

**Securities Law
Requirements Around the
World**

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Summary

- Overview of Global Securities Laws
- Compliance Requirements
- Trends – Harmonization
- Trends - Enforcement
- Noncompliance – The Pitfalls

Overview of Global Securities Laws

- Offers Pursuant To Stock Plans
 - Awards (Options, Purchase Rights, RSUs, Restricted Stock, SARs)
 - Exchanges
 - IPOs – Directed Share Plans
 - Stock Splits

Overview of Global Securities Laws

- Why Regulate Securities Offers?
- Key Facts And Circumstances Determining Regulation
 - Number Of Offerees (e.g., Employees, Consultants, Franchisees)
 - Value Of Offer
 - Method Of Delivery
 - Previous Offers
 - Corporate Structure
- Securities Regulations Vary From Country To Country

Compliance Requirements

- Initial Compliance
 - Registration
 - Approval
- Ongoing Compliance
 - Notification
 - Filings

Compliance Requirements

 **Australia**

- Class Order 03/184
 - Companies Must Be Publicly Traded
 - Options May Not Exceed 5% Of Total Capital
 - Australia Sub-Plan May Be Required
 - Offer Document Required (With Current AUD/USD Exchange Rate)
 - Lodge Offer Document And Grant Materials With ASIC Within Seven Days Of Offer

Compliance Requirements

 **Belgium**

- Prospectus Required If Offers Of Securities Not Listed On An EU Exchange Are Directed To More Than 50 Employees
- Governed By The Banking, Finance, And Insurance Commission
- Partial Exemption To Allow Abbreviated Prospectus May Be Granted
- Abbreviated Prospectus Includes:
 - Description Of Stock Plan And Offer
 - Company Financial Information
 - Company New Developments And Prospectus
 - Tax Treatment For Awards



Compliance Requirements

 **Canada (Quebec)**

- Application For Relief From:
 - Prospectus
 - Dealer Registration
 - Designated Broker Registration
- Designation Of Captive Brokers
- French Translation Of Offering Notices
- Detailed Summary Of Plan Provisions
- Most Recent Audited Financial Statements
- Filing Fee Of Approximately C\$1,000



Compliance Requirements

 **China**

- Approval from the China Securities Regulatory Commission ("CSRC") is required before any options are granted.
- Such approval cannot be obtained because there is no official procedure in place for foreign companies to obtain the approval of the CSRC.
- Offer of securities to employees through stock option plans by foreign companies without the approval of the CSRC is a breach of securities law.
- Most multinational companies require employees in China to use the full cashless exercise method to reduce the legal risks.



Compliance Requirements

 **China (continued)**

- In response To An Anonymous Inquiry, CSRC Has Indicated That The Grant Of Options Under An Employee Stock Plan Will Not Be Subject To CSRC Approval If:
 - Plan Is Available To Employees Of The Issuer and its Affiliates,
 - Options Are Granted To A Limited Number Of Employees, And
 - Employees Are Not Allowed To Assign The Shares Acquired Under The Plan To Another Person In China



Compliance Requirements

 **France**

- Prospectus Must Include:
 - Description Of Plan
 - Description Of Person(s) Responsible For Preparation Of The Prospectus And Auditors That Prepare And Approve The Annual Report And Accounts Of The Parent Company
 - Description And Financial Position Of The Parent Company
 - Description Of The Board Of Directors Of The Parent Company
 - Description Of The Growth Of The Parent Company And Predicted Future Development Of The Company
- Submit All Documents In French To The *Autorit... Des March... Financiers* (The "AMF")



Compliance Requirements

 **Hong Kong**

- Legislation Enacted In December 2004
- Formalizes Various Exemptions To Securities Registration Requirements
 - Exemptions For Offerings To Employees
 - Offers To Fewer Than 50 People.



Compliance Requirements

 **Italy**

- Prospectus Required If Offers Made To More Than 200 Employees (Excluding Management)
- Prospectus Must Include:
 - Description Of Company's Business And Corporate Structure
 - Investor Warnings
 - Financial Disclosures
 - Company's Bylaws
 - Description Of Material Business Developments And Risks
- Must Be Filed With CONSOB Five Days Before Offers Are Made
- Stock Option And Employee Stock Purchase Plans That Are Subject To The Italian Prospectus Requirements Must Use An Italian Financial Intermediary In The Administration Of The Plans



Compliance Requirements

 **Japan**

- Form 7 Securities Registration Statement
 - 50 Or More Employees And Offer Value Equal To Or Greater Than ¥100,000,000
 - Include Translated Plan, Audited Financials, And Certification Of Compliance With U.S. Securities Laws
- Form 6 Securities Notification Statement
 - 50 Or More Employees And Offer Value Equal Between ¥10,000,001 And ¥99,999,999
 - Fewer Than 50 Employees And Offer Value ¥100,000,000 Or Greater
- Aggregation Rules Apply
- EDINET Registration Required
- Exemption may be available for equity grants to directors and employees of a direct, wholly-owned subsidiary of a non-Japanese issuer.



Compliance Requirements

 **Malaysia**

- Information Memorandum
 - Option Agreement And Related Materials
 - File Within Seven Days Of Delivery To Employees



Compliance Requirements



New Zealand

- Exemption Notice 2002
 - Applies To Employee Stock Awards Granted After 3/31/03
 - Disclosures To Employees Must Include Company's Financial Statements
 - Filing With Registrar Of Companies
 - Annual Updates



Compliance Requirements



Philippines

- Securities Regulation Code
 - File Request For Exemption From The Registration Requirements With Securities And Exchange Commission
 - Documents Must Be Authenticated By The Philippines' Consulate
 - An Exemption Fee Of 1/10th of 1% Of The Amount Of Securities Offered And A Research Fee Equal To 1% Of The Exemption Fee Must Be Paid



Compliance Requirements



Russia

- New Directive Issued By The Russian Central Bank
 - Russian banks are required to provide the Central Bank with information regarding non-Russian securities held by the banks and their Russian resident clients as of January 1, 2005.
 - Reports were due by February 25, 2005.



Compliance Requirements

Thailand

- Securities Registration Requirements
 - Any offer subject to registration unless exemption applies
 - Exemption available for equity compensation programs if during 12-month period
 - Offers are made to less than 35 employees or directors
 - Aggregate value of securities sold pursuant to the program exceeds Thai Baht 20 Million (Approximately US\$ 517,000)
 - Exemption applies on a plan-by-plan basis



Compliance Requirements Prospectus

- Prospectus Delivery
 - Electronic Dissemination
 - Hard Copy
 - Company Intranet Site



Compliance Requirements Ongoing Compliance

-  France
-  Japan
-  Portugal
-  Thailand
-  United Kingdom



Exemptions

- Small Offerings
- Employee Plans
- Sophisticated Investors

**Exemptions – Small Offerings
No Registration or Approval Necessary**

-  Australia – 20 Or Fewer Employees In 12 Month Period
-  Belgium – Under 50 Employees
-  Columbia – 99 Or Fewer Employees
-  France – Under 100 Employees
-  Italy – Under 200 Employees (Management Excluded) And Grant Value Under €40,000
-  Japan – Under 50 Employees And Grant Value Under ¥10,000,000
-  Korea – Under 50 Employees In Six Month Period Or W1,000,000,000 In Two Years
-  Thailand – Under 35 Employees Or Baht 20 Million

**Exemptions – Employee Plans
No Registration or Approval Necessary**

-  Canada
-  France (With French-Qualified Option Plan)
-  Germany
-  United Kingdom
-  United States

Exemptions – Sophisticated Investors No Registration or Approval Necessary

-  Australia
-  Canada
-  Italy
-  Malaysia
-  New Zealand
-  Taiwan
-  United States



Trends – Harmonization

Canada (Except Quebec)

- Multilateral Instrument 45-102
 - Replaces Separate Provincial Compliance Requirements
 - Exemption From Approval Requirements For First Trades By Employees Exempt
 - Exemption From Dealer Registration Available (Except Alberta)
 - Minor Ongoing Reporting



Trends – Harmonization

European Union

- EU Prospectus Directive
 - Published December 31, 2003
 - Must Be Enacted By Member States No Later Than July 1, 2005
 - Intended To Create A Single Regime To Govern Content, Format, Approval, And Distribution Of A Prospectus Within The EU
- Exemptions
 - Offers To Less Than 100 Persons Per Member State; Or
 - Offers With Total Consideration Less Than €2.5 Million Over 12 Month Period
- Determination Of Home Member State



Trends – Harmonization



European Union (continued)

- Countries That Have Adopted The Directive So Far
 - Belgium
 - Denmark
 - Luxembourg
 - Spain
 - Slovak Republic



Trends - Enforcement



Australia

- ASIC Will Audit The Annual Directors' Report Of All Listed Australian Companies To Ensure That Companies Properly Disclose Compensation And Stock Plan Benefits Paid To Directors And Executive Officers
- ASIC Also Will Audit The Financial Reports Of 440 Listed Australian Companies To Ensure Compliance With Accounting Standards



Trends - Enforcement



Canada

- All Provinces (Other Than British Columbia Which Is Adopting Its Own Legislation) Adopted Audit Compliance Rules (Multilateral Instrument 52-109) That Impose A Certification Of Disclosures Requirement On CEOs And CFOs. (Similar To Sarbanes-Oxley)



Trends - Enforcement



European Union

- EU Transparency Directive, Adopted On June 29, 2004 And To Be Implemented Next Year, Will Require Certification Of Annual And Bi-Annual Disclosures And Increased Disclosure Of Share Ownership



Trends - Enforcement



France

- Failure To File A Required Prospectus May Lead To:
 - A Maximum Penalty Of €1.5 Million (US\$1.8 Million) Or Ten Times The Profit Realized By The Infringer
 - Rescission Rights For Employees
- The Securities Authorities Have Informally Indicated That They Will Limit Their Inquiry To The Last Three Years



Trends - Enforcement



France (continued)

- Corporate Governance Principles Announced By The Association Française des Entreprises Privées ("AFEP") And Mouvement des Entreprises de France ("MEDEF") Recommend That Corporations:
 - Refrain From Granting Options At A Discount
 - Refrain From "Timing" The Market By Requiring Options To Be Granted At Set Intervals (In Addition To The Existing "Closed Periods" During Which Qualified Options May Not Be Granted In France)
 - Impose Other Procedural Requirements On Option Grants
- The AFM Intends to Scrutinize and Take Action Against Non-EU Issuers Publicly Offering Their Securities In France. This Will Require Employers To Ensure That Their Equity Compensation Programs Fall Within An Exception To The Public Offering Requirements In France



Trends - Enforcement



Japan

- Failure To Comply With Securities Laws May Lead To:
 - A Fine Of Up To ¥3 Million And/Or Imprisonment For A Period Of Up To 3 Years For Executives Responsible For Non-Compliance
 - A Fine Of Up To ¥300 Million For Company
 - Employee Rescission Rights
- The Securities Authorities Have Not Pursued Any Action Against Non-Japanese Companies Offering Employee Stock Plans, Even Though They Are Aware Of Non-Compliance
- Japanese Securities Laws Provide No Clear Means To Cure Violations





Netherlands

- Rules Proposed To Be Included In The Corporate Governance Code:
 - Increased Transparency Of Executive Compensation
 - A Requirement To Adopt A Set Of Corporate Governance Principles
 - An Explanation Of The Extent Of Compliance With Corporate Governance Principles






United States

- In 2003, The NYSE Division Of Enforcement Prosecuted 231 Cases, Including 59 Actions Against Member Firms And Collected US\$12.6 Million In Disciplinary Fines
- In 2004, The NYSE Division Of Enforcement Prosecuted 195 Cases, Including 50 Actions Against Member Firms And Collected US\$25.6 Million In Disciplinary Fines



Noncompliance – The Pitfalls

- Penalties – Civil/Criminal
- Negative Publicity
- Enforcement
- Private Lawsuits - Rescission Rights
- Sarbanes-Oxley
- Remedial Measures
- Fees
- Whistleblower



Questions?

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