

Navigating the US Regulatory Minefield
A tactical guide for domestic and international issuers

Nicholas Greenacre
 Todd Garvelink
 Art Meyers

McDERMOTT, WILL & EMERY PALMER & DODGE LLP
ATTORNEYS

global equity

Introduction

- US Securities for International Issuers
- NYSE Shareholder Approval Requirements
- NASDAQ Shareholder Approval Requirements
- Topical Issues
- Questions

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US Securities for international issuers - 1

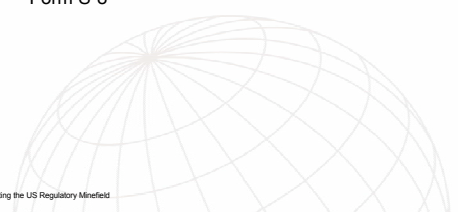
- Securities Exchange Act of 1934
 - Form F-1
 - Compulsory registration
 - *trade on US exchange*
 - *assets >\$10m + >500 US holders*
 - Rule 12g3-2(a)
 - *<300 US holders*
 - *foreign private issuer*

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US Securities for international issuers - 2

Securities Act of 1933

- **Registered class**
 - Form S-8



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US Securities for international issuers - 3

Securities Act of 1933

- **Unregistered**
 - Regulation D (Rule 506)
 - *Accredited investors*
 - *35 person limit*
 - *Senior management only*
 - Rule 701
 - *\$5m limit*
 - *US GAAP over \$5m*



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US Securities for international issuers - 4

- **Blue Sky Laws**
 - Self-executing exemptions (e.g. Florida, Texas)
 - Notice filing (e.g. Georgia, Minnesota)
 - Substantive Requirements (e.g. California)
- **Investment Company Act**
 - Characteristics
 - <100 participants




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US Listing?

- ✓ “Acquisition Currency”
- ✓ Prestige
- ✓ Wider investor following
- ✓ US GAAP reconciliation
- ✓ Tradeable stock to US employees



- x Disclosure
- x SOX
- x Compliance Costs
- x Litigation

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SOX Requirements for non-US companies

- **CEO and CFO certifications**
 - Disclosure controls
 - Internal controls
- **Personal Loans**
- **Periodic Disclosure**
- **Regulation BTR**
- **SRO Rules**
- **Auditor Independence**
- **Audit Committees**
- **Reimbursement after mistatement**



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Reactions

- **De-list?**
 - QXL ricardo
- **Defer US offerings**

BUT

- **Lobster Trap**
- **EU Governance Proposals**



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NYSE Shareholder Approval Requirements

- **New plans and material revisions to existing plans**
 - Generally effective 30 June 2003
 - Limited grandfathering for "discretionary" and "formula" plans
 - Elimination of discretionary broker voting

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NYSE Shareholder Approval Requirements

- **Definition of plan**
 - DRIP
 - FMV purchases
 - Cash payments
 - Treasury shares
 - Individual arrangements

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NYSE Shareholder Approval Requirements

- **Material revision**
 - Expansion of types of awards
 - Material increase in number of shares available
 - Material expansion of class of participants
 - Material extension of plan term
 - Material change in method of determining exercise price
 - Deletion or limitation of any provision prohibiting repricing

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NYSE Shareholder Approval Requirements

- **Exceptions**
 - All exceptions require Compensation Committee approval
 - Must notify exchange when an exception is used
 - Employment inducement awards
 - Mergers and acquisitions
 - Qualified and 423 plans
 - Parallel excess plans

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NYSE Shareholder Approval Requirements

- **FAQs**
 - Matching shares
 - Restricted stock units
 - Sublimits
 - Amending awards
 - Awards in contemplation of shareholder approval
 - Plans "comparable" to U.S. 401(k), 423, and excess benefit plans
 - Trust purchases

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NASDAQ Shareholder Approval Requirements

- **NASDAQ Rule 4350**
 - most stock option plans
 - other equity arrangements
- **Other NASDAQ Rules Similar to NYSE**
 - evergreen plans
 - formula plans
 - discretionary plans

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Exceptions - 1

- **Material amendments**
- **Not an “equity compensation plan”**
- **Cash-settled awards**
- **General issue of warrants or rights**
- **Tax qualified plans and parallel nonqualified plans**

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Exceptions - 2

- **Plans for share purchase at fair market value**
- **M&A**
- **Inducement awards**
 - Includes re-employed employee
 - press release

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Exceptions - 3

- **Foreign Issuers (Rule 4350(a))**
 - any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer; or
 - contrary to generally accepted business practices in the issuer's country of domicile.

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Special issues

- **Repricings**
 - material amendment
 - no presumption where plan silent
- **Broker Voting**
 - Already prohibited under NASDAQ rules
- **Grandfathering**
 - 30 June 2003
 - material amendments

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Other Considerations - 1

- **Reportable events on form 8-K for senior executives and directors**
- **Shares held in off-shore trusts**
- **Nil-priced options**
- **Dividends qualifying for 15% tax rate**

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Other Considerations - 2

- **Proposed ISO rules require fixed-share limits**
- **Golden parachute rule changes**
- **Provisory note reduction**

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Todd K. Garvelink
McDermott, Will & Emery
T: +1 212 547 5308
F: +1 212 547 5444
tgarvelink@mwe.com

Nicholas Greenacre
McDermott, Will & Emery
T: +44 20 7575 0345
F: +44 20 7577 6950
ngreenacre@europe.mwe.com

Arthur S. Meyers
Palmer & Dodge LLP
Boston, MA
T: +1 617 230-0471
ameyers@palmerdodge.com

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