsolescence.

Intangible assets. In addition to questions regarding goodwill, the SEC staff typically questions the capitalization policy and amortization period for other intangible assets. The staff will often request expanded disclosures of these items, as well as explanations regarding the future benefits the intangible assets will provide.

The SEC staff has also been questioning purchase price allocations for acquired intangibles, reminding registrants that there must be a direct allocation of the purchase price to acquired intangibles based upon an appropriate valuation study.

Realization of deferred tax assets. If a registrant has recognized a net deferred tax asset under U.S. GAAP that is material, the SEC staff stated that it may be necessary to discuss uncertainties surrounding realization of the asset and material assumptions underlying management's determination that the net asset will be realized. If the asset's realization is dependent on material improvements over present

levels of consolidated pre-tax income, material changes in the present relationship between income reported for financial and tax purposes or material asset sales or other non-routine transactions, a description of these assumed future events, quantified to the extent practical, should be furnished in the MD&A. Also, if significant objective negative evidence indicates uncertainty about realization of the deferred asset, the countervailing positive evidence that management used in its decision not to establish a full allowance against the asset should be identified.

Conversely, a valuation allowance for the deferred tax asset is not appropriate unless it is more likely than not that the asset will not be realized. The SEC staff has challenged registrants that establish a significant allowance but whose disclosures regarding current and expected operating results appear inconsistent with management's view regarding realization of the deferred tax asset. In those circumstances, the staff has questioned whether the narrative disclosures are unreasonably optimistic or the valuation allowance is unreasonably pessimistic, and revisions to the financial statements or the narrative typically have been necessary to reconcile the apparent inconsistency.

Material changes in the allowance for realization of a deferred tax asset from one period to the next should be fully explained in MD&A, highlighting changes in assumptions and environmental factors that necessitated the change.

Related-party transactions. Perhaps one of the more cumbersome disclosure areas for companies is the requirement to disclose all material related-party transactions and balances.

The SEC staff takes a great interest in the accounting and disclosures for related-party transactions. It is imperative that management compiles information about its structure and control relationships to ensure proper disclosure.

Materiality. Materiality is a concept that requires consideration of both qualitative and quantitative factors. The staff believes that in practice, there appears to be little, if any, consideration of the qualitative aspects of materiality. The staff has stated that the following qualitative factors should be considered: erroneous accounting that leads to a change in earnings or the earnings trend; erroneous accounting that is part of a plan to smooth earnings from period to period; and, erroneous accounting that contributes to changing a loss to a gain.

Derivative financial instruments. The accounting standard-setting bodies continue to address the reporting for derivative financial instruments. The FASB recently standardized the accounting for derivative instruments by requiring that all companies recognize them as assets and liabilities in the balance sheet and subsequently measure them at fair value (effective for all fiscal quarters of fiscal years beginning after June 15, 2000). Due to the significant risks derivatives could present to a registrant, the SEC staff has focused on disclosures of derivatives during the review process.

The SEC has also issued rules that call for specific disclosures of registrants' accounting policies, requiring both qualitative and quantitative discussions of market risks outside the financial statements. The staff has recently made several observations about registrant noncompliance with the market risk disclosure rules:

- The quantitative and qualitative disclosures are not being provided outside the financial statements. Registrants should be aware that safe-harbor protection regarding forward-looking statements does not apply if the disclosures are placed in the notes to the financial statements.

- Registrants that present information in a tabular format are not providing adequate details about the relevant terms of the instruments and the assumptions used in determining their estimated fair value, cash flows, and future variable rates. Additionally, registrants are not adequately segregating instruments by common characteristics and risk classifications.
- Registrants that use the sensitivity-analysis and value-at-risk model are not disclosing sufficient information about the types of instruments and the offsetting positions in the analysis. Registrants should provide adequate disclosures about the specific model and significant assumptions that they are using.
- The qualitative disclosures do not clearly depict how the registrant manages its material market-risk exposures, particularly in comparison to the prior year.

YEAR 2000. The SEC recently issued an interpretation on Year 2000 disclosures. The SEC expects that for the vast majority of companies, Year 2000 issues are likely to be material, and therefore disclosure is required. When a company has a Year 2000 disclosure obligation, the SEC staff believes that full and fair disclosure includes:

- The company's state of readiness.
- The costs to address the company's Year 2000 issues.
- The risks of the company's Year 2000 issues.
- The company's contingency plans.

The staff indicated that it will challenge a company that has not provided any disclosures and may refer the matter to the Division of Enforcement.

THE EURO. The SEC staff recently issued a legal bulletin on a registrant's disclosure responsibilities regarding the introduction of the Euro. The effect of the Euro conversion upon a registrant and its business will depend largely upon the nature of the business conducted and various other factors.

Since a registrant may be affected differently over time, the legal bulletin indicates that a registrant should evaluate its disclosure obligations to investors on an ongoing basis, including:

- The period before the January 1, 1999 introduction of the Euro.
- The transition period.
- The period after January 1, 2002, when the transition will be completed.
- When a nonparticipating country converts to the Euro.

The legal bulletin also advises that a registrant should consider the effects of the Euro conversion on each reportable industry segment and on each significant line of business, even if it is not an industry segment.

The legal bulletin states that a registrant should disclose the impact of the Euro conversion if that impact is expected to be material to the registrant's business or financial condition. If a registrant suspects that its operations may be materially affected by the Euro conversion but is uncertain of this, the issuer should disclose this known uncertainty. In either case, the issuer needs to indicate whether it has initiated an internal analysis to plan for the conversion and should describe that analysis and/or plan.

The specific disclosure requirements for the Euro are discussed in the legal bulletin. The SEC will be closely scrutinizing a company's disclosures regarding the introduction of the Euro to ensure strict compliance with the legal bulletin.

MD&A. As previously noted, MD&A is an area to which the SEC staff devotes significant attention. The SEC is placing greater emphasis on management providing a discussion of forward-looking information and the expected effect this information is likely to have on future operations.

Some of the items on which the staff has commented are:

- Providing an adequate discussion of cash flows from operating, investing, and financing activities.
- Adequately disclosing currency risks and the effects that changes in exchange rates have had on the financial statements for material foreign operations.
- Discussing significant revenue-recognition policies.
- Providing an adequate discussion of asserted and unasserted claims and their potential effect on future financial statements.
- Discussing the reasonably likely consequences of recent acquisitions or dispositions.
- Discussing the potential effects of expected changes in current legislation on the company's operations.
- Providing an expanded discussion of debt agreements, including covenant restrictions, waivers, interest rates, limitations on the sale of assets and the payment of dividends, and the effect on the company's liquidity.
- Providing derivative-related disclosures, including identification of the risks to which the company is exposed and how derivatives are being used to help mitigate that risk, explanation of the company's risk-management strategy and discussion of the methods and quantified parameters used to monitor and control risk.
- Discussing the impact of inflation and changing prices on net sales, revenues and income from continuing operations.
- Discussing the impact of any restructuring charges on operations and the current status of the restructuring plan.
- Discussing material changes in any valuation allowance for deferred tax assets from one period to the next.

ALTERNATIVE MEASURES OF PERFORMANCE. Companies are increasingly presenting non-GAAP financial measures such as "earnings before interest, taxes, depreciation and amortization" ("EBITDA") in the selected and summary financial data sections of SEC filings. The SEC staff generally does not object to such presentations, but it has indicated that these measures should receive no greater prominence than the GAAP measures and should be presented under the caption "other data." The staff also has required certain cautionary disclosures to accompany such measures.

RECENTLY ISSUED ACCOUNTING STANDARDS. The SEC staff frequently questions the adequacy of disclosure in the footnotes and/or MD&A regarding the impact that recently issued accounting standards will have on a company's financial statements. Disclosures should include a description of the standard, its anticipated adoption date and planned method of adopting, the impact the standard will have on the financial statements to the extent it is reasonably estimable, and any other effects that are reasonably likely to occur (e.g., changes in business practices, debt covenant violations).

"CARVE-OUT" ISSUES FOR SUBSIDIARIES/DIVISIONS GOING PUBLIC

If a subsidiary, division or smaller business component is "carved out" of another entity and becomes a separate registrant through an IPO, the SEC rules require audited historical financial statements to be presented for the carved-out business. In these cases, the operating results should reflect all the costs of its doing business as a stand-alone entity, even if some of the costs were not historically allocated to the entity being carved out.

The SEC staff requires carved-out entities' financial statements to include expenses incurred by others on the entity's behalf. In some cases, a reasonable method of allocating common expenses to the carved-out entity (e.g. incremental or proportional cost allocation) must be chosen because specific identification of expenses is

not practical. The footnotes to the financial statements are required to include an explanation of the methodology and management's assertion that the method used is reasonable. Because of the various assumptions made in allocating certain expenses, historical carve-out financial statements may not be indicative of expected future results of operations. Known prospective costs which differ from costs included in the carve-out financial statements are required by Article 11 of Regulation S-X to be included in a pro forma income statement for the most recent year and any subsequent interim period.

In certain circumstances, the SEC staff may require complete audited financial statements of the consolidated legal entity rather than a carve-out presentation. A pro forma income statement presentation for the latest fiscal year and any subsequent interim period and a pro forma balance sheet as of the latest balance sheet date to give effect to the businesses not being retained by the legal entity would typically be required in such situations.

PRO FORMA ISSUES

The following general guidelines on pro forma financial information are intended for non-U.S. companies:

- Pro forma financial statements required consist of income statements for the latest fiscal year and any required subsequent interim period and a balance sheet as of the latest date of the balance sheet included in the registration statement. These statements may be condensed and must be supported by explanatory notes describing the adjustments and assumptions.
- The pro forma adjustments to the condensed income statement should include only those adjustments that are factually supportable, expected to have an ongoing effect and directly attributable to the transaction. The effect of material nonrecurring charges or credits which result directly from the transaction and which will be included in the income of the registrant within the 12 months succeeding the transactions should not be included in the pro forma condensed income statement, but should be disclosed separately in the footnotes. Pro forma income statement adjustments should be computed as if the transaction was consummated at the beginning of the most recent fiscal year presented.
- In contrast to the pro forma income statement, the pro forma condensed balance sheet should be prepared based on the assumption that the transaction was consummated on the latest balance sheet date. The balance sheet adjustments should give effect to all events directly attributable to the transaction and factually supportable, irrespective of whether they are expected to have an ongoing effect.
- Adjustments for the impact of planned transactions, such as future restructuring plans, are more akin to forecasts and should not be presented in pro forma statements. In addition, it is not acceptable to "normalize" expected cost savings. If it is material, the information may be presented in the footnotes to the pro forma statements.

CERTAIN U.S. GAAP DIFFERENCES

The following is a summary of certain U.S. GAAP differences that non-U.S. companies may encounter:

Consolidation and equity accounting

- In certain countries, the financial statements of subsidiaries that are in different lines of business from the rest of the consolidated group are not consolidated regardless of whether the parent has control. Under U.S. GAAP, when the parent has control over its subsidiaries, such subsidiaries are consolidated except for those over which control is considered temporary.

- Under U.S. GAAP, investments over which the investor is able to exercise significant influence are accounted for under the equity method. Significant influence is presumed at a 20 percent ownership level. However, certain circumstances might overcome this presumption. In some countries, different levels of voting interest are used as the benchmark for presumptive significant influence.
- GAAP in some countries allows or requires the use of proportionate consolidation, which is not allowed under U.S. GAAP. (When certain conditions are met, the SEC rules do not require a reconciliation of this difference.)

Business combinations

- The requirements regarding qualification for pooling-of-interests versus purchase accounting for business combinations vary widely among countries. Some countries prohibit pooling-of-interests accounting.
- In some countries, the amount by which the purchase price exceeds the fair value of the net assets acquired in a business combination (commonly referred to as goodwill) may be recorded as a direct charge to shareholders' equity or income. This approach is unacceptable under U.S. GAAP.

Foreign currency

- Some countries allow the use of the year-end exchange rate in the translation of the income statement rather than an average exchange rate for the year, as required by U.S. GAAP.
- In some countries, gains and losses on remeasurement of assets and liabilities denominated in a foreign currency may be deferred and amortized. U.S. GAAP requires such amounts to be included in the income statement.

Investments

- Under U.S. GAAP, investments in debt securities and investments in equity securities that have readily determinable fair values (other than equity method investments and consolidated subsidiaries) are classified according to management's intent for holding the investments. Debt securities for which management has the positive intent and ability to hold to maturity are reported at amortized cost, whereas other debt and equity securities are reported at fair value (with gains and losses recorded either in the income statement or as a separate component of shareholders' equity based on the classification of the investments). Certain non-U.S. GAAPs require investments in debt and equity securities to be reported at cost, whereas others require such investments to be reported at the lower of cost or market value.

Property, plant and equipment

- Some countries permit the write-up of non-current assets (usually property, plant and equipment) to appraised values. Asset revaluations and current cost adjustments of fixed assets are not permitted under U.S. GAAP. However, when a foreign GAAP comprehensively includes the effects of inflation (which includes restatement of fixed assets to replacement costs), such effects of inflation, including the restatement effect of fixed assets to replacement cost, do not need to be included as an adjustment in the U.S. GAAP reconciliation.

- Some recently privatized foreign private issuers have indicated to the SEC staff that historical fixed-asset records have not been maintained. In cases where reliable fixed asset records have not been available and have not been reasonably produced, the staff has not objected to the establishment of fixed asset amounts that are based on fair values at the opening balance sheet date. In such cases, the SEC staff expects the issuer to undertake a rigorous process of identification and appraisal of assets. The opening fair-value balances are considered to be historical costs, and thereafter the assets are reported in the usual manner with respect to recognition of depreciation and evaluation of impairment. Such situations should be pre-cleared in advance of filing with the SEC staff.
- Under U.S. GAAP, interest cost is required to be capitalized for constructed assets while foreign exchange losses are not subject to capitalization but must be expensed. In certain non-U.S. GAAPs, capitalization of interest is either not allowed or determined on a basis different than required under U.S. GAAP. Additionally, certain non-U.S. GAAPs allow capitalization of foreign exchange losses.

Research and development

- GAAP in some countries permit or require research and development costs to be capitalized and amortized over future periods. Under U.S. GAAP, such costs are expensed as incurred.

Deferred income taxes

- Deferred tax accounting under U.S. GAAP requires the recognition of an asset or liability for the expected future tax consequences of temporary differences between the tax basis and accounting basis of assets and liabilities regardless of when such temporary differences will reverse. Many non-U.S. GAAPs apply an income statement approach of determining deferred taxes. Deferred taxes are provided for timing differences between pretax accounting income and taxable income.
- In some countries, the recognition of a tax liability for temporary differences is not required, unless the tax liability is expected to be paid within a foreseeable future period. Except for not having to provide certain tax liabilities for non-U.S. subsidiaries and equity investee unremitted earnings considered to be permanently reinvested, U.S. GAAP generally requires that deferred tax liabilities be provided, regardless of timing of payment.
- U.S. GAAP requires that valuation allowances be provided for deferred tax assets when it is more likely than not that all or a portion of the deferred taxes will not be realized. Other GAAPs have different criteria for when a valuation allowance is required.

Deferred and capitalized costs

- Many countries permit a wider range of alternatives for deferral and capitalization of costs than are allowed under U.S. GAAP.

Pensions and other post-retirement benefits

- Significant variations in accounting for pensions and other post-retirement benefits around the world typically include differences in methods of attributing cost to periods of employee service and differences in the methods of projections and assumptions used to calculate the pension obligation and related pension expense. U.S. GAAP requires the discount rate to be adjusted as interest rates change. This is not required by many non-U.S. GAAPs.

Employee compensation

- U.S. GAAP differences may exist between the local GAAP accounting for employee compensation, especially if compensation includes stock options. Additionally, in some countries the accrual of vacation pay is not required, whereas under U.S. GAAP such accruals are mandatory.

Leases

- Under U.S. GAAP, certain types of long-term lease arrangements are required to be accounted for as capital leases of the leased assets. Such arrangements may be accounted for as operating leases under GAAP in some countries.

Derivatives and financial instruments

- U.S. GAAP requires the disclosure of the fair value and credit risk of all financial instruments, both for assets and liabilities recognized and for those not recognized in the balance sheet. This disclosure is not required by GAAPs in certain countries.
- Effective for fiscal quarters of fiscal years beginning after June 15, 2000, U.S. GAAP requires the recognition of derivative financial instruments on the balance sheet at fair value. Changes in the fair value of derivatives, including those that qualify as hedges, are recorded in current income or comprehensive income depending on the type of derivative. GAAP in certain countries do not have authoritative guidance on the measurement and presentation of derivative financial instruments.

Contingencies

- Under U.S. GAAP, accounting for contingent losses is based upon the probability of ultimate loss and the ability to reasonably estimate the amount of the loss and contingent gains are deferred until realized. Some non-U.S. GAAPs allow the recognition of contingent gains and losses based on different criteria.

Extraordinary items, discontinued operations and changes in accounting principles

- U.S. GAAP requires separate income statement classification of extraordinary items, discontinued operations and the effect of changes in accounting principles to be included in the income statement following income from continuing operations.
- Under U.S. GAAP, an event or transaction can be classified as extraordinary if it is both unusual in nature and infrequent in occurrence. Many non-U.S. GAAPs have criteria for extraordinary classification which are less stringent than U.S. GAAP.

Comprehensive income

- Comprehensive income consists of net income and "other comprehensive income" items that are recognized directly in shareholders' equity such as foreign currency translation adjustments and net unrealized gains (losses) on certain marketable securities. U.S. GAAP requires the accumulated balance of other comprehensive income to be disclosed separately on the balance sheet in the equity section, total comprehensive income to be disclosed on the face of the financial statements, and the components of accumulated other comprehensive income to be disclosed in a financial statement or in the footnotes. Most countries do not have a requirement to disclose comprehensive income. (Note that the SEC staff has indicated that all foreign private issuers must present comprehensive income and its components either on a home country GAAP basis or U.S. GAAP basis. If presented under home country GAAP, the SEC encourages but does not require this information to be reconciled to U.S. GAAP.)

Earnings per share

- Basic and diluted earnings per share are required to be presented on the face of the income statement under U.S. GAAP. GAAP in some countries does not have a requirement to disclose earnings per share, and such calculation methods can differ from those prescribed by U.S. GAAP.

Related party transactions

- Under U.S. GAAP, the nature and extent of any transactions with related parties are required to be disclosed, together with the amounts involved. Certain countries do not have a requirement to disclose related-party transactions.

Segment reporting

- U.S. GAAP requires the presentation of segment information based on a company's internal management reporting structure, whereas GAAP in certain other countries require disclosure of segment information by line of business and geographical area. Segment information presented by non-U.S. companies must be prepared using the U.S. GAAP criteria of a company's internal management reporting structure. Furthermore, such information must be presented in the same reporting currency as the financial statements and must be reconciled to the total consolidated information on the basis of their home country GAAP. It is not, however, necessary to apply the U.S. GAAP adjustments to the local GAAP segment reported results to reconcile such information to U.S. GAAP.

Chapter 9
Private Offerings

Non-U.S. companies seeking to raise capital in the U.S. and avoid the SEC registration and reporting requirements may find a private placement an attractive alternative. Private placements, a market dominated by institutional investors, are exempt from SEC registration on the presumption that such investors are highly sophisticated and knowledgeable. As a result, private placements can usually be made more quickly and at less cost than a public offering.

INFORMATION INCLUDED IN THE OFFERING DOCUMENT

Despite the absence of an SEC review, the investment bankers and attorneys involved in the private placement will require that a substantial amount of prospectus-type information be included in an offering circular (memorandum) to be distributed to potential investors. The content of this document, distribution of which is tightly controlled by law, is largely at the discretion of the investment bankers and attorneys. The document is not normally as comprehensive as an SEC registration statement, and often the company can negotiate the information to be included.

RULE 144A

Rule 144A allows securities privately placed with QIBs to be offered or sold to other QIBs without registration with the SEC. By providing such an exemption, Rule 144A enables U.S. institutional investors to buy and sell the securities of non-U.S. companies more easily, providing a measure of post-issue liquidity. It is important to note that the rule applies to the resale of restricted securities among QIBs and to original offerings to QIBs.

QIBs represent institutional investors eligible to participate in the Rule 144A market. These include various institutions that manage at least U.S. $100 million in securities, such as banks, savings and loans, insurance companies, investment companies, investment advisers, public employee benefit plans, employee benefit plans, business development companies, corporations, trusts or partnerships, or entities owned entirely by qualified investors. They also include brokers/dealers that own and invest on a discretionary basis U.S. $10 million in securities of non-affiliates.

Once unregistered securities are placed with eligible investors, limited resales by any person are permitted after one year, unlimited resales by non-affiliates of the issues are permitted after a holding period of two years.

With regard to financial statements in a Rule 144A offering circular, annual home country GAAP audited financial statements and unaudited interim financial statements are generally provided. Such statements are not normally reconciled to U.S. GAAP, but a description of the differences between home country and U.S. GAAP is typically provided, often accompanied by an SEC-style MD&A. In addition, the home country statements are often presented in an “Americanized” format and wording style.

A private placement will not normally involve the issuer in periodic SEC reporting requirements, although an undertaking to provide some level of ongoing reporting to the holders is often included in the private placement document.

Companies should be aware that the application of Rule 144A requires the involvement of a qualified securities attorney to ensure that any securities sales meet the complex provisions of the rule and that appropriate disclosures are made to protect the company against U.S. securities litigation. The independent accountant also plays an important role in connection with a Rule 144A offering due to the inclusion of the audited financial statements in the private placement document. It is important that the independent accountant has U.S. accounting and SEC expertise since, as noted above, the private placement document normally contains U.S. GAAP and SEC-style financial information which, in the future, may be subject to SEC scrutiny (e.g., in the event that the company follows a private placement with a public offering). Additionally, the broker, dealer or other financial intermediary acting as the principal or agent normally requires the auditors' report to be in the format prescribed by U.S. GAAS. The independent accountant involved in a Rule 144A transaction is also typically required to furnish a comfort letter to the underwriters.

NASD RULE 144A TRADING SYSTEM (PORTAL)

The NASD has established an automated system for trading securities privately placed under Rule 144A. Referred to as "PORTAL," this system provides for quotations and transaction reports, automated confirmations, a standard settlement period, settlement by electronic book entry in a worldwide clearing and depositary system, and the ability of participants to quote, confirm and settle in major currencies. All securities and participants must qualify under Rule 144A, and transactions are carefully monitored to ensure compliance with the rule.

Chapter 10
Life as a Public Company

A new publicly held company or new entrant to the U.S. capital markets should be managed with consideration for the rights and expectations of its new public shareholders. The decision-making process becomes more complicated because business decisions can have a direct impact on the value of your company's securities. It is further complicated by the fiduciary responsibilities of the management and directors to new U.S. shareholders.

MAINTAINING INVESTOR ENTHUSIASM

Once your company has been taken public in the U.S., it will take considerable effort to maintain its market position. If investor enthusiasm for your company is not maintained, trading will decline. If that happens, causing your company's shares to become thinly traded, you will not reap the benefits sought from the IPO, such as liquidity. Thus, effective distribution and support of the stock, as well as continuing security analyst interest, is necessary after the IPO.

A strategy for after-market support can be determined with the assistance of a financial public relations firm. This strategy usually includes choosing an individual within your company to handle shareholder relations. This helps to ensure that your company will release uniform, accurate information.

A public company's performance, as perceived by the market, is reflected in the value of its stock. Management faces the pressure of balancing short-term productivity with long-term goals. Negative developments, such as the release of lower-than-expected earnings, may hurt the stock's value. Management has an incentive to boost current earnings and may not want to reveal unfavorable events. It should, however, be reiterated that the best policy is for management to be as honest and objective as possible.

Earnings are not the only factor that affects the public's perception of your company. Even after your company goes public, it should strive to maintain (or improve) the characteristics that it desired before becoming a public company.

These characteristics, modified for a post-IPO company, are:

- GROWTH. Is your company demonstrating a sustained or increasing growth rate that is high enough to attract and satisfy investors?

  Your company's share value will be determined largely by its earnings potential.

- IMAGE. Are your company's products or services highly visible and of interest to the consuming and investing public?

  A positive company image may improve the share value.

- MANAGEMENT. Is management capable and committed?

  Management plays a key role in the way a company performs. It is essential that management remains innovative, committed and capable.

ONGOING INVESTOR RELATIONS

Providing timely and reliable information is important to the well being of a public company. To foster interest in the company and gain positive publicity, your company should develop a good relationship with the investment community. It is important to keep the lines of communication open, and you should disclose material information – both good and bad – as promptly as possible. Managing expectations is the key to successful investor relations.

Material information such as financial results, dividend information, new products or services, acquisitions and disposal of businesses, sales of securities, large contracts and top management or control changes is usually announced with a press release.

All companies will have bad news at some point. The challenge is to present that information promptly, effectively and honestly. Obscuring or denying difficult circumstances is a short-term tactic that often backfires. The investment community can be ruthless with companies that shade the truth. With the volatility of the markets, full and timely communication is vital to protect your company's reputation and minimize the risk of shareholder lawsuits.

The investment community expects at least one face-to-face briefing per year by top management of major international companies. This can be time consuming and expensive for non-U.S. companies.

PERIODIC REPORTING REQUIREMENTS

Once a non-U.S. company registers to sell securities in the U.S., it must file an annual report with the SEC on Form 20-F. See Appendix B for a summary of information required by Form 20-F.

Non-U.S. registrants are not required to file quarterly financial reports. However, such companies are required to promptly furnish on Form 6-K material information which is made or required to be made public in the local domicile, is filed or required to be filed with a stock exchange or is distributed or required to be distributed to shareholders.

Form 6-K is a cover sheet to which are attached copies of the relevant information, in English. See Appendix D for a summary of information required by Form 6-K.

SEC requirements notwithstanding, the NYSE requires non-U.S. companies to provide at least semiannual reports (in home country GAAP without a reconciliation to U.S. GAAP). Also, if a company provides quarterly information to investors in its country of domicile, it must furnish such information (without a U.S. GAAP reconciliation) to the NYSE.

SAFE-HARBOR PROVISIONS

The Private Securities Litigation Reform Act of 1995 provides a "safe-harbor" for forward-looking statements, such as forecasts, projections, and other similar disclosures in the MD&A. To qualify for the safe harbor, an issuer must be subject to the reporting requirements of section 13(a) or section 15(d) of the 1934 Act at the time such statements are made. The safe-harbor encourages registrants to disclose forward-looking information and protects them from investor lawsuits if the forward-looking information does not materialize. This protection does not extend to statements which, when issued, are known to be false. A safe harbor applies to any form of written communication (e.g., press releases, letters to shareholders), as well as oral communications (e.g., telephone calls, analysts' meetings) that contains forward-looking information.

To fall under safe-harbor protection, the forward-looking material must be clearly identified and include a cautionary statement detailing factors that could make the forecast or projection inaccurate. A general statement such as, "Certain information contained in this annual report is forward-looking" does not adequately identify the statements. Similarly, the specific risks to forecasts and projections should be spelled out; "boilerplate warnings" will not suffice as meaningful cautionary language.

The new statutory safe harbor does not require a company to update a forward-looking statement. However, materially changed circumstances may have to be disclosed as dictated by MD&A disclosure requirements. Further, from a business and investor relations standpoint, a company should consider updating such information.

It should be noted that the safe-harbor provision is not applicable to forward-looking statements included in historical financial statements, or to forward-looking statements included in IPO registration statements. However, the new statutory safe harbor does not replace or alter the current judicial "bespeaks caution" doctrine on which the new safe-harbor rules were based. The bespeaks-caution doctrine generally protects a company against lawsuits based on a forward-looking statement that was made with sufficient cautionary language.

Your legal counsel will be invaluable in helping you navigate the safe-harbor rules. Such guidance is also important when forward-looking material is communicated verbally, such as in conference calls with analysts. Management should consult with its U.S. securities counsel on such matters.

RESTRICTIONS OF TRADING ON NON-PUBLIC INFORMATION

Until important information is made public, SEC rules prohibit company insiders from personally trading the company's securities or passing this information to others. Within the company, material information should be kept confidential. Persons privileged to this information must treat it as confidential until it is released to the public. In the past, violators of this rule have been fined or otherwise penalized. Management should consult with its U.S. securities counsel on such matters.

FIDUCIARY DUTIES

Fiduciary laws require that transactions between a company and any of its officers, directors or large shareholders be fair to the company. These laws apply to both privately and publicly held companies. However, since the officers and directors of a privately held company are usually its only shareholders, the ramifications of fiduciary laws are less than what they might be for a publicly held company.

Fiduciary laws must be carefully observed after a public offering due to the interests of the new shareholders. Whenever there is a potential conflict of interest between the company and its fiduciaries, management should obtain independent appraisals or bids, independent director approval and/or shareholder approval, depending on the nature and significance of the transaction.

Management should consult with its U.S. securities counsel on such matters.

FOREIGN CORRUPT PRACTICES ACT OF 1977

The Foreign Corrupt Practices Act of 1977 ("FCPA") is an amendment to the 1934 Act. The FCPA applies to any issuer, including foreign companies, with securities registered pursuant to Section 12 of the 1934 Act or required to file reports under Section 15(d) of the 1934 Act. Its primary purpose is to prevent the use of corporate funds for bribery of foreign governments and foreign officials in order to obtain or retain business. Its accounting-standards provisions, however, have a much broader effect, reaching the record keeping and internal accounting-control systems of companies.

The record-keeping provisions referred to above are intended, among other things, to eliminate unrecorded assets such as slush funds and to prevent disguising the payment of bribes as legal transactions. The internal accounting-control provisions require a control system sufficient to provide reasonable assurance regarding transaction processing, to ensure access to assets is only with management's authorization and periodically to verify the existence of assets.

ATTENTION TO DETAIL AND CONFIDENTIALITY

There have been many stock-manipulation scandals in recent years in the U.S., resulting in scrutiny of insider trading. It is important to preserve confidential information among a small group to prevent insider-trading activity.

Some of the rules can be complex. To provide assurance as to compliance with the rules, you should consult with your U.S. securities counsel.

Appendix A
Overview of Listing Criteria for U.S. Exchanges

	NYSE	AMEX	NASDAQ NATIONAL MARKET *(see alternative listing criteria below)*[1]	NASDAQ SMALL CAP MARKET [2]
MINIMUM NUMBER OF INVESTORS	5,000 each holding 100 or more shares	800 or 400 if number of public shares is over 1 million [3]	400 each holding 100 or more shares	300 each holding 100 or more shares
MINIMUM PUBLIC SHARES	2.5 million worldwide	500,000	1.1 million	1 million
TOTAL MARKET VALUE OF PUBLIC SHARES	U.S. $100 million worldwide	U.S. $3 million	U.S. $8 million	U.S. $5 million
MINIMUM BID PRICE [4]	N/A	U.S. $3	U.S. $5	U.S. $4
OPERATING HISTORY	N/A	N/A	N/A	1 year or, if less than 1 year, market capitalization of at least U.S. $ 50 million.
BALANCE SHEET	U.S. $100 million net tangible assets	U.S. $4 million shareholders' equity	U.S. $6 million net tangible assets	U.S. $4 million net tangible assets or U.S. $50 million market cap, or U.S. $750,000 net income in last fiscal year or two of the last three fiscal years
PRE-TAX INCOME	U.S. $100 million cumulative pre-tax income for the last three fiscal years [5]	U.S. $750,000 pre-tax income in latest fiscal year or two of most recent three fiscal years [6]	U.S. $1 million pre-tax income in last fiscal year or two of last three fiscal years	No minimum specific requirements (see balance sheet criteria above)

[1] Non-U.S. companies are also required to have a minimum bid price of U.S. $5, three market makers and comply with corporate governance requirements including non-executive directors, audit committees.

[2] Non-U.S. companies are also required to have a minimum bid price of U.S. $4, three market makers, comply with corporate governance requirements and have an operating history of one year or, if less than one year, the initial listing required market capitalization of at least U.S. $50 million.

[3] Also, 800 if number of public shares is over 500,000 and 400 if number of public shares is over 500,000 and average daily volume exceeds 2,000.

[4] The minimum bid price requirement is designed to safeguard against certain market activity associated with low-priced securities.

[5] With no less than U.S. $25 million for any one of the last three fiscal years.

[6] Pre-tax income requirement can be waived with U.S. $15 million in market value of public float, minimum bid price of U.S. $3, three years of operating history and U.S. $4 million of shareholders' equity.

Note: The criteria above are for initial listings of common stock by non-U.S. companies. Requirements vary for other securities. Ongoing requirements are generally less restrictive.

Alternative Initial Listing NASDAQ National Market Requirements
(Source 8/25/97 NASDAQ announcement)

	INITIAL LISTING 1	INITIAL LISTING 2	INITIAL LISTING 3
MINIMUM NUMBER OF INVESTORS	400 each holding 100 or more shares	400 each holding 100 or more shares	400 each holding 100 or more shares
MINIMUM PUBLIC SHARES	1.1 million	1.1 million	1.1 million
MINIMUM BID PRICE	U.S. $5	U.S. $5	U.S. $5
MARKET VALUE OF PUBLIC FLOAT	U.S. $8 million	U.S. $18 million	U.S. $20 million
MARKET CAPITALIZATION	N/A	N/A	U.S. $75 million (or total revenue and total assets respectively, of U.S. $75 million)
OPERATING HISTORY	N/A	2 years	N/A
BALANCE SHEET	U.S. $6 million net tangible assets	U.S. $18 million shareholders' equity	N/A
PRE-TAX INCOME	U.S. $1 million	N/A	N/A
MARKET MAKERS	3	3	4

Appendix B
Form 20-F

GENERAL SUMMARY

Form 20-F is the form most commonly used either as a registration statement under Section 12 of the 1934 Act or as an annual report (or transition report) filed under Section 13(a) or 15(d) of the 1934 Act by any non-Canadian foreign private issuer. It is also the form that contains the instructions as to the information with respect to the registrant for the 1933 Act registration forms. A Canadian foreign private issuer ineligible to register under the Multi-jurisdictional Disclosure System would also use this form as a 1934 Act registration statement and as an annual report.

The following are the items of information to be included in Form 20-F:

PART I

ITEM

1. Description of Business.
2. Description of Property.
3. Legal Proceedings.
4. Control of Registrant.
5. Nature of Trading Market.
6. Exchange Controls and Other Limitations Affecting Security Holders.
7. Taxation.
8. Selected Financial Data.
9. Management's Discussion and Analysis of Financial Condition and Results of Operations.

9A. Quantitative and Qualitative Disclosures About Market Risk.

10. Directors and Officers of Registrant.
11. Compensation of Directors and Officers.
12. Options to Purchase Securities from Registrant or Subsidiaries.
13. Interest of Management in Certain Transactions.

The information specified in Items 11 and 12 of Form 20-F needs to be furnished in the aggregate only unless the registrant discloses to its shareholders or otherwise makes public the information on an individual basis. Item 13 is another item in which the disclosure requirements are conditioned upon the information that is made public pursuant to foreign laws or for other reasons. That is, foreign law and regulations will determine how much of the required information need be provided.

PART II

14. Description of Securities to be Registered.
    (a) Capital Stock To Be Registered.
    (b) Debt Securities To Be Registered.
    (c) American Depositary Receipts.
    (d) Other Securities To Be Registered.

PART III

15. Defaults Upon Senior Securities.
16. Changes in Securities, Changes in Security for Registered Securities and Use of Proceeds.

PART IV

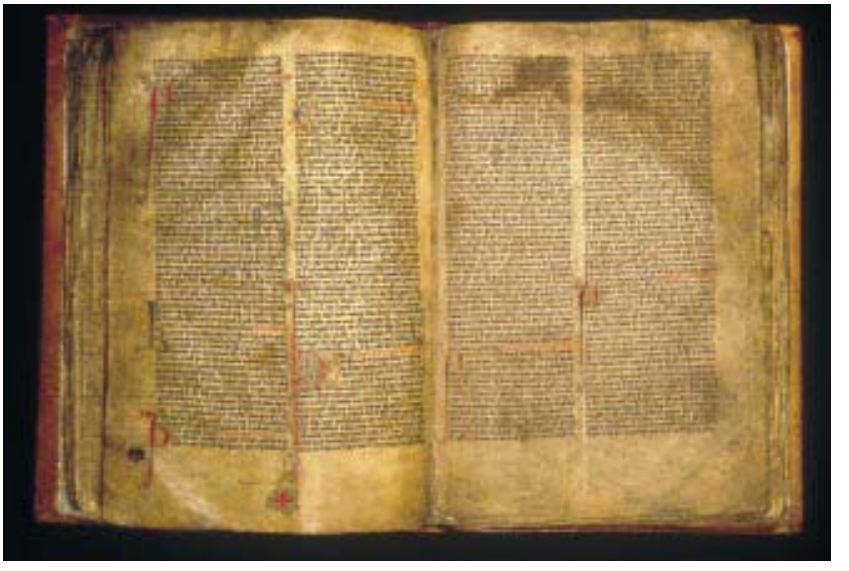
17. Financial Statements.
18. Financial Statements.
19. Financial Statements and Exhibits.

Due date

When used as an annual report, Form 20-F must be filed within six-months after the end of the registrant's fiscal year.

ANNUAL REPORT TO SHAREHOLDERS

The form and content of annual reports to shareholders prepared by U.S. registrants is governed by the proxy rules. Foreign private issuers are exempt from the proxy rules under Section 14 of the 1934 Act. Accordingly, there are no specific SEC requirements regarding the information to be included by foreign registrants in their annual reports to shareholders.



Appendix C
Summary of Matters Covered by SEC Regulation S-X: Form and Content of and Requirement for Financial Statements

ARTICLE	SUBJECT	SUMMARY OF CONTENTS
1	Application of Regulation S-X	Specifies the registration statements and reports to which Regulation S-X is applicable and defines terminology used in Regulation S-X that are to be followed.
2	Qualifications and Reports of Accountants	Contains the requirements as to the qualifications and independence of accountants and the contents of their reports.
3	General Instructions as to Financial Statements	Sets forth instructions for (a) the nature of financial statements required and the entities (i.e., issuers, significant acquirees and significant investees), dates and periods they must cover, and (b) the age of interim financial statements required to be included in registration statements.
3A	Consolidated and Combined Financial Statements	Contains the requirements for the presentation of consolidated and combined financial statements.
4	Rules of General Application	Contains the rules for form, order and terminology, and for certain of the footnotes required to be furnished as part of the financial statements.
5	Commercial and Industrial Companies	Sets forth the information to be included in the balance sheet and income statement captions for commercial and industrial companies. Also specifies the schedules that are to be filed.
6	Registered Investment Companies	These articles set forth the information to be included in the financial statements of special types of entities.
6A	Employee Stock Purchase, Savings and Similar Plans	
7	Insurance Companies	
9	Bank Holding Companies	
10	Interim Financial Statements	Sets forth the form and content of interim financial statements and requires comparative statements for interim periods provided to meet interim timeliness requirements of S-X Article 3.
11	Pro Forma Financial Information	Specifies the form and content of pro forma financial disclosures and when such disclosures are required. Also provides guidance for the presentation of financial forecasts that may be furnished in lieu of pro forma disclosures.
12	Form and Content of Schedules	Sets forth the form and content of financial statement schedules required in accordance with S-X Rule 5-04 (and certain other rules for special types of entities).

Appendix D
Form 6-K

GENERAL

Foreign private issuers are not required to file quarterly reports on Form 10-Q or current reports on Form 8-K. Instead, such registrants are required to furnish reports on Form 6-K whenever relevant information is made or is required to be made public to non-U.S. investors pursuant to foreign laws or stock exchange regulations or distributed to security holders. This form is used by foreign private issuers that are required to furnish reports pursuant to Rule 13a-16 or 15d-16 under the 1934 Act.

Form 6-K is usually a cover form to which certain information is attached. The information required to be furnished is that which is material with respect to the issuer and its subsidiaries consisting of:

- Changes in business;
- Changes in management or control;
- Acquisitions or dispositions of assets;
- Bankruptcy or receivership;
- Changes in the registrant's certifying accountants;
- The financial condition and results of operations;
- Material legal proceedings;
- Changes in securities or in the security for registered securities;
- Defaults upon senior securities;
- Material increases or decreases in the amount outstanding of securities or indebtedness;
- The results of the submission of matters to a vote of security holders;
- Transactions with directors, officers, or principal security holders;
- The granting of options or payment of other compensation to directors or officers; and
- Any other significant information that the registrant deems of material importance to security holders and has found appropriate to disclose in its country of domicile.

The information provided on Form 6-K merely consists of copies of information filed or made public in the foreign private issuer's country. English translations are required in connection with press releases and information provided directly to shareholders. English translations are only required for other types of information if it is prepared by the issuer.

The report on Form 6-K is required to be submitted promptly after the material contained in the report is made public. The form consists of a cover page, a copy of the document or report involved, and a signature page.

How PricewaterhouseCoopers Can Help

PricewaterhouseCoopers (www.pwcglobal.com), the world's largest professional services organization, helps its clients build value, manage risk and improve their performance.

Drawing on the talents of more than 150,000 people in 150 countries, PricewaterhouseCoopers provides a full range of business advisory services to leading global, national and local companies and to public institutions. These services include audit, accounting and tax advice; management, information technology and human resource consulting; financial advisory services including mergers & acquisitions, business recovery, project finance and litigation support; business process outsourcing services; and legal services through a global network of affiliated law firms.

PricewaterhouseCoopers refers to the member firms of the worldwide PricewaterhouseCoopers organization.

THE GLOBAL CAPITAL MARKETS GROUP

At PricewaterhouseCoopers, we have created the Global Capital Markets Group (the "GCMG" or the "Group"), a dedicated global team of professionals to provide high value advisory services to non-U.S. companies raising capital and/or listing their securities in the U.S. securities markets. The GCMG comprises 25 partners and more than 120 other professionals, based in a total of 12 countries. This network of professionals all over the globe means that the Group has someone with experience in taking companies from your region into the US.

The individuals who comprise our GCMG know both the formal rules and procedures, and the informal mood of the SEC better than anyone else. It includes a former senior SEC staff member, and some of the leading names in the profession connected with non-U.S. SEC registrations.

The knowledge of our team is supplemented by the fact that we have taken, and continue to take, many of the world's leading non-US companies onto the U.S. securities markets. This means that we have an unparalleled understanding of the issues and solutions that will work for companies from every industry, with every conceivable financial structure.

Within PricewaterhouseCoopers, the GCMG is supported at the National level by specialists in all facets of U.S. accounting and reporting. The International Consultation and Review Group ("ICRG"), which forms part of our Auditing and

Business Advisory Services ("ABAS") Consulting and SEC Services group, is led by Wayne Carnall, a world-renown cross border filing expert who spent several years as a senior staff member of the SEC specializing in this area. The ICRG provides technical support to the GCMG regarding U.S. GAAP, SEC reporting and other related matters. The GCMG relies heavily on PricewaterhouseCoopers, Global Corporate Reporting Group, led by Mary Keegan for consultative support on IAS.

The delivery of our services is generally achieved in multi-lines of business teams that comprise local resources, primarily from Auditing and Business Advisory Services including Transaction Services. Several other disciplines may, however, be involved such as Tax and Legal Services and Global HR Solutions. As always, the challenge is to achieve the right balance of local and global experience and expertise for the client's project.

OUR SERVICES

Whether you are seeking an initial public offering and listing on the NYSE, NASDAQ or AMEX, or a private placement of debt or equity, we can help. We can also help your company be positioned for potential cross-border merger and acquisition transactions.

Increasingly, as a prelude to an initial public offering, the Global Capital Markets Group of PricewaterhouseCoopers is being engaged to assist prospective registrants with the conversion of their financial statements from local GAAP to IAS and/or U.S. GAAP. These projects are usually a prelude to a future global offering and/or listing. Additionally, market conditions change rapidly; the availability of U.S. GAAP or IAS reconciled financial information will reduce your lead-time to the completion of a successful offering.

Our services reflect our approach to advising our clients that a well-thought out and planned strategy is needed from the very outset. PricewaterhouseCoopers services span the complete life cycle of your capital market listing from the identification of an entry strategy through on-going accounting support in dealing with the SEC.

STRATEGIC PLANNING

It takes the right approach from the outset to enter the U.S. securities markets in a way which will maximize your return and reflect the true strength of your business. In order to reap rewards and avoid the pitfalls, you need to have the right strategy.

In planning the best strategy for gaining access to the U.S. securities markets we:

- Provide strategic advice in the early planning stage to help management identify and evaluate the various alternative approaches for entering the U.S. public and private securities markets.
- Perform a preliminary study of the impact of complying with the SEC's financial reporting requirements - both from a burden of compliance and a sensitivity of disclosure standpoint - to identify any potential "deal breakers," offer practical solutions and assess the magnitude of the task.
- Advise on the adoption of a U.S. GAAP or IAS financial reporting framework.
- Introduce the company to investment bankers, financial institutions, venture capitalists and lawyers.
- Assist in assessing the company's readiness for registered offerings versus private placements.

TECHNICAL SUPPORT

Once the strategy is established, we help develop and execute the blueprint for success. Picking the right route through the rules, regulations and interpretations is extremely complex and hazardous, but it is the only way to realize your strategy. In particular we:

- Assist in the identification of all significant U.S. GAAP and/or IAS issues and help the client calculate the impact of accounting differences from home country GAAP.
- Identify and help the company develop the disclosures required in the footnotes to the financial statements, financial statement schedules, pro forma financial statements and other separate financial statements required by SEC rules, regulatory agencies, U.S. GAAP and IAS.
- Assist the company in developing MD&A and other parts of the prospectus or offering circular.
- Help management address, negotiate and resolve issues raised by the SEC in its review of the registration statement.
- Advise the audit engagement team responsible for conducting audits and other verifications of financial information for offering documents.
- Review the various drafts of the prospectus to help the company comply with the numerous requirements and reduce the number of potential SEC review comments.
- Discuss issues on an anonymous or identified basis with the SEC before the company files the registration statement.
- Anticipate SEC comments and help the company prepare responses to the comments.
- Assist companies in requesting relief from the SEC where required information is not considered meaningful and is not cost effective to provide.

ONGOING SUPPORT

Just as the rules and regulations change, so does the optimal position a company can take. After a listing has been obtained, in order to make sure that your position is optimal, we offer the following ongoing SEC, U.S. GAAP and IAS support to non-US companies that have registered with the SEC.

We can:

- Assist the company in meeting ongoing SEC reporting requirements (e.g. review the company's annual filing on Form 20-F and assist the company in responding to any SEC review comments).
- Evaluate the accounting treatment of new and/or unusual transactions under U.S. GAAP and IAS, such as a new type of financial instrument or a business combination.
- Assist the company in evaluating and implementing new rules under U.S. GAAP, IAS and SEC regulations.
- Provide courses and technical updates on U.S. GAAP, IAS and SEC developments.

Your worlds  Our people