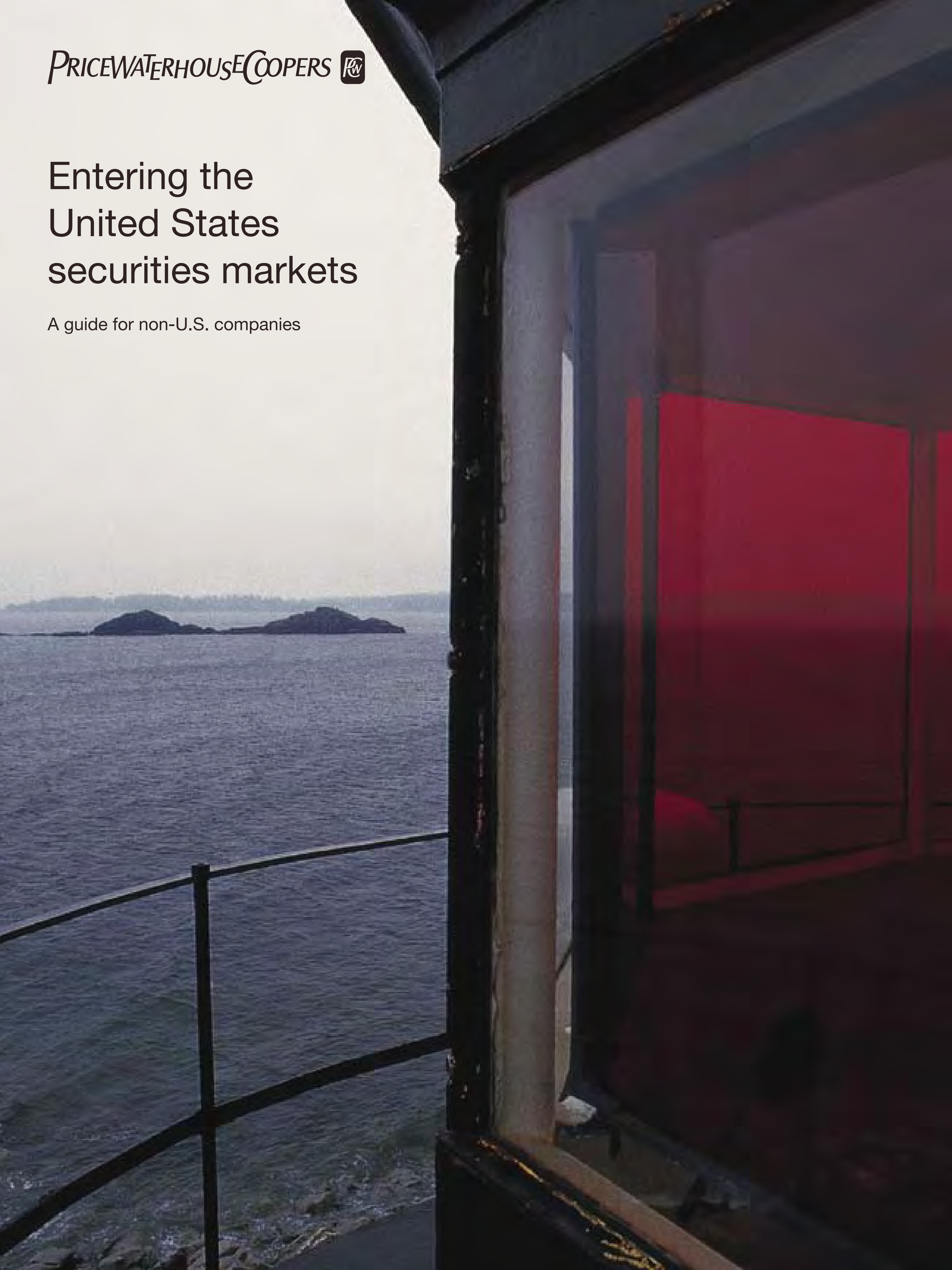
PricewaterhouseCoopers

Entering the United States securities markets

A guide for non-U.S. companies



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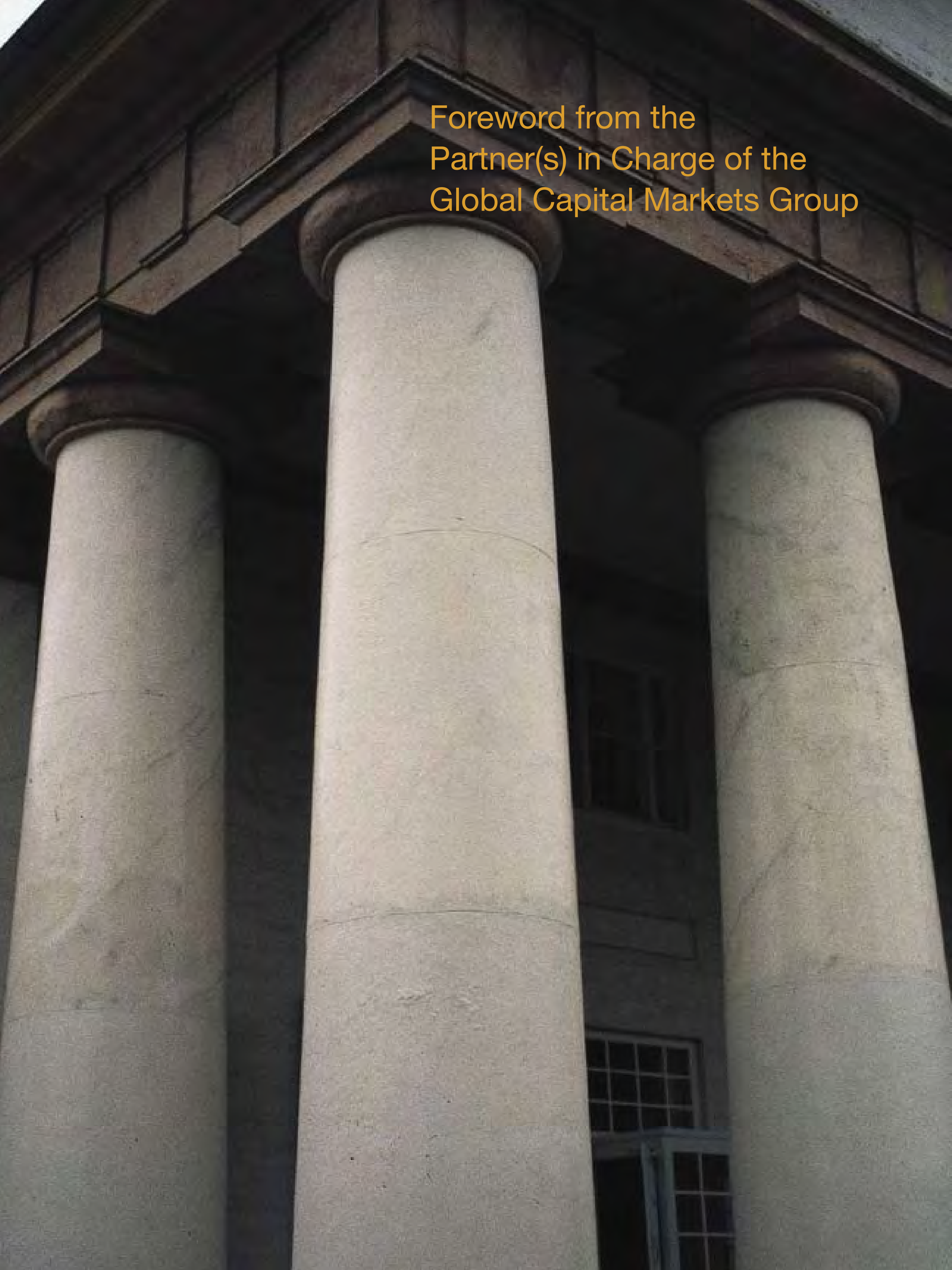
Foreword from the Partner(s) in Charge of the Global Capital Markets Group



The United States ("U.S.") security markets – because of their size, perceived credibility and the eagerness of investors – represents the richest source of capital in the world. Entering the U.S. capital markets, however, presents new and complex challenges to companies seeking access to such capital. Recent informational and compliance changes in U.S. securities law require companies to demonstrate their ability to manage their operations and financial health, control their systems and demonstrate transparency, accountability and integrity within and without their organization. Viewed positively, this is an unprecedented opportunity for companies to prove their standing among their peers and demonstrate that they are among the best-run organizations in the world.

A private or public offering in the United States can provide a company with an infusion of long-term capital that can fuel growth and enhance shareholder value. A company that lists on the New Your Stock Exchange ("NYSE") or National Association of Securities Dealers Automated Quotation ("Nasdaq") stands to gain other significant benefits. These include:

- The establishment of a currency to pursue acquisitions in the United States.
- An enhanced corporate reputation and profile.
- A lower overall cost of capital through access to US debt and commercial paper markets.
- A foundation for establishing a share or stock option reward program to attract U.S. based employees.

Non-U.S. companies entering the U.S. securities markets for the fist time also face some significant challenges, including, the demands of U.S. investors, time-consuming and complex registration requirements and the intricacies of the U.S. offering process. Selecting the right team of advisors to assist in managing the process is critical.

PricewaterhouseCoopers Global Capital Markets Group is a group of highly skilled and experienced professionals dedicated to providing guidance to non-U.S. companies interested in entering the U.S. securities markets. With over a decade of experience, we have successfully assisted many prestigious non-U.S. companies in raising funds and obtaining listings on U.S. exchanges. Our professionals have in-depth knowledge of both the formal rules and procedures, as well as the current points of focus of the Securities and Exchange Commission ("SEC") and of U.S. investment bankers and investors.

In addition, Wayne Carnall, one of the most knowledgeable and highly-regarded cross-border-filing specialists in the world, along with an experienced group of SEC technical consultants serve as a vital source of technical advice and counsel to both members of the Global Capital Markets Group and to prospective registrant clients.

PricewaterhouseCoopers Global Capital Markets Group has developed this publication to serve as a practical and valuable guide to entering the U.S. securities markets. We hope you will find it helpful as you commence this exciting process.

We are certain that engaging the PricewaterhouseCoopers Global Capital Markets Group at an early stage in a planned U.S. securities markets transaction will accelerate reaching your goal successfully, and we encourage you to contact us for more information and assistance.

William E. Decker
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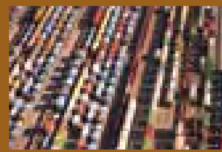

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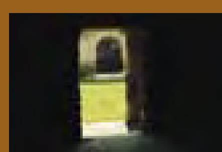

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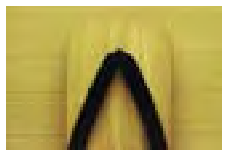

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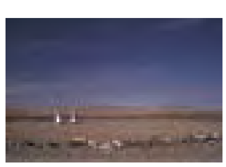

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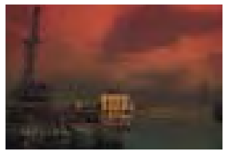

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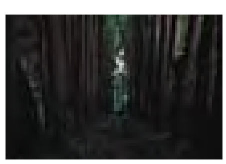


appendices

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, including 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 at the end of 2003 of approximately U.S. $17.0 trillion and U.S. $2.9[1] trillion, respectively. The Nasdaq average daily volume for 2003 was U.S. $28.0 billion, and that of the NYSE was U.S. $38.5 billion.

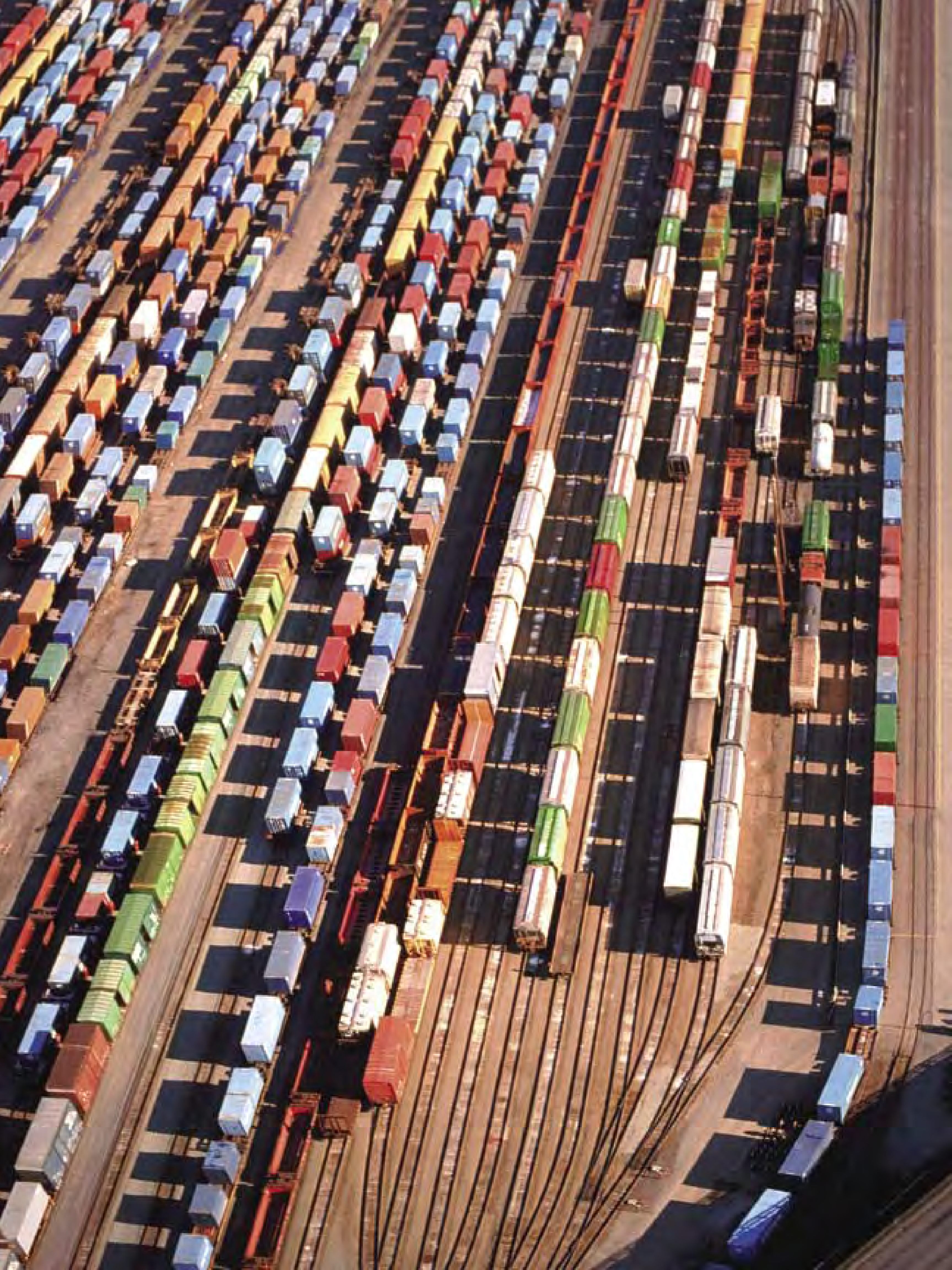
Mergers with U.S. businesses

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 purchasers 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. GAAP. While they may have a long-term investment view, a key consideration for financial buyers could be 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.

1 Market capitalization of domestic registrants only.



Stock-based compensation

A company trading securities in the U.S. can offer stock-based compensation to U.S. based employees. Offering stock compensation has become an important way of recruiting and retaining employees in the U.S. Many non-U.S. companies have found that they cannot adequately compete for the top talent in the U.S. without offering attractive stock-based compensation schemes.

Enhance share value

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 pricing than it enjoys in its domestic markets. This could substantially decrease a company's cost of capital.

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"). Those companies can capitalize on favorable market conditions by selling 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. One example is where 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 implements a tax planning strategy by reorganizing a portion of its 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..

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.

Product marketing

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

Privatization or exit strategy

A government may sell its holding in enterprises in U.S. 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 in the U.S. because of the increased liquidity and credibility of such a large market.

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 effectiveness of the company's systems and controls and the availability of audited financial statements prepared in accordance with U.S. GAAP or reconciled from home-country GAAP or International Financial Reporting Standards ("IFRS") 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, non-U.S. companies with less of a track record are also coming into the markets. These companies often have either sole access to a market, are the first movers in a new market or have 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. In the recent past, companies in new markets that have yet to establish any profitability, have entered the U.S. securities markets. However, the success of such offerings relies heavily on current market sentiment.

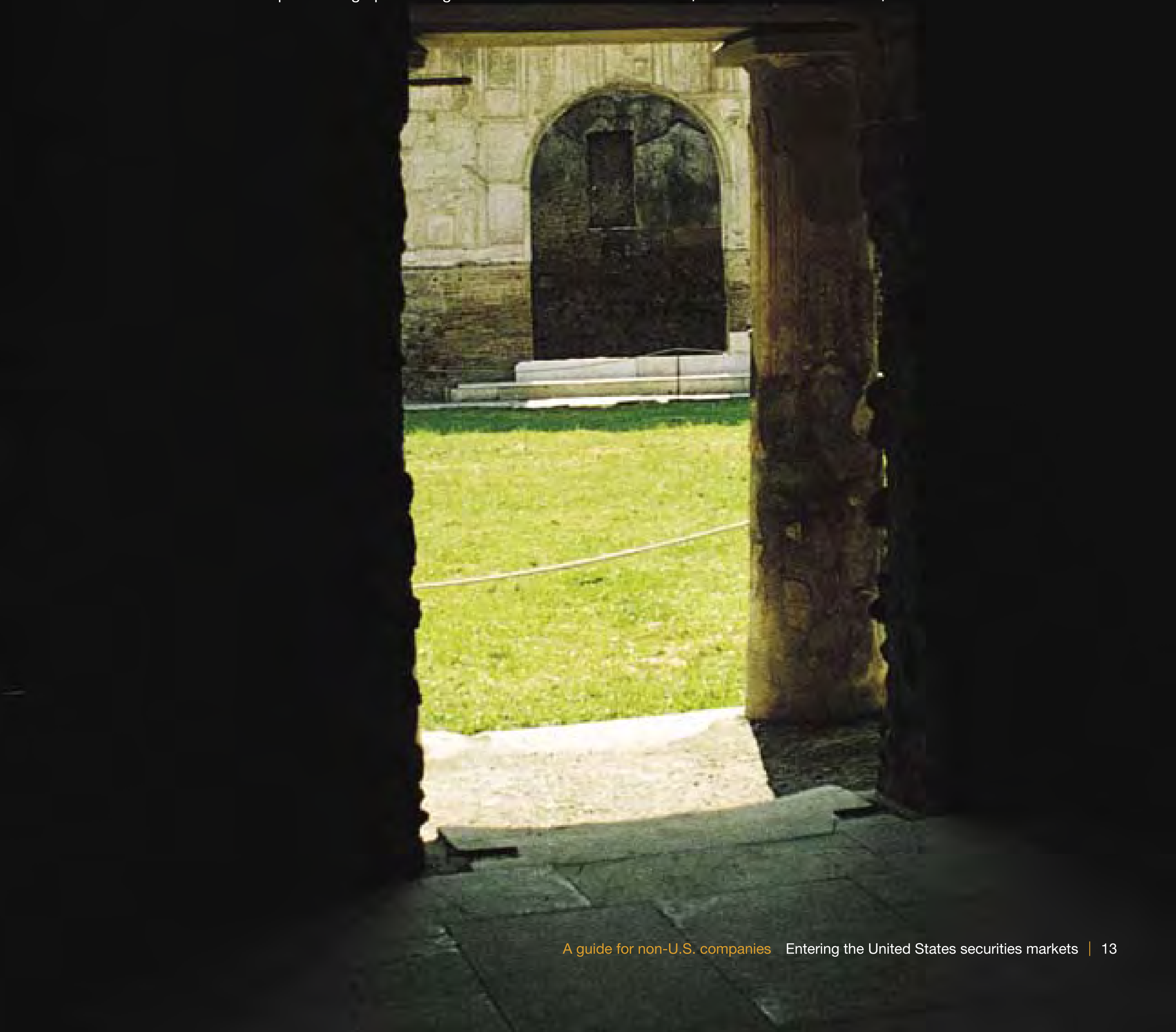
- **Experienced management team.** It is essential to have a strong management team with a proven track record in both operational and in financial markets.

- **Effective systems and controls.** A company's internal controls, accounting and information systems should be fully capable of handling growth and increased SEC reporting requirements. Recent legislation and market demands have made a company's control environment over both financial reporting and disclosure controls and procedures an important new focus to the investing community. The provisions of the Sarbanes-Oxley Act of 2002, for 20-F annual reports beginning with the first fiscal year ending on or after July 15, 2005, require that a company's CEO and CFO explicitly evaluate and report to the public on the effectiveness of internal controls over financial reporting, and the company's external auditors attest to management's assessment of the effectiveness of these controls. Additionally, a company's CEO and CFO currently are required in Form 20-F annual reports to attest to the effectiveness of the company's disclosure controls and procedures regarding information included therein as of the fiscal year-end date.

- **Audited financial statements.** Audited financial statements for public offerings are required under most circumstances for the latest three years, and 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 primary U.S. GAAP financial statements are required for first-time offerings. When companies seek to raise capital through private registration offerings, audited U.S. GAAP, IFRS, or home-country GAAP financial statements are normally included. 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 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 judgment 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. The term foreign private issuer means any foreign issuer other than a foreign government, except an issuer meeting the following conditions:

- More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held (of record) by residents of the United States; and
- Any one of the following:
  - The majority of the executive officers or directors are U.S. citizens or residents; or
  - More than 50 percent of the assets of the issuer are located in the U.S.; or
  - The business of the issuer is administered principally in the U.S.

An issuer is required to examine nominee and custodial accounts to determine ownership. These criteria should be reviewed with legal counsel.

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 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 Depositary Receipt ("ADR") or Global Depositary 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. An 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 public securities 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.

Public vs. private offering

Financing objectives, costs 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, shareholders' equity, 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 technology, media, infrastructure industries, energy, telecommunications, banking and capital-intensive manufacturing. Its entry requirements include a relatively high market capitalization and a high number of shares in the public markets, among others. As of December 31, 2003 there were 2,750 companies which had their stock listed on the NYSE, including 467 non-U.S. companies headquartered in 50 countries. The companies listed on the NYSE had more than 359 billion shares worth U.S. $17.0 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. Historically, the Nasdaq has attracted many high technology and biotech companies over the last few years. As of December 31, 2003, there were 3,333 companies listed on Nasdaq, including 337 non-U.S. companies representing 35 countries. The companies listed on the Nasdaq had more than 150[2] billion shares worth U.S. $2.9[2] trillion available for trading.

2 Information for domestic registrants only.

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 American Stock Exchange ("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 of the investor base in each market and the appetite for shares in your company.

In the past, 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 6) 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 to be quoted on the OTC Bulletin Board.

NASD and AMEX

The National Association of Securities Dealers, Inc. ("NASD") is the largest self-regulated securities organization in the United States. Through its interests in The Nasdaq Stock Market, Inc. and NASD Regulation, Inc., the NASD designs, operates and regulates the 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.

The 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 a diverse array of products – equities, options, exchange-traded funds, and structured products.

AMEX has been a member of the NASD family of companies since 1998. As of March 31, 2004, the NASD and the AMEX approved the sale of NASD's interest in the AMEX to the AMEX Membership Corporation. This sale will end the six-year alliance between NASD and AMEX.

Securities and Exchange Commission ("SEC")

The SEC, based in Washington D.C., is the principal regulatory body for the U.S. securities markets. The SEC is tasked 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 significant information necessary to make their informed 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 is allowed). The SEC staff is comprised of lawyers and accountants, including industry specialists, who may participate in the review to provide assurance that the prospectus adequately informs potential investors about your company.

The Public Company Accounting Oversight Board ("PCAOB")

The PCAOB was created by the Sarbanes-Oxley Act of 2002 on July 30, 2002 and is responsible for overseeing the audits of public companies for the protection of investors and furthering the public interest in the preparation of informative, accurate and independent audit reports. Unlike the SEC, the PCAOB is not a government agency, but rather, a private, not-for-profit corporation.

The PCAOB is responsible for registering public accounting firms that audit public companies; establishing or adopting auditing standards as well as standards for quality control, ethics and independence; conducting inspections of registered public accounting firms and conducting investigations and disciplinary proceedings. When you become a public company in the U.S., your company's financial statements will have to be audited by an accounting firm that has been registered with the PCAOB. The PCAOB is funded by both the registered public accounting firms and public companies.

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 and continue to invest heavily, both directly and through mutual funds. In addition, private and employer-funded pension funds provide a substantial pool of investment capital.

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

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

Points to bear in mind

- **Management time and attention.** Senior executives must focus attention on the offering process for months. It always consumes more time than expected. This can lead at times to a loss of focus on other important business matters.
- **Loss of privacy.** Public companies may view the extensive disclosures required by the SEC as a drawback. Management must disclose profits, competitive position, certain 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 involve 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 reconciled to (or in accordance with) U.S. GAAP, as well as certain disclosures required to comply with U.S. GAAP and SEC regulations.

- **Certifications and internal control requirements.** The Sarbanes-Oxley Act of 2002 requires the company's CEO and CFO to each provide in the Form 20-F annual report certifications regarding the company's financial statements and the effectiveness of the company's disclosure controls and procedures ("the Section 302 Certifications"). Additionally, for 20-F annual reports, beginning with the first fiscal year ending on or after July 15, 2005, the CEO and CFO are each required to provide an assessment as to the effectiveness of the company's internal controls over financial reporting as of the end of the fiscal year ("the 404 Certifications") and the company's external auditors are required to attest to such assessment. A company should consider the existence, documentation and effectiveness of its internal controls over financial reporting and its disclosure controls and procedures related to information to be included in its Form 20-F before deciding to become a public registrant in the United States.

- **Evaluation of alternative approaches and related disclosure requirements.** 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 registration requirements of the SEC, 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 of time 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.

- **U.S. legal environment.** When assessing compliance costs, companies need to be aware that the legal environment in the U.S. may be more litigious than in their home country.

- **Fees.** As with any offerings of securities on major markets, the cost to a company of an initial offering in the U.S. is usually significant. These costs include outside services, such as, underwriters, independent auditors, investment banks and attorneys, and registration fees, including printing fees. Once a company is a public registrant, there are on-going fees, including the annual financial statements and internal control audits, PCAOB fees, investor relation fees and other administrative expenses, such as printing fees and increased directors' and officers' liability insurance.

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 overemphasized. 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 to using advisors experienced in dealing with the complex and often confusing regulatory and legal environment of the U.S.

Company personnel

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, as you provide the leadership necessary to steer through the often dynamic and complex process. As a result, to maintain the necessary focus on daily business, you may need to delegate the management of the project to a trusted individual. Even if much of the work is to be executed by external advisors or if additional staff is hired, key company staff will play a significant role as they learn new requirements and develop new skills. Their commitment to the project could be the difference between a successful initial public offering ("IPO") and a failed attempt.

The independent registered public accounting firm

At the start of the process, you will need to select a public accounting firm that has been registered with the PCAOB. Your independent auditors play a lead role throughout the entire registration process as strategic and technical advisors. Selection of an independent registered public accounting firm should be based upon experience with the U.S. capital markets; expertise in U.S. GAAP and the auditing standards of the Public Company Accounting Oversight Board ("standards of the PCAOB"); and the firm's reputation and experience with U.S. and international offerings. Some of the specific services provided by the independent auditors include:

- Strategic advice in the planning stage of the 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 advise the company in preparing the registration statement and obtaining SEC clearance. Guidance in the identification and measurement of all significant U.S. GAAP differences in the home-country financial statements and identifying potentially sensitive or problematic financial disclosure issues is particularly important.
- Performing audits of the financial statements. Properly auditing multiple years of disclosure and reconciliation requirements can be extensive and complicated for public offerings. An established audit relationship and the auditor's knowledge of your business should translate into more effective and rapid project completion time, which could be crucial to the success of the offering. Investors in private placements routinely demand several years of audited financial statements prepared under a comprehensive framework such as home-country GAAP, IFRS or U.S. GAAP.

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

The independent auditors should have first-hand experience with U.S. cross-border offerings, as well as international expertise. 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 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 offering prospectus.

Your U.S. securities counsel will draft portions 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 professionals 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 (an attorney) 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).
- Assist in the preparation of “blue sky” filings.

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 may need appropriate experts to support asset values. Experts should have solid 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 regarding the SEC’s electronic filing system, Electronic Data Gathering, Analysis and Retrieval (“EDGAR”). The printer should have a demonstrated track record in providing quick and accurate turnaround in a cost-effective manner. With respect to EDGAR, the company should ensure it files Form ID with the SEC, well in advance of the offering, to receive its access and identification codes for EDGAR.

The depositary bank

If the offering involves ADRs or other forms of depositary receipts (see Chapter 6), a depositary 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 offerings the depositary 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. Consequently you must ensure that your investment bank is capable of providing you with the most advantageous offering options across the various capital markets. 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 the offering 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:

- Relevant perspectives on the capital markets in numerous geographies and the advantages and disadvantages to your company.
- Knowledge of market conditions and various types of investors.
- Experience in marketing, structuring the deal and facilitating syndications to create support for the stock after it is sold.
- A research department with the ability to analyze your company, its competitors, the markets and the economy.

- Experience in pricing stock so that it will be attractive to the company and the investor.
- The ability to help with future offerings.

Generally speaking, investment banks come in three sizes: “major-bracket” or “wire-house” firms with well-known names; a middle-tier comprised mostly of 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 and the quality of the investment banking staff 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 firm 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.

In April 2003, the SEC announced a global settlement of enforcement actions against several Wall Street firms relating to an investigation of research analyst conflicts of interest. The terms of the settlement included several structural reforms intended to separate the firms’ research and investment banking activities, including an agreement that research analysts will be prohibited from participating in efforts to solicit investment banking business, and the creation and enforcement of firewalls between research functions and investment banking to prohibit improper communications between the two. Given the limits on interaction between the research analyst and investment bankers, the terms of global settlement will likely impact your approach to evaluating and eventually cultivating a relationship with your investment banker and will result in less involvement from the research analyst in the IPO process.

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 of higher risk 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 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 prices 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, 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 independent auditor and attorney prior to 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 investment bank 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 over-allotment). 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 over-allotments. The investment bank remits proceeds at the offering price less commission, but it keeps any other profits from the sale of the over-allotment.

The over-allotment 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. Part I of the registration statement consists of the prospectus and is eventually used by companies to market their securities. Part II of the registration statement includes information not required in the prospectus. The registration statement is 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 and is required to file at least one annual report after the offering.

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.

Initial registration under the 1933 Act is accomplished by filing the registration statement in the form of an F-1. Companies already registered, but that are raising new capital, sometimes have the option of using Form F-2 or Form F-3.

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 registered securities, and to regulate the national securities exchange and trading thereon, and trading in the over-the-counter market, and to prohibit market manipulation, including insider trading.

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 are also 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 a registration statement on 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.

Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 ("SOA") was enacted on July 30, 2002, and significantly reformed securities laws in the U.S. in response to a number of major corporate and accounting scandals involving some of the most prominent companies in the United States. SOA prescribed fundamental changes in how audit committees, management and auditors interact and carry out their responsibilities.

The PCAOB, which is subject to the oversight of the SEC, was created by SOA to oversee the audit of public companies that are subject to U.S. securities laws. The PCAOB is responsible for registering public accounting firms that audit public companies; establishing or adopting auditing, quality control, ethics and independence standards; conducting inspections of registered public accounting firms and conducting investigations and disciplinary proceedings.

All companies registered with the SEC are required to be compliant with the provisions of SOA. Accordingly, if your company is considering a registered offering in the U.S. or listing on a U.S. exchange or Nasdaq, you should evaluate your company's readiness for compliance with SOA, including, the existence, documentation and effectiveness of your company's internal controls over financial reporting and disclosure controls and procedures related to information to be included in your company's annual report on Form 20-F. Additionally, you should consider the composition of your company's audit committee and board of directors and any loans to executives (See Appendix C for further details).

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). 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.

Rules 801 and 802 of the 1933 Act provide exemptions from registration of certain rights offerings, and exchange offers of foreign private issuer securities issued in business combinations, if the U.S. investors hold 10 percent or less of the stock of the issuer.

Rule 701 of the 1933 Act provides an exemption from registration of securities issued by a non-reporting company related to certain compensatory arrangements. U.S. GAAP information is required to be distributed to employees in certain circumstances.

Tender offers for the securities of foreign private issuers are also generally exempt from most provisions of the Exchange Act and rules governing tender offers, if U.S. security holders hold 10% or less of the securities sought in the offer ("Tier I" exemption). The Tier I exemption is also available to the foreign private issuer or any officer, director or other person who otherwise would have an obligation to file Schedule 14D-9. When U.S. security holders hold 40% or less of the class of securities sought in the offer, limited tender offer exemptive relief will be available to the bidders to eliminate frequent areas of conflict between U.S. and foreign regulatory requirements ("Tier II" exemption).

Issuers should employ and consult their securities counsel to advise them regarding these exemptions.

"Blue sky" filings

In addition to the SEC filing for an offering of securities, a company must also file in the various states in which the investment bank believes its customers are resident. The myriad state requirements 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. Accordingly, any offering of securities in the United States must be made after appropriate consideration of state as well as federal laws.

Stock exchanges

Although regulated by the 1934 Act, the operation of the exchanges is independent of the SEC. The new rules adopted by the NYSE and AMEX for foreign private issuers do not have more stringent requirements than those required by the SEC. However, the rules adopted by Nasdaq could be more stringent than the SEC rules. Each registrant must consult with their legal counsel for the specific requirements of the exchange on which it is listed. See Appendix A for a summary of some of the major U.S. 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 American Depositary Receipt ("ADR")?

A significant portion of public offerings by non-U.S. companies (excluding Canadian registrants) in the United States are in the form of depositary receipts – usually ADRs (also called American Depositary Shares or ADSs). These are negotiable receipts issued to investors by an authorized depositary, normally a U.S. bank or trust company, and are evidence that the depositary owns the securities of a foreign company. The depositary 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 depositary 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 depositary receives dividends directly from the foreign company in its local currency and issues dividend checks in U.S. dollars.

- Local links. The depositary 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 (Level III), private placement or as part of a global offering.

In certain jurisdictions, different depositary receipt terminology is used, usually for political and/or marketing reasons. A common example is Global Depositary Receipts or GDRs. Despite the different terminology, all depositary 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**	**Private Rule 144A**	**Global Depository Receipts ("GDRs")**
Description	Over the counter trading of existing shares which are publicly 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 for registration. 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.
Sarbanes-Oxley Act Requirements	Compliance with SOA is not required as company is not considered a SEC registrant reporting company.	Compliance with SOA is required upon filing of annual report on Form 20-F.	Compliance with SOA is required upon filling of an annual report on Form 20-F.	Compliance with SOA is not required unless company is already a SEC registrant reporting company.	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, and therefore, is not required to comply with the provisions of the SOA. 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 extensive disclosure, preparation of its accounts in accordance with (or reconcile to) U.S. GAAP and compliance with the periodic reporting requirements of the 1934 Act. The requirements of the SOA include certifications by management regarding the effectiveness of the company's internal controls over financial reporting and disclosure controls and procedures related to annual reports filed on Form 20-F (see Appendix C for further details). 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, as well as full compliance with SOA, including certifications by management regarding the effectiveness of the company's internal controls over financial reporting and disclosure controls and procedures related to annual report filed on Form 20-F (see appendix C for further details). Alternatively, full U.S. GAAP financial statements may be presented. This is generally the most difficult type of offering.

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 and from compliance with SOA. The company should, however, comply with the Rule 144A requirements. Additionally, to avoid possible later SEC registration requirements under Section 12(g) of the Exchange Act related to reaching 300 U.S. shareholders, the company should consider the need to request and obtain the exemption under Rule 12g3-2(b) of the Exchange Act. Such exemption also requires providing information in English to the SEC related to information that is made available to its shareholders.

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.

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. However, similar to Level I and RADR’s, the company should consider the need to request and obtain the exemption under Rule 12g3-2(b) of the 1934 Act before reaching the 300 U.S. shareholder limit that requires registration with the SEC under section 12(g) of the Exchange Act.

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 U.S..

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 enabling 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 an important decision that management should make after assessing their goals and objectives.

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 auditor 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, evaluate certain legal and accounting alternatives, 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 may 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 auditor and tax advisor 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.

- As part of the Sarbanes-Oxley Act of 2002, U.S. stock exchanges were required to enhance their corporate governance regulations. These stringent regulations include specific guidelines regarding independent directors and audit committees, executive compensation, shareholder meetings and voting rights, and code of conduct. Generally foreign private issuers are permitted to follow home country practice where the specific stock exchange regulations are contrary to laws, regulations or generally accepted business practices in the company's home country. However, disclosure is generally required where foreign private issuers deviate from the stock exchanges' regulation. You should assess the required corporate governance procedures of the exchange you are planning to list with before deciding to go public.

- The Sarbanes-Oxley Act of 2002 requires the company's CEO and CFO to each provide in the Form 20-F annual report a certification regarding the company's financial statements and the effectiveness of the Company's disclosure controls and procedures ("the Section 302 Certifications"). Additionally, for Form 20-F annual reports, beginning with the first fiscal year ending on or after July 15, 2005, the CEO and CFO are each required to provide an assessment as to the effectiveness of the company's internal controls over financial reporting as of the end of the fiscal year ("the 404 Certifications") and the company's external auditors are required to attest to such assessment. SOA also establishes certain requirements for audit committee and board of directors' members and prohibits loans to company executives. A company should consider the existence, documentation and effectiveness of its internal controls over financial reporting and its disclosure controls and procedures related to information to be included in its Form 20-F, as well as the composition of their audit committee and board of directors and any loans to executives before deciding to become a public registrant in the United States.

- 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 required audits must be conducted in accordance with standards of the PCAOB. Your company's financial position and results under U.S. GAAP should be assessed, which will require data gathering and decision-making well in advance of the audit of the U.S. GAAP reconciliation or U.S. GAAP financial statements.

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 demands placed on senior management during a U.S. offering can easily be underestimated. The process is challenging and dynamic. Careful planning and an understanding of the process are essential to the success of the 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 auditor, the investment bank and the investment bank's counsel. Project management disciplines are established where roles and responsibilities are agreed, the 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 auditor in accordance with standards of the PCAOB.
- The company has the capacity to provide the information required by the SEC without unnecessary delay.

PERIOD PRIOR TO CLOSING	EVENT	PARTICIPANT(S)
Two years to six months	Select registration team (counsel, independent auditor, investment bank, public relations firm and depositary bank)	Company and company's board of directors
	Evaluate the plans, needs and financing alternatives of the company	Company, independent auditor 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 auditor and investment bank
	Evaluate the preparedness of the company to comply with the provisions of Sarbanes-Oxley Act, including internal control documentation and effectiveness, composition of board of directors and audit committee and any executive loans	Company, independent auditor, company's counsel
	Evaluate the preparedness of the company to comply with the corporate governance requirements of the stock exchange on which the company plans to list their shares	Company, company's counsel
	Preliminary study to identify GAAP differences (including measurement and disclosure) and assessment of the additional projects and resources required to reconcile or convert to U.S. GAAP	Company and company's board of directors
Six months	Sign letter of intent of 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 auditor, investment bank, investment bank's counsel and depository bank
	Commence due-diligence review	Investment bank, investment bank's counsel
	Establish and distribute timetable for registration process	Company, company's counsel, independent auditor, 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
	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

PERIOD PRIOR TO CLOSING	EVENT	PARTICIPANT(S)
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
	Review complete draft of registration statement	Company, company's counsel, independent auditor, investment bank and investment bank's counsel
	Consider commencing discussions with relevant U.S. securities exchange regulator	Company, company's counsel and investment bank
	Appoint stock transfer agent and registrar and arrange for preparation of stock certifications	Company
	Discuss comfort letter requirements and procedures	Company, independent auditor, 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 draft registration statement submitted to the SEC (including a signed audit opinion in accordance with the standards of the PCAOB)	Company and independent auditor
	Forward complete draft of registration statement to printer	Company or company's counsel
	Obtain and finalize final proofs of draft registration statement from printer	Company, company's counsel, independent auditor, investment bank and investment bank's counsel
	Submit draft registration statement to the SEC for a confidential review (this submission is not technically filed with the SEC and is not available in the public domain)	Company or company's counsel
Three months	Receive comment letter from the SEC regarding draft registration statement	Company's counsel
	Hold meeting to review and discuss the SEC comment letter	Company and company's counsel, with the advice and assistance of independent auditor, 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 auditor
	Prepare response to the SEC comment letter and revisions to registration statement resulting from the SEC comment letter	Company and company's counsel with the advice and assistance of the independent auditor, 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
	Confidentially provide amended registration statement to the SEC	Company's counsel

PERIOD PRIOR TO CLOSING	EVENT	PARTICIPANT(S)
Two months	Receive comment letter from the SEC regarding registration statement	Company's counsel
	Prepare response to SEC comment letter and make changes to registration statement	Company and company's counsel, with the advice and assistance of independent auditor, investment bank and investment bank's counsel
	Seek listing on major U.S. securities exchange	Company and company's counsel
	Confidentially (or formally) 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 auditor
	Publish tombstone ad	Company and investment bank
	Begin road show	Company and investment bank
One month	Receive comment letter(s) from the SEC and amend registration statement(s) as appropriate	Company and company's counsel with the advice and assistance of independent auditor, investment bank and investment's bank counsel
	Formally file amended registration statement with the SEC	Company, company's counsel
	Notify SEC in writing that 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 auditor
	Hold due diligence meeting	Company, company's counsel, independent auditor, investment bank and investment bank's counsel
	Sign underwriting agreement	Company, company's counsel, investment bank and investment bank's counsel
	Finalize offering price	Company and investment bank
	File price amendment to the registration statement with the SEC	Company and company's counsel
	Receive notification from the SEC that the registration has become effective	Company and company's counsel
	Notify securities exchange of effectiveness and begin trading	Company's counsel
	Deliver first comfort letter to investment bank	Independent auditor
Closing date	Deliver updated comfort letter ("bring down" letter) to investment bank	Independent auditor
	Complete settlement with underwriter, issue stock, collect proceeds from offering and sign final documents	Company, company's counsel, investment bank, investment bank's counsel and depositary bank
	Issue press release	Company, investment bank and depositary bank

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, the 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 significant risks associated with the offering 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, as it could result in a prospectus that does not fairly present the company to potential investors. The company's legal counsel needs to be integrally involved in the drafting to ensure the company's interests are met.

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.

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

Risk factors associated with the offering. Any factors that are specific to your company or its industry and 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, a dependence on a few customers or suppliers, a 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 would 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.

Reasons for the offer and use of proceeds. Your company must disclose the estimated net amount of the proceeds and discuss the planned use of the proceeds from the offering. This section of the registration statement should be carefully drafted. The SEC requires disclosure in each Form 20-F annual report filed after the offering on the actual application of the proceeds until all proceeds are applied. 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, general working capital needs 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 agreements, 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 and indebtedness. A statement of capitalization and indebtedness must be provided. This statement shows the company’s capitalization on an actual basis and, if applicable, as adjusted to reflect the planned sale of securities and the application of the net proceeds therefrom.

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 nature of your company's operations and its principal activities, including the main categories of products sold and/or services performed for each of the last three financial years.
- The principal markets in which your company competes, including a breakdown of total revenues by category of activity and geographic market for each of the last three financial years.
- The seasonality of your company's main business.
- The sources and availability of raw materials, including a description of whether prices of principal raw materials are volatile.
- The marketing channels used by your company, including an explanation of any special sales methods, such as installment sales.
- Summary information regarding the extent to which your company is dependent, if at all, on patents or licenses, industrial, commercial or financial contracts (including contracts with customers or suppliers) or new manufacturing processes.
- The basis for any statements made by your company regarding its competitive position.
- The material effects of government regulations on your company's business, identifying the regulatory body.

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 auditor 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 home-country 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 may be presented instead of full U.S. GAAP financial statements. These financial statements must be audited in accordance with standards of the PCAOB. They also must be 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, audited in accordance with standards of the PCAOB.
- The last fiscal year of audited financial statements may not be older than 15 months at the time of the offering or listing (i.e., the effective date). However, in the case of the company's initial public offering, the audited financial statements are also to be of a date not older than 12 months at the time the document is filed with the SEC. In such cases, the initially filed audited financial statements may cover a period of less than one year. This stricter rule for initial public offerings does not apply to foreign issuers offering securities in the United States for the first time, if they are already public in their home country.
- Selected financial information (summarized from the balance sheets and income statements) for the lesser of five years or the period of existence of the company's business(es) is generally required. This information can either be presented under home-country 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). Selected financial data for either or both of the earliest two fiscal years of the five-year period may

be omitted, however, if the company represents to the host country regulator that such information cannot be provided without unreasonable cost or effort. Selected financial data should also include interim data related to any interim financial statements included in the offering document.

- Interim financial statements, (covering at least the first six months of the fiscal year, as well as the comparable period in the prior year) also referred to as stub-period financial statements, are required if the audited fiscal year-end financial statements are more than 9 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 auditor review them.

- 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 and could require reconciliation to U.S. GAAP for up to two years, depending upon whether certain significance criteria are met. Additionally, unaudited acquiree interim financial statements may be required to meet timeliness requirements. See Appendix D for a summary of matters covered by SEC Regulation S-X.

- Separate financial statements of an investee accounted for by the equity method and financial guarantors are required if certain conditions are met.

- 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 date. While the need for pro forma financial information most frequently occurs in connection with consummated or probable business combinations, the rule also applies to other events such as:
  - The disposition or probable disposition of a significant portion of a business.
  - The registrant was previously part of another entity and such presentation is necessary to reflect the operations and financial position of the registrant as an autonomous entity.
  - Consummation of other events or transactions has occurred, or is probable for which pro forma information would be material to investors.

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.

Operational and Financial Review and Prospects ("OFR"). Previously referred to as Management Discussion and Analysis ("MD&A') In this section, management explains to investors and users, factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, including discussion of the company's critical accounting policies and estimates affecting the company's results. Management also assesses the factors and trends, which are anticipated to have a material effect on the company's financial condition and results of operations in future periods. The information provided must also relate to all separate segments of the company. The SEC continues to focus on the OFR 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.

- **Operating results.** Companies should provide information regarding significant factors and trends, including unusual or infrequent events or new developments, materially affecting the company's income from operations, indicating the extent to which income was so affected. Any other significant component of revenue or expenses necessary to understand the company's results of operations should also be included. This should also cover where material, the impact of inflation, foreign currency, governmental policies and economic policies.

- **Liquidity and capital resources.** Companies should provide information regarding the company's liquidity (both short term and long term) and related significant trends, including a description of the internal and external sources of liquidity; an evaluation of the sources and amounts of the company's cash flows; information on the level of borrowings, details of financial instruments used, treasury policies; and details of the company's material commitments for capital expenditures.
- **Research and development, patents and licenses, etc.** Companies should provide a description of their research and development policies for the last three years, where it is significant, including the costs incurred during each of the last three financial years on company-sponsored research and development activities.
- **Trend information.** Companies should identify the most significant recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest fiscal year. The company also should discuss, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's revenues, profitability, liquidity or capital resources.
- **Off-balance sheet arrangements.** Companies should discuss all off-balance sheet arrangements that have or are reasonably likely to have a material effect on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. This discussion should include the business purpose and importance to the company of the arrangements, the amounts of revenues, expenses and cash flows arising from the arrangements, any known event which may result in a change in the arrangements and any other information the company believes is necessary for the reader to understand the arrangements.
- **Tabular disclosure of contractual obligations.** Companies should provide in tabular format all contractual obligations as of the end of the latest balance sheet date grouped at a minimum level of long-term debt obligations, capital (finance) lease obligations, operating lease obligations, purchase obligations and other long-term liabilities. The payments relating to these obligations should be grouped by payment period at a minimum level of less than one year, one to three years, three to five years and more than five years.

Other disclosures. Legal proceedings, the identity of directors, senior management and advisors, details of the offering, history and developments of the company, safe harbor disclosures, various exhibits and statutory information as well as certain other information must also be disclosed.

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 certain 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 concerns 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 auditor as well as other representations made about the financial statements and other financial information in the prospectus. The auditor 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 and many times far more than an auditor may provide under professional accounting standards. Management should be involved in these discussions, as the company bears the cost of this extra work. Such discussions can take substantial time.

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 completed 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. The process of clearing comments by the SEC can be substantial. There may be more than one series of comments on a registration statement, lengthening the SEC review period to five or more weeks.

Major areas of the prospectus that typically generate SEC comments are risk factors, OFR, discussion of the business, pro forma presentations and the financial statements. 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 review of the registration statement. During a confidential review, the offering document is not technically filed and therefore is not available to the public. A confidential 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 confidential 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 "Roadshow and 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 non-U.S. regulators may require the inclusion of prospective financial information in the prospectus. 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 registration statement 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 fair and reasonable. The department may require the company and its underwriter to renegotiate the compensation terms and statement arrangements and to amend the registration statement. The SEC will not declare a registration statement effective until the NASD Regulation Department of Corporate Financing has concluded its review and issued a statement 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 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 auditor 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 auditor, 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 have been subject to the 1934 Act reporting requirements for at least thirty-six calendar months and have timely filed the most recent Form 20-F. However, if the company meets the aggregate market value requirement of $75 million or more or is issuing investment-grade securities, as defined, and has timely filed the latest Form 20-F annual report required to be filed, then the thirty-six month reporting requirement is not applicable.

Form F-3

Form F-3 is a short-form registration statement available to foreign private issuers that have been subject to the 1934 Act reporting requirements for at least twelve calendar months, have 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 B and D for the information requirements of Forms 20-F and 6-K, respectively). 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 the equivalent of U.S. $75 million or more.
- An offering of non-convertible securities for cash 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 may be updated by the filing of Forms 6-K and 20-F that are incorporated by reference into the Form F-3. 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 DPO's. A DPO allows the issuer to sell shares directly to the investor without the assistance and fees associated with working with an underwriter. DPOs are typically offerings made pursuant to exemptions from registration contained in Regulation A or Regulation D.

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. Even for those non-U.S. companies that have such audited financial statements, conforming the financial statements to the SEC requirements can be cumbersome.

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

- Certain U.S. GAAP differences.
- "Carve-out" issues for subsidiaries/divisions going public.
- Pro forma financial statements.
- Other considerations.

A brief summary of certain accounting and reporting hot topics has been included as a separate insert to this publication. Please refer to the rear inside cover.

Certain U.S. GAAP differences

The following is a summary of certain U.S. GAAP differences that non-U.S. companies may encounter. Depending on your company's particular situation, many additional differences may arise.

Consolidation and equity accounting

- U.S. GAAP requires a company that has a "controlling financial interest" in another entity to consolidate that entity. A "controlling financial interest" under U.S. GAAP is determined using two models: the voting interest model and the risk and rewards model. Under the voting interest model, control is presumed to exist in situations when an investor directly or indirectly owns more than 50 percent of the voting interest of an investee. Under the risk and rewards model, the party who participates in the majority of an entity's economics ("the primary beneficiary") is deemed to have control. In order to determine which model applies, the company must first determine whether the entity is a variable interest entity ("VIE") or a voting interest entity. If the entity is a VIE and the company is the primary beneficiary, then the company must consolidate the entity, regardless of whether the company has voting control or not. Minority interest would typically be provided for the portion of the entity not owned by the company. If the entity is not a VIE, then, in general, the voting interest model should be assessed to determine whether the company should consolidate the entity. The determinations under U.S. GAAP of whether the entity is a VIE and whether the company is a primary beneficiary can be very complex. The company should use qualified U.S. GAAP resources to assist them in these determinations. The disclosure requirements to reconcile to U.S. GAAP for differences in consolidation between U.S. GAAP and the local GAAP are significant and pervasive. In certain countries, the financial statements of subsidiaries that operate in different lines of business from the rest of the consolidated group are not consolidated, regardless of whether the parent company has control.

- Under U.S. GAAP investments over which the investor is able to exercise significant influence over the investee are accounted for using the equity method. Significant influence is presumed to exist when the investor owns 20 percent or more of the voting shares of an investee. However, this presumption may be overcome in certain circumstances. In some countries, different levels of voting interest are used as the benchmark for determining significant influence.

- GAAP in some countries allows or requires the use of proportionate consolidation, which is generally not permitted under U.S. GAAP. When certain conditions are met, the SEC rules do not require a reconciliation of this difference.

Business combinations

- U.S. GAAP requires all business combinations to be accounted for using the purchase method. Under the purchase method, the individual assets and liabilities acquired are recognized in the balance sheet at fair value. The difference between the purchase consideration and the fair value of the assets and liabilities acquired is recognized as goodwill. Goodwill is not amortized into earnings but rather is assessed for impairment at least annually. However, U.S. GAAP does require that all transfers of businesses between entities under common control be accounted for in a manner similar to a pooling. In many countries, the purchase method is used to account for common control transfers of businesses and the pooling-of-interests method is often used to account for business combinations. The requirements regarding the criteria for pooling-of-interests versus purchase accounting vary widely from country to country. In some countries, the amount by which the purchase price exceeds the fair value of the net assets acquired in a business combination (goodwill) may be recorded as a direct charge to shareholders' equity or income. Also, in many countries the assets and liabilities that are acquired are not adjusted to fair value when the purchase accounting adjustments are made. These approaches are unacceptable under U.S. GAAP and may require additional specialist assistance.

- U.S. GAAP requires the fair value of in-process research and development ("IPR&D") to be expensed on the date of the acquisition. In some countries, the fair value of in-process research and development is included in the goodwill balance while in other countries it is a separate intangible asset.[3]

Restructuring charges

- Certain differences between U.S. GAAP and other GAAPs related to recognition and measurement frequently lead to differences in the timing and amount of restructuring provisions recognized. Key differences relate to the required timetable for development of a formal plan, the types of costs which may be accrued and the accounting for subsequent changes to such provisions.

Foreign currency

- Some countries allow the use of the year-end exchange rate in the translation of the income statement and cash flows of a foreign entity rather than an average exchange rate for the year, as required by U.S. GAAP.

- In some countries, gains and losses on re-measurement of assets and liabilities denominated in a foreign currency may be deferred and amortized. U.S. GAAP requires such amounts to be recognized 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 that 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). U.S. GAAP requires that impairments be recorded in the income statement for other

3 As of the date of this publication, the FASB has tentatively concluded that IPR&D acquired in a business combination should be capitalized as an intangible asset. The capitalized IPR&D will be accounted for as an indefinite-lived intangible asset subject to impairment testing until the completion or abandonment of the project. Upon completion, the acquirer will make a separate determination of the useful life of the asset. Research and development costs incurred subsequent to the acquisition will continue to be expensed. The FASB also tentatively concluded that IPR&D acquired outside a business combination, either individually or as part of a basket asset purchase, will continue to be expensed.

than temporary declines in the fair value of such investments. Certain other 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 non-U.S. 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, generally 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 other GAAPs, capitalization of interest is either not allowed or determined on a basis different than that required under U.S. GAAP. Additionally, certain other GAAPs allow capitalization of foreign exchange losses.

- Under U.S. GAAP, entities that are legally obligated to perform asset retirement activities are required to recognize the fair value of a liability for the asset retirement obligation either in the period in which it is incurred and a reasonable estimate can be made, or when it can be reasonably estimated. Upon initial recognition of the liability, an entity also capitalizes the asset retirement cost by increasing the carrying amount of the related long-lived asset by the same amount as the liability. The capitalized cost is then allocated to expense over the asset's useful life. Increases to the liability due to the passage of time are recognized in income as accretion expense. Changes resulting from revisions to the original estimates are recognized as an increase or decrease in the liability with a corresponding increase or decrease in the asset. In other GAAPs, the accounting requirements of asset retirement obligations vary significantly.

Asset impairments

- U.S. GAAP requires that an impairment loss can only be recognized for a long-lived asset if the carrying amount of the asset exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. If an impairment loss is deemed necessary, it is measured as the difference between the carrying amount and fair value of the asset. Restoration of a previously recognized impairment loss is prohibited. Other GAAPs require the use of different impairment criteria and also may allow the reversal of previously recognized impairments.

- U.S. GAAP requires that goodwill be tested for impairment at least annually using a two-step approach at a level of internal reporting referred to as a reporting unit. Step one consists of comparing the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step of the goodwill impairment test is required to be performed to measure the amount of impairment loss, if any. The second step of the goodwill impairment test compares the implied fair value of the reporting unit goodwill with the carrying amount of that goodwill. The implied fair value of the reporting unit is determined in the same manner as the amount of goodwill recognized in a business combination. If the carrying amount of reporting unit goodwill exceeds the implied fair value of that goodwill, an impairment loss is recognized in an amount equal to that excess. Subsequent reversal of a previously recognized goodwill impairment loss is prohibited. Other GAAPs do not require that goodwill be tested for impairment at least annually and also provide for different models for determining whether an impairment exists.

- U.S. GAAP requires that intangible assets that are not subject to amortization (i.e., indefinite-lived) be tested for impairment at least annually. An impairment loss exists when the carrying amount of an indefinite-lived intangible asset exceeds its fair value and the loss is recognized in an amount equal to that excess. Subsequent reversal of a previously recognized impairment loss is prohibited. Other GAAPs do not have specific guidance concerning the impairment of indefinite-lived intangible assets.

Disposal of long-lived assets

- Under U.S. GAAP, an asset is classified as held for sale only when management having the authority to approve the action has committed to a plan to dispose. The SEC 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.
- If certain criteria are met, U.S. GAAP requires companies who are in the process of disposing a portion of the business that has clearly distinguishable operations and cash flows to present the disposal group in the financial statements as a discontinued operation. Other GAAPs use different criteria for determining the disposal group and have different presentation requirements.

Research and development

- GAAP in some countries permits or requires research and development costs to be capitalized and amortized over future periods. Under U.S. GAAP, research and development costs are expensed as incurred. However, separate rules apply to the development costs for computer software.

Revenue recognition

- U.S. GAAP contains numerous rules for the recognition of revenue and generally requires that revenue not be recognized until it is realized or realizable and earned. Revenue is generally considered to be realized or realizable and earned when all of the following four criteria are met:
  1. Persuasive evidence of an arrangement exists.
  2. Delivery has occurred or services have been rendered.
  3. The seller's price to the buyer is fixed or determinable.
  4. Collectibility is reasonably assured.

The SEC has introduced prescriptive guidelines as to how it interprets these particular criteria and how they should be applied to specific types of transactions. In most countries the revenue recognition criteria are not as prescriptive.

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 other GAAPs apply an income statement approach to 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. U.S. GAAP generally requires that deferred tax liabilities be provided regardless of timing of payment. However, U.S. GAAP does not allow providing a deferred tax liability for temporary differences, such as unremitted earnings of foreign subsidiaries or foreign corporate joint ventures, unless it becomes apparent that those temporary differences will reverse in the foreseeable future.
- 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 determining when a valuation allowance is required.

Deferred and capitalized costs

- Many countries permit a wider range of alternatives for the deferral and capitalization of costs than are allowed under U.S. GAAP. For example, under U.S. GAAP, start-up costs must be expensed as incurred.

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 the periods of employee service and differences in the projection and assumption methods used to calculate the pension obligation and related pension expense.
- Also, U.S. GAAP requires the discount rate to be adjusted as certain interest rates change. This is not required by many other GAAPs.

Employee compensation

- U.S. GAAP differences may exist when compared to home-country GAAP accounting for employee compensation, especially if compensation includes charges related to stock options. Additionally, in some countries, the accrual of vacation pay is not required, whereas under U.S. GAAP such accruals are mandatory.[4]

Leases

- Under U.S. GAAP, certain types of long-term lease arrangements are required to be accounted for as capital leases. Such arrangements may be accounted for as operating leases in other GAAPs. In addition, under U.S. GAAP, certain non-lease contracts may be deemed to include embedded leases, which are required to be accounted for separately.

Derivatives and financial instruments

- U.S. GAAP requires the recognition of derivative financial instruments on the balance sheet at fair value. If certain conditions are met, a derivative may be specifically designated as (a) a hedge of the exposure to changes in the fair value of a recognized asset or liability or an unrecognized firm commitment, (b) a hedge of the exposure to variable cash flows of a recognized asset or liability or a forecasted transaction, or (c) a hedge of the foreign currency exposure of a net investment in a foreign operation, an unrecognized firm commitment, an available-for-sale security, or a

4 As of the date of this publication, the FASB has tentatively concluded that all stock-based compensation be expensed at fair value. This possible change is very controversial and may result in U.S. Congressional intervention.

foreign-currency denominated forecasted transaction. Changes in the fair value of derivatives, including those that qualify as hedges, are recorded in current income or other comprehensive income depending on the type of hedge. GAAP in certain countries does not have authoritative guidance on the measurement and presentation of derivative financial instruments.

Guarantees

- U.S. GAAP requires that companies who issue certain guarantees recognize the fair value of the guarantees as a liability. U.S. GAAP also requires disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. Other GAAPs have different recognition and disclosure requirements for guarantees.

Financial instruments with characteristics of both liabilities and equity

- U.S. GAAP requires certain financial instruments with characteristics of both liabilities and equity to be accounted for as liabilities (or assets in certain circumstances) in the statement of financial position. Other GAAP's require that the equity and liability components be accounted for separately.

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. Contingent gains are not recorded until realized. Some other 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 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 other GAAPs have criteria for extraordinary classification which are less stringent than U.S. GAAP.

Comprehensive income

- U.S. GAAP requires reporting of comprehensive income and its components. 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. The SEC staff allows foreign private issuers to present in their financial statements comprehensive income and its components either on a local GAAP basis or under U.S. GAAP. The information is not required to be reconciled to U.S. GAAP if presented on a local GAAP basis. Most other GAAPs do not have a requirement to disclose comprehensive income.

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 calculation methods can differ from those prescribed under U.S. GAAP.

Related party transactions

- Under U.S. GAAP, the nature and extent of 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.
- The SEC staff takes 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.

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 requires 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.

"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, 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 financial statements

Pro forma financial statements may be required in the following circumstances:

- When a significant business combination, as defined by SEC regulations, has occurred or is probable.
- Where a significant disposition has occurred or is probable and is not fully reflected in the historical financial statements.
- Where one or more real estate operations have been acquired.
- For certain roll-up transactions.

- Where the registrant was previously part of another entity.
- Where events or transactions have occurred or are probable for which disclosure of pro forma financial information would be material to investors.

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

- Pro forma financial statements consist of income statements for the latest fiscal year and any required subsequent interim period, and also may require 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 non-recurring 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, if required, 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.
- The SEC staff also believes there is a clear distinction between pro forma information and projections; therefore, a pro forma presentation should not include adjustments, assumptions and hypothetical scenarios by which their nature present alternative courses of action. Adjustments such as expected cost savings due to economies of scale should be excluded. Also, judgmental estimates of how historical management practices and operating decisions may or may not have changed as a result of the transaction should be excluded from the pro forma information.
- The SEC staff has a long-time administrative position prohibiting pro forma adjustments which impute investment/interest earnings on excess cash generated by a transaction. With respect to investment/interest earnings on excess cash, the SEC staff's position is based on the notion that these funds could be used in a number of ways other than being "invested' in securities to generate income (i.e., investment in plant, inventory build-up, acquisition of a business, etc.) and, therefore, an adjustment for investment/interest earnings is not factually supportable.

Other considerations

Materiality

Materiality is a concept that requires consideration of both qualitative and quantitative factors. Evaluation of materiality by the company and its independent auditors requires consideration of all relevant circumstances, and the SEC staff believes that there are numerous circumstances in which misstatements below 5% could well be material, when considering various qualitative factors. Among other items, the staff has indicated 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. When companies intentionally record errors within a defined percentage ceiling, they are misusing the concept of materiality. Careful consideration should be given by the company and its independent auditors with regard to assessments of materiality.

Operational and Financial Review and Prospects ("OFR")

(Previously referred to as Management Discussion and Analysis ("MD&A"))

As previously noted, OFR 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:

- Discussing the critical accounting policies and their effect on the estimation process.
- 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 risk 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.
- Discussing off-balance sheet arrangements, their nature business purpose and importance to the company.
- Any known event, demand, commitment, trend or uncertainty that may result in the termination or reduction of a company's off-balance sheet arrangement.
- Discussing obligations under guarantee contracts that require recognition and measurement in the company's financial statements.
- Discussing any retained or contingent interest in assets transferred to an unconsolidated entity.
- Discussing any obligation arising out of a variable interest in an unconsolidated entity that is held by and material to the company.

Non-GAAP financial measures

As directed by the Sarbanes-Oxley Act of 2002, the SEC adopted rules to address public companies' disclosure of certain financial information that is calculated and presented on the basis other than in accordance with generally accepted accounting principles. The rules cover, separately, the inclusion of non-GAAP financial measures that are (a) publicly disclosed in other than SEC filings, and (b) included in filings with the SEC. The inclusion of such non-GAAP measures in SEC filings is subject to more extensive restrictions including prohibitions against (a) the omission of cash settled charges or liabilities from a non-GAAP liquidity measure other than EBIT and EBITDA, as defined; (b) adjusting a non-GAAP performance measure for items identified as non-recurring, infrequent or unusual when those items are likely to recur within two years or similar items have occurred within the prior two years; (c) presenting non-GAAP financial measures on the face of the company's financial statements or in the footnotes thereto; (d) presenting non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by the SEC's rules; and (e) using titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures. In all instances, disclosures of non-GAAP financial measures must include (i) a presentation, with equal or greater prominence, of the most directly comparable financial measure calculated and presented in accordance with GAAP, (ii) a reconciliation of the non-GAAP financial measure to the most directly comparable financial measure calculated and presented in accordance with GAAP and (iii) a statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations. The company should consult with its securities counsel with regard to such matters.

International financial reporting standards

In early 2002, the European Commission adopted a new Regulation that requires all EU companies listed on a regulated market to prepare consolidated accounts in accordance with International Financial Reporting Standards ("IFRS") from January 1, 2005 onwards. The Regulation was issued to help eliminate the barriers to cross-border trading in securities by ensuring that company accounts throughout the EU are more reliable and transparent and that they can be more easily compared. This will in turn increase market efficiency and reduce the cost of raising capital for companies, ultimately improving competitiveness and helping boost growth.

Although there continue to be differences between IFRS and US GAAP, since 2002, the accounting boards presiding over both US GAAP and IFRS have placed the convergence of US GAAP and IFRS as a high priority. Both boards have agreed to adopt compatible, common, high-quality solutions to existing and future accounting issues. The commitment by both boards to eliminate or reduce differences through continued progress on joint projects and coordination of future work programs, will improve comparability of financial statements across national jurisdictions. The SEC continues to require reconciliation to U.S. GAAP.

As of the date of this publication, the SEC has issued a proposal to provide those companies adopting IFRS for the first time to allow only one year of comparable financial information under IFRS as opposed to two years of comparable financial information, as is normally required in an SEC filing. This would allow those affected companies to include financial statements in SEC filings under IFRS, reconciled to U.S. GAAP, for the most recent two years; however, certain additional disclosures would be required.

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 to be 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 a SEC registration statement, and often the company can negotiate the information to be included.

Rule 144A

Rule 144A allows securities privately placed with Qualified Institutional Buyers ("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 at least U.S. $10 million in securities of non-affiliates.

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 financial 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 a SEC-style OFR. In addition, the home-country financial statements are often presented in an "Americanized" format and wording style.

A private placement will not result in the issuer having 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 a 144A offering 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 auditor involved in a Rule 144A transaction is also typically required to furnish a comfort letter to the underwriters. The independent auditor also plays an important role in connection with a Rule 144A offering due to the inclusion of audited financial statements in the private placement document. It is important that the independent auditors on your 144A working group team have experience with regard to U.S. offerings, especially, when your 144A offering has registration rights, which will result in the eventual filing of a registration statement with the SEC.

NASD Rule 144A trading system (PORTAL)

The NASD has established a system for trading securities privately placed under Rule 144A. Referred to as "PORTAL", this system provides for 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

The management of a new publicly-held company or new entrant to the U.S. capital markets should consider 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, causing your company's shares to become thinly traded. If that happens 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 often 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.

- **Public trust.** Is your company maintaining a high level of investor confidence?

In the current environment, companies need to demonstrate that they embrace and live by a spirit of transparency, a culture of accountability, and a high level of integrity.

Ongoing investor relations

Managing expectations is the key to successful 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. Financial reporting transparency may offer a public company significant benefits, including:

- Increased management credibility.
- More long term investors.
- A greater analyst following.

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 back-fires. 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 each 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 and has publicly placed securities in the U.S., it must file an annual report with the SEC on Form 20-F no later than six months after the fiscal year end. The annual report must include the SOA Sections 302, 404 and 906 certifications. The 404 certifications related to management's assessment of internal accounting controls over financial reporting and the related independent auditor attestation report thereon are first applicable to annual reports on Form 20-F with fiscal years ending on or after July 15, 2005. Form 20-F annual reports will be reviewed at least once every three years by the SEC, as mandated by the Sarbanes-Oxley Act (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, non-U.S. registrants are required to promptly furnish on Form 6-K material information which is **(a)** made or required to be made public in the local domicile, **(b)** filed or required to be filed with a stock exchange or **(c)** 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. The SOA section 302, 404 and 906 certifications are not required to be included in the Form 6-K submission (See Appendix E for a summary of information required by form 6-K).

The SEC requires most 1933 Securities Act registration statements and 1934 Exchange Act registration statements and reports to be submitted electronically through their EDGAR system. However, a foreign private issuer can chose to submit its Form 6-K on paper as long as the information provided is not a press release, is not required to be and has not been distributed to the foreign private issuer's security holders, and, if discussing a material event, including the disclosure of annual audited or interim consolidated financial results, has already been the subject of a Form 6-K submission or other SEC filing on EDGAR.

The NYSE and AMEX often requires non-U.S. companies to provide at least semi-annual reports (in home-country GAAP without 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 and AMEX.

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 OFR. To qualify for the safe-harbor protection, 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 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 OFR disclosure requirements. Furthermore, 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. 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 consider obtaining 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.

How PricewaterhouseCoopers can help

PricewaterhouseCoopers (www.pwc.com) provides industry-focused assurance, tax and advisory services for public and private clients. More than 120,000 people in 139 countries connect their thinking, experience, and solutions to build public trust and enhance value for clients and their stakeholders.

The Global Capital Markets Group

At PricewaterhouseCoopers, we have created the Global Capital Markets Group (the "GCMG" or the "Group"), a global team of professionals fully dedicated to providing technical, strategic and project management advisory services to non-U.S. companies actively interested in raising capital and/or listing their securities in the U.S. securities markets. The Group comprises more than 55 partners and over 285 other professionals, based in over 20 countries around the world. Our partners and professionals – many resident in your region – are experienced in all aspects of U.S. capital raising activities by non-U.S. companies.

The individuals who comprise our GCMG know both the formal rules and procedures, and the informal mood of the SEC with respect to non-U.S. companies. Our team has taken, and continues to take, many of the world's leading non-U.S. companies into the U.S. securities markets. 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 by the International Consultation and Review Group ("the ICRG"); specialists in all facets of U.S. accounting and reporting. The ICRG is led by Wayne Carnall, a world-renowned cross-border filing expert. Wayne spent several years as a senior staff member of the SEC, specializing in foreign-registrant matters and cross-border financial reports. The ICRG provides an additional source of critical technical support to the GCMG on complex or unusual issues regarding U.S. GAAP, SEC reporting and other related matters.

The delivery of our services is generally optimized using the right balance of multidisciplined business teams that comprise Auditing, Transaction Services, Tax and Legal Services and Global Human Resources Solutions.

Our services

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

Increasingly, as a prelude to an initial public offering, the GCMG is engaged to assist management with their conversion of their financial statements from home-country GAAP to IFRS and/or U.S. GAAP. These projects are usually a prelude to a future global offering and/or listing. Bearing in mind that market conditions change rapidly, the availability of U.S. GAAP or IFRS reconciled financial information will reduce your lead time to completing a successful offering.

Our services reflect our approach to advising our clients that a well conceived, planned and executed 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

The right approach from the outset is needed to enter the U.S. securities markets in a way that will maximize your return and reflect the true strength of your business. 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 IFRS 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.

- 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 required audits must be conducted in accordance with standards of the PCAOB. Your company's financial position and results under U.S. GAAP should be assessed for SEC compliance, which will require data gathering and decision-making well in advance of the audit of the U.S. GAAP reconciliation or U.S. GAAP financial statements.

Pre-IPO diagnostics

GCMG has developed tools that can be used in assisting the company in performing an enterprise-wide diagnostic of core areas of competency necessary for non-U.S. companies to make the transformation to a publicly-held company in the United States. The results of such a diagnostic can provide management and/or key stakeholders with focused insights on the people, process, organizational and technical issues associated with an initial public offering transaction in the U.S.. They also help the organization to make an informed assessment of its readiness for becoming, and functioning as a public company in the U.S. and plan the way forward.

Technical support

Once the strategy is established, we advise and guide the company's execution of the blueprint for success. Picking the right route through the rules, regulations and interpretations is extremely complex and hazardous. In this area we:

- Review management's identification of all significant U.S. GAAP and/or IFRS issues and the impact of accounting differences from home-country GAAP.
- Review management's identification and development of disclosures required in the footnotes to the financial statements, pro forma financial statements and other separate financial statements required by SEC rules, regulatory agencies, U.S. GAAP and IFRS.
- Advise the company in developing OFR 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 of financial information for offering documents.
- Review the prospectus prior to filing to help the company comply with the technical requirements and minimize the number of SEC comments.
- Discuss issues 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.

Project management support

Raising capital and the registration of securities can be complex and daunting and often impact all aspects of your business. As a result, it will require direction by senior executives and involve resources from a wide array of organizational units. Good project management will be essential to achieving a level of success that could be vital to the market perception of your company.

We can help. Our team of project management professionals understands the dynamics and pressures of registration projects. We will tailor our level of support to meet your needs, ranging from periodic input throughout your planning and execution phases, to dedicating one of our highly-experienced project-management specialists to provide advice and counsel to the members of your project team.

Capitalizing on our extensive experience with registration projects we have developed a structured approach to project management supported by robust principles and tools. This simple but effective framework provides a disciplined and consistent - but flexible - method of working, adaptable for the needs, size and culture of all companies. It is a tried and trusted way of managing business change that will help you to maintain a clear focus on the project objectives and an understanding of the way forward. Most importantly, it will enable you to “manage by exception”, confident that you have the means to control the project process and outcome with the minimum distraction from day-to-day business.

Ongoing support

After a listing has been obtained, we offer ongoing SEC, U.S. GAAP and IFRS support to help your company comply with SEC requirements.

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).
- Review management’s evaluation of the accounting treatment under U.S. GAAP and/or IFRS of new, complex or unusual transactions, such as a new type of financial instrument or a business combination.
- Review management’s evaluation and implementation of new rules under U.S. GAAP, IFRS and SEC regulations.
- Provide courses and technical updates on U.S. GAAP, IFRS and SEC developments.

Closing

The vast experience of our fully dedicated professionals based in your region is the cornerstone to:

- Effectively accelerating the process of getting your planned transaction to market; and
- Providing timely guidance for managing your ongoing U.S. financial reporting obligations.

appendix A

Overview of listing criteria for U.S. exchanges

Listing requirements

Quantitative standards:

	NYSE	**AMEX** (see Alternative Initial Listing AMEX Requirements)[5]	**Nasdaq National Market** (see Alternative Initial Listing Nasdaq National Market Requirements)[5]	**Nasdaq Small Cap Market**[6]
Minimum number of investors	5,000 each holding 100 or more shares	800 or 400 if number of public shares is over 1 million[7]	400 each holding 100 or more shares	300 each holding 100 or more shares
Minimum public shares	$2.5 million worldwide	$500,0000	$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[8]	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	n/a	U.S. $4 million shareholders' equity	U.S. $15 million shareholders' equity	U.S. $5 million shareholders' equity or U.S. $50 million market capitalization, 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[9, 10]	U.S. $750,000 pre-tax income in latest fiscal year or two of the most recent three fiscal years	U.S. $1 million pre-tax income from continuing operations in last fiscal year or two of the last three fiscal years	No minimum specific Requirements (see balance sheet criteria above)
Market makers	n/a	n/a	3	3

5 The Alternative Initial Listing Nasdaq National Market Requirements and the Alternative Initial Listing Amex Requirements are set out at the end of this appendix.

6 Non-U.S. companies are also required to comply with corporate governance requirements and have an operating history of one year or, if less than one year, an initial listing required market capitalization of at least U.S. $50 million.

7 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 for the preceding six months.

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

9 With no less than U.S. $25 million in each of the most recent two fiscal years.

10 Pre-tax income requirement can be waived by the company by meeting one of the following tests: at least $500 million global market capitalization, at least $100 million revenue during most recent 12 month period and at least $100 million aggregate cash flows for the last three fiscal years, with a minimum of $25 million in the most recent two fiscal years; or at least $750 million global market capitalization and at least $75 million revenues during the most recent fiscal year; or at least $500 million global market capitalization, at least 12 months of operating history, the company's parent or affiliated company is a listed company in good standing and the company's parent of affiliated company retains control of the entity or is under common control with the entity.

11 The market capitalization requirement can be waived with total assets and revenues of US $75 million each in the most recent fiscal year or in two of the three last years.

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.

Qualitative standards:

All of the exchanges also consider qualitative factors in evaluating listing eligibility. These qualitative factors may include:

- Compliance with the exchange's corporate governance standards.
- Requirements regarding the company's independent directors and audit committees.
- Requirements regarding shareholder approval for certain corporate actions.
- Requirements regarding quorum of shareholders.

Alternative initial listing Nasdaq national market requirements

	STANDARD 1	STANDARD 2
Minimum number of investors	400 each holding 100 or more shares	400 each holding 100 or more shares
Minimum public shares	1.1 million	1.1 million
Minimum bid price	U.S. $5	U.S. $5
Market value of public float	U.S. $18 million	U.S. $20 million
Market capitalization	n/a	U.S. $75 million (or total revenue and total assets respectively, of U.S. $75 million)
Operating history	2 year	n/a
Balance sheet	U.S. $30 million shareholders' equity	n/a
Pre-tax income	n/a	n/a
Market makers	3	4

Alternative initial listing American Stock Exchange requirements

	STANDARD 1	STANDARD 2	STANDARD 3
Minimum number of investors	800 or 400 if number of public shares is over 1 million[7]	800 or 400 if number of public shares is over 1 million[7]	800 or 400 if number of public shares is over 1 million[7]
Minimum public shares	$500,000	$500,000	$500,000
Minimum bid price	U.S. $3	n/a	U.S. $3
Market value of public float	U.S. $15 million	U.S. $15 million	U.S. $20 million
Market capitalization	n/a	U.S. $50 million	U.S. $75 million[11]
Operating history	2 years	n/a	n/a
Balance sheet	U.S. $4 million shareholders' equity	U.S. $4 million shareholders' equity	n/a

Additional information can be found on the exchanges' websites regarding both the quantitative and qualitative listing standards at:

www.nyse.com
www.amex.com
www.nasdaq.com

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 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.

The following are the items of information to be included in Form 20-F (Note that some of these items are not required when filing an annual report.):

Part I

Item	
1.	**Identity of directors, senior management and advisors.**
1A	Directors and senior management
1B	Advisors
1C	Auditors
2.	**Offer statistics and expected timetable.**
2A	Offer statistics
2B	Method and expected time table
3.	**Key information.**
3A	Selected financial data
3B	Capitalization and indebtedness
3C	Reasons for the offer and use of proceeds
3D	Risk factors
4.	**Information on the company.**
4A	History and development of the company
4B	Business overview
4C	Organizational structure
4D	Property, plant and equipment
5.	**Operating and financial review and prospects.**
5A	Operating results
5B	Liquidity and capital resources
5C	Research and development, patents and licenses, etc.
5D	Trend information
5E	Off-balance sheet arrangements
5F	Tabular disclosure of contractual obligations
5G	Safe harbor
6.	**Directors, senior management and employees.**
6A	Directors and senior management
6B	Compensation
6C	Board practices
6D	Employees
6E	Share ownership
7.	**Major shareholders and related party transactions.**
7A	Major shareholders
7B	Related party transactions
7C	Interest of experts and counsel
8.	**Financial Information.**
8A	Consolidated statements and other financial information
8B	Significant changes

Part I (continued)

Item	
9. The offer and listing.	
9A	Offer and listing details
9B	Plan of distribution
9C	Markets
9D	Selling shareholders
9E	Dilution
9F	Expenses of the issue
10. Additional information.	
10A	Share capital
10B	Memorandum and articles of association
10C	Material contracts
10D	Exchange controls
10E	Taxation
10F	Dividends and paying agents
10G	Statement by experts
10H	Documents on display
10I	Subsidiary information
11. Quantitative and qualitative disclosures about market risk.	
12. Description of securities other than equity securities.	
12A	Debt securities
12B	Warrants and rights
12C	Other securities
12D	American depositary shares

Part II

Item	
13. Defaults, dividend arrearages and delinquencies.	
14. Material modifications to the rights of security holders and use of proceeds.	
15. Controls and procedures.	
16. Reserved.	
16A	Audit committee financial expert
16B	Code of ethics
16C	Principal accountant fees and services
16D	Exemptions from the listing standards for audit committees
16E	Purchases of equity securities by the Issuer and affiliated purchasers

Part III

Item
17. Financial statements.
18. Financial statements.
19. 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.

The information specified in Item 6B includes disclosure of the amount of compensation paid, and benefits in kind granted, to such persons by the company and its subsidiaries for services in all capacities to the company and its subsidiaries by any person. Disclosure of compensation is required on an individual basis unless individual disclosure is not required in the company's home country and is not otherwise publicly disclosed by the company. That is, foreign law and regulations will determine how much of the required information needs to be provided.

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. However, there are stock exchange requirements, which require companies to provide certain information to shareholders.

appendix C

The Sarbanes-Oxley Act of 2002

Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 ("SOA") was enacted on July 30, 2002, and significantly reformed securities laws in the U.S. in response to a number of major corporate and accounting scandals involving some of the most prominent companies in the United States. SOA prescribed fundamental changes in how audit committees, management and auditors interact and carry out their responsibilities.

The PCAOB, which is subject to the oversight of the SEC, was created by SOA to oversee the audit of public companies that are subject to U.S. securities laws. The PCAOB is responsible for registering public accounting firms that audit public companies; establishing or adopting auditing, quality control, ethics and independence standards; conducting inspections of registered public accounting firms and conducting investigations and disciplinary proceedings. The PCAOB replaced the accounting profession's self-regulating framework.

Many provisions of SOA are directed at "issuers". The term issuer is defined in SOA as an issuer as defined in Section 3 of the Securities Exchange Act of 1934, the securities of which are registered under Section 12 of that Act, or that is required to file reports under Section 15(d) of that Act or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that has not withdrawn that registration. Upon first consideration, this definition appears to exclude a large number of SEC registrants (e.g., companies filing voluntarily under section 15(d) of the Exchange Act as a result of an indenture requirement). However, the SEC staff has indicated that most of the SOA requirements are applicable to those companies that voluntarily file. Accordingly, company management, together with their counsel, must carefully research each section of SOA and the related rules to determine if the specific provision is applicable to their fact pattern.

Presented below are some of the key elements of SOA that impact issuers, and where noted, companies filing reports under Section 13(a) or 15(d) of the Securities Exchange Act:

Certifications (Section 302, 404 and 906)

Section 302 – This Section requires each company filing periodic reports under Section 13(a) or 15(d) of the Exchange Act to have their principal executive and financial officers each certify the financial and other information contained in the company's periodic reports. For foreign private issuers filing annual reports on Form 20-F, these certifications are only required in 20-F annual reports, as such companies are not required to file quarterly reports.

Pursuant to the rule, officers are required to certify that: they have read the annual report on Form 20-F; that the report does not contain an untrue statement of material fact or omit to state a material fact; that the financial statements and other financial information contained in the report fairly present (in all material respects) the company's financial condition and results of operations; that they are responsible for establishing and maintaining disclosure controls and procedures for the company and appropriately designed them and evaluated the effectiveness of them as of the year-end date and presented in the annual report their conclusions with regard to them; that they have disclosed in the report any material change in the company's internal control over financial reporting that occurred during the period covered by the annual report; and that they have disclosed to the company's auditors and the audit committee all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting and any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

The 302 certifications are currently effective for companies filing annual reports on Form 20-F. The form of certification is included in Item 12 in "Instructions As To Exhibits" in Form 20-F, but also includes the requirements of the 404 certification language, that is first required for fiscal years ending after July 15, 2004, as indicated below. The company should consult with its legal counsel as to the form of the certification that is appropriate to its circumstances.

Section 404 – This Section requires issuers, other than registered investment companies, to have their principal executive and financial officers each certify in the report that: they are responsible for establishing and maintaining internal controls over financial reporting and that they have designed such internal control over financial reporting or caused them to be designed, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

For foreign private issuers filing annual reports on Form 20-F, these certifications are only required in Form 20-F annual reports, as such companies are not required to file quarterly reports.

Form 20-F requires inclusion of a report of management on the company's internal control over financial reporting. The internal control report must include: a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company; a statement identifying the framework used by management to evaluate the effectiveness of the issuer's internal control over financial reporting; management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective; and a statement that the registered public accounting firm that audited the company's financial statements included in the annual report has issued an attestation report on management's assessment of the company's internal control over financial reporting.

A company is required to provide the registered public accounting firm's attestation report as part of the annual report. Internal control disclosure and reporting requirements related to Section 404 are first effective for foreign private issuer's annual reports on Form 20-F for its fiscal year ending on or after July 15, 2005.

Disclosures

Section 401 – This Section contains provisions intended to improve financial disclosures, including disclosure requirements regarding off-balance sheet arrangements, contractual arrangements and non-GAAP financial measures. GAAP refers to the principles under which the primary financial statements are prepared.

The implementing rules to Section 401 related to non-GAAP financial measures cover separately those that are (1) publicly disclosed in other than SEC filings (Regulation G), and (2) included in filings with the SEC (amendments to Form 20-F).

The rules related to non-GAAP measures included in SEC filings are more prohibitive than Regulation G. These prohibitions and requirements are discussed in Chapter 8 under "Non-GAAP Financial Measures." However, for purposes of SEC filings, a non-GAAP financial measure that otherwise would be prohibited will be permitted if the measure is: (1) required or expressly permitted by the standard-setter that established the GAAP used in the foreign private issuer's primary financial statements; and (2) included in the foreign private issuer's annual report or financial statements used in its home country jurisdiction or market.

Regulation G applies to 1934 Act reporting companies whenever an entity discloses or releases publicly any material information that includes a non-GAAP financial measure. It requires: a presentation of the most directly comparable financial measure calculated and presented in accordance with GAAP; a quantitative reconciliation of the differences between the non-GAAP financial measure presented and the most directly comparable GAAP measure; and inclusion of the reconciliation of the non-GAAP measure to the most directly comparable GAAP measure as part of the disclosure of the non-GAAP financial measure. However, in certain circumstances, such information can be provided by posting it to the registrant's website if the registrant discloses the location and availability of the required information during the presentation of the material information that includes the non-GAAP financial measure.

However, Regulation G does not apply to public disclosure of a non-GAAP financial measure of a foreign private issuer if the following conditions are met: (1) securities of the foreign private issuer are listed or quoted outside the U.S.; (2) the non-GAAP financial measure and the most directly comparable GAAP financial measure are not calculated and presented in accordance with U.S. GAAP; and (3) the disclosure is made outside the U.S. or is included in a written communication that is released outside the U.S..

The final rule clarifies that the information can be released in both the U.S. and outside the U.S. if the release in the U.S. occurs at the same time, or after, the release outside the U.S. Accordingly, for most companies, the information included in the press release will not be subject to Regulation G.

Both Regulation G and the amendments to Form 20-F do not prohibit the disclosure of non-GAAP measures relating to a proposed business combination if the disclosure is contained in a communication that is subject to communication rules applicable to business combination transactions.

Companies should consult with their legal counsel related to compliance with the rules related to the use of non-GAAP measures.

Section 406 – This Section requires a company subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act to disclose whether it has adopted a code of ethics that applies to the company's principal executive, financial, accounting officer or controller, or persons performing similar functions. Foreign private issuers must also disclose annually any amendments to and waivers from the code of ethics relating to those officers. Foreign private issuers may chose to disclose these amendments and waivers more than annually on a Form 6-K or its internet website. Companies that have not adopted an ethics code must disclose this fact and explain why they have not done so. The code of ethics requirements are included in Item 16B to Form 20-F.

Section 408 – This Section requires the SEC to review the financial statements and disclosures of issuers on a regular and systematic basis. However, reviews must be performed no less frequently than once every three years.

Audit committees

Section 301 – This Section resulted in the SEC creating new Exchange Act Rule 10A-3, which established requirements related to audit committees concerning: the independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent auditor; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee.

This Section also required the SEC by rule, to direct the national securities exchanges and associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee guidelines in Rule 10A-3. The requirements of the new Exchange Act Rule 10A-3 apply only to issuers listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association. It does not apply to other reporting companies under Section 13(a) or 15(d) of the Exchange Act. Foreign private issuers that are listed must be in compliance with the new listing rules by July 31, 2005.

Various special considerations were given to foreign private issuers regarding the above requirements. Exemption was given to foreign private issuers who have two-tier boards of directors, stating the non-management or supervisory board qualifies as board of directors from which the audit committee may be formed. Also, non-management or non-executive employees will be permitted to sit on the audit committee of a foreign private issuers if the employee is elected or named to the board of directors or audit committee pursuant to home country legal or listing requirements. Foreign government or foreign governmental entity representatives may also sit on the audit committee of an foreign private issuers provided that representative is not an executive officer of the foreign private issuers and complies with the compensation requirements. Also, consideration was given if local laws require auditor oversight through a board of auditors or groups of statutory auditors that are separate from the board of directors. This consideration exempts the board from the requirements regarding the independence of audit committee members and the audit committee's responsibility to oversee the work of the outside auditor if the board meets the remaining requirements regarding procedure for handling complaints, access to advisors and funding for advisors and additionally, the board meets the following criteria: **(1)** includes persons that are separate from the issuer or includes one or more members who are not directors; **(2)** must no be elected by management or contain members who are also executive officers for the issuers; **(3)** be subject to home country independence standards that provide for its independence from the issuer or the management of the issuer; (4) in accordance with home country legal or listing requirements, be responsible for the appointment, retention and oversight of the outside auditors.

Foreign private issuers availing themselves of the various above exemptions will have to disclose their reliance on the exemptions and their assessment of whether, and if so, how, such reliance would materially adversely affect the ability of their audit committee to act independently and to satisfy the requirements of the rules.

Section 407 – The rules requires a company to disclose its board of directors determination as to whether it has at least one “audit committee financial expert” serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. The audit committee’s financial expert’s understanding of GAAP must be of the GAAP used in the preparation of the primary financial statements. For foreign private issuers with two-tier boards, the determination as to whether a person is a financial expert should be made by the supervisory or non-management board. For foreign private issuers meeting the Exchange Act Rule 10A-3(c)(3) requirements, the determination as to whether a person is a financial expert should be made by the board of auditors or statutory auditors, as applicable.

These disclosure requirements are included in Item 16 to Form 20-F and are applicable to reporting companies irrespective of whether they are listed issuers. Foreign private issuers are currently required to comply with such disclosure requirements, except that compliance with the amendments to Item 16A that requires additional disclosure as to whether the financial expert is independent and that for companies meeting the Exchange Act Rule 10A-3(c)(3) requirements, the term board of directors mean the issuer’s board of auditors or statutory auditors, as applicable, are effective for annual reports for periods ending on or after July 31, 2005.

Independent auditors

Section 201 – Prohibits a registered public accounting firm from providing any non-audit service to an issuer contemporaneously with the audit that includes: (1) bookkeeping or other services related to the accounting records or financial statements of the audit client; (2) financial information systems design and implementation services; (3) appraisal or valuation services, fairness opinion, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions or human resources; (7) broker or dealer, investment adviser, or investment banking services; (8) legal services and expert services unrelated to the audit; (9) any other service that the PCAOB determines, by regulation, is impermissible. With regard to appraisal or valuation services, fairness opinions and contributions-in-kind reports, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during the audit, such services are precluded. However, if the results of these services will be subject to the audit this section precludes the auditor from providing these services even if local laws require the auditors to provide these services. The rules allows an accounting firm to “engage in any non-audit service, including tax services,” that is not listed above, only if the activity is pre-approved by the audit committee of the issuer (See Section 202 for pre-approval requirements).

Section 202 – This Section requires that audit committees pre-approve all audit, review, and attest services that are required under the securities laws and all other permissible non-audit services to be rendered by the audit firm.The pre-approval requirement is waived with respect to the provision of non-audit services for an issuer if the aggregate amount of all such non-audit services provided to the issuer constitutes less than five percent of the total amount of revenues paid by the issuer to its auditor (calculated on the basis of revenues paid by the issuer during the fiscal year when the non-audit services are performed); if such services were not recognized by the issuer at the time of the engagement to be non-audit services; and if such services are promptly brought to the attention of the audit committee and approved prior to completion of the audit. The authority to pre-approve services can be delegated to one or more members of the audit committee, but any decision by the delegate must be presented to the full audit committee. Item 16C of Form 20-F contains the disclosure requirements applicable to principal accountant fees and services.

Section 204 – The accounting firm must report to the audit committee prior to the company's filing of the audit report with the SEC the following: (1) all critical accounting policies and practices to be used, (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management including: ramification of the use of such alternative disclosures and treatments, and the treatment preferred by the auditor; and (3) other material written communications between the auditor and client management, such as schedules of unadjusted differences or management representation letters.

Other

Section 303 – This section prohibits officers and directors of an issuer, and persons acting under the direction of an officer or director, from taking any action to coerce, manipulate, mislead, or fraudulently influence the auditor of the issuer's financial statements if that person knew or should have known that such action, if successful, could result in rendering the financial statements materially misleading. The rules, in combination with the existing rules under Regulation 13B-2, are designed to ensure that management makes open and full disclosures to, and has honest discussions with, the auditor of the issuer's financial statements.

Section 304 – If, as a result of misconduct, an issuer is required to prepare an accounting restatement due to "material non-compliance" with financial reporting requirements of the federal securities laws, Section 304 of SOA requires that the chief executive officer and the chief financial officer to "reimburse the issuer for any bonus or other incentive-based or equity-based compensation received" during the twelve month period following earlier of the first public issuance or filing with the SEC of the non-compliant document. Additionally, profits realized by these officers from the sale of securities of the issuer during that period must be reimbursed to the issuer.

Section 304 does not require that the misconduct that gives rise to the accounting restatement have been on the part of the officer disgorging the bonus or profit. Accordingly, this provision could penalize "innocent" CEOs or CFOs.

Section 402 – It is unlawful, with certain defined exceptions, for any issuer to extend, maintain, arrange or renew credit in the form of a personal loan to or for any director or executive officer. Arrangements outstanding at July 30, 2002, however, are "grandfathered" provided that there is no material modification or renewal. Consumer credit companies may make home improvement and consumer credit loans and issue credit cards to its directors and executive officers if it is done in the ordinary course of business on the same terms and conditions made to the general public.

appendix D

Summary of matters covered by SEC Regulations S-X: Form and Content of and Requirements for Financial Statements

ARTICLE	SUBJECT	SUMMARY OF CONTENTS
1	**Application of Regulations 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**	These articles set forth the information to be included in the financial statements of special types of entities.
9	**Bank Holding Companies**	These articles set forth the information to be included in the financial statements of special types of entities.
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 Regulation 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 Regulation S-X Rule 5-04 (and certain other rules for special types of entities).

appendix E
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, where such issuer:

(i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized;

(ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange; or

(iii) distributes or is required to distribute to its security holders.

Such information may consist 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 home 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.

Inquiries

We value your feedback. If you have any questions or need further information on any of the issues discussed in Entering the United States Securities Markets, A Guide for Non-U.S. Companies, please contact:

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