

Tapping the United States Capital Markets in 2016

Ship Finance and Maritime Operations Seminar

February 18, 2016

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General State of Shipping Markets

- Oversupply of tonnage in virtually all sectors
- Poor demand due to *global* economics
- China pullback
- Collapsing crude oil prices
- Owners struggle to obtain financing on favorable terms

The US Capital Markets

- Public or private (institutional) sources of funds as an alternative to owner's equity and bank debt
- Available in many forms of equity and debt
- Universally regarded as the single most liquid source of funds in the world





General State of US Capital Markets

- Few deals closed in 2015
- Limited “windows” of opportunity
- Some secondary offerings (no dilution)
- Stock buybacks
- Private equity firms waiting

What can companies do in 2016?



US Capital Markets Opportunities

- “Windows” open and close
- Industries come in and out of favor
- Shipping is a hard sell; bigger is better
- But deals can be done *at a price* ...
- US institutions and hedge funds continue to be flush with cash
- There are times when demand for IPO stocks soar
- Preparation is necessary to take advantage of “open windows” and high demand for IPOs



END
WORK ZONE



BE
PREPARED
TO STOP

New Entrants: Why Access the US Capital Markets?

- Ready and inexpensive source of funds
- Makes future capital raising easier, especially for “*well known seasoned issuers*” or WKSIs (\$700 million in public market capitalization)
- For foreign companies (most shipping industry issuers), exempt from SEC proxy rules, short-swing profits rules
- *No mandatory tender offers typical in European-style jurisdictions*



IPO Equities

- Common (Ordinary) Shares
- American Depositary Receipts (“ADRs”)
 - a means for US investors to receive dollar denominated securities and dividends
 - separates a home market of common (ordinary) shares from a US market of ADRs
 - Used where local laws conflict with US laws
 - » share register
 - » transfer taxes

United States Public Offerings

- Unless all of the investors are large institutions, the sale of securities likely to be a public offering
- SEC registration requirements
- Prospectus delivery requirements



The US Securities and Exchange Commission

- To conduct a US IPO, the Company must register the shares that are to be offered or sold with the SEC
- The US securities laws gives the SEC authority to publish registration forms, and decide what information is required to be disclosed. For example, the main registration form for foreign issuers is the “Form F-1”, which tells us what information must be in the prospectus
- The SEC then reviews whether the issuer’s prospectus meets the requirements of the form.
- The SEC does not recommend or judge a transaction or its participants on their merits

SEC Divisions

- Division of Corporation Finance
- Division of Trading & Markets
- Division of Investment Management
- Division of Enforcement
- Division of Risk, Strategy & Financial Innovation

- *In an IPO, we work with people we know within the Division of Corporation Finance. The SEC has developed an institutional memory for shipping deals.*

The US Congress and SEC Want More Listings To Take Place in the US

- Benefits for “Foreign Private Issuers”
- Benefits for Emerging Growth Companies

What are Foreign Private Issuers?

- Corporations incorporated outside the US
- That have at least 50% foreign holders of records
- Or, that have a majority of US holders of record, directly or indirectly and none of the following:
 - a majority of the company’s directors or executive officers are US citizens or residents
 - majority of the company’s assets are located in the US
 - the business of the company is administered principally in the US

The Jobs Act (Enacted in 2012)

- Created a class of new entrants to the US capital markets called “Emerging Growth Companies” or “EGCs”
- To be an EGC, must have less than \$1.0 billion in gross revenue in last fiscal year, and not already a US public filer



EGC Process

- EGCs can submit a draft IPO registration statement with the SEC for confidential review
- Can elicit comments confidentially and respond by submitting confidential amendments
- The Company must publicly file the registration statement no later than 15 days before the “road show” commences, at which time all prior submissions also become public

Advantages of EGC Status

- Delays necessity for “auditors’ attestation report” on internal controls for up to 5 years (save \$\$\$)
- Requires only two years of audited financial statements
- Can engage in “testing the waters” communications with potential investors

Benefits For a Foreign Private Issuers

- Easier on Forming Committees
- Easier on Corporate Governance
- Exemption from US Proxy Rules and
- No Disclosure of Individual Compensation
- Exemption from Certain Complicated US Trading Rules

Follow-on Offerings Made Easy

- Can use “shelf” registration statement (Form F-3)
- Available one year after IPO
- Use of integrated disclosure through “incorporation by reference”
- The SEC may declare effectiveness with limited review, saving time and money
- Automatic effectiveness (no SEC review) for “well-known seasoned issuers” (listed companies with a worldwide public float of at least \$700 million)

Players in a Public Equity Offering

- The Issuer
- The Selling Shareholders
- The Managing Underwriter
- The Selling Syndicate
- The Stock Exchange/
Nasdaq
- The Lawyers
- The Auditors
- Experts
- Financial Printer
- The Transfer Agent
- DTC
- Who is “Cede & Co.”

Players in a Public Debt Offering

- The Issuer
- The Initial Purchaser
- The Purchaser's
Syndicate
- The Rating Agencies
- The Lawyers
- The Auditors
- Experts
- Printer
- The Trustee
- The Registrar and
Paying Agent
- DTC/Cede & Co.

Beginning the transaction process

- Organizational meeting with the participants and the underwriters
- Due diligence
- Begin preparation of documents:
 - Prospectus
 - Financial statements/projections
 - Rating agency presentation
 - Road show presentation



Issuer's role in the Prospectus

- The Summary: “Company” and “Strategy”
- Don't over-sell it: Avoid “forward-looking statements” and projections
- The “Business” section and industry analysis
- Unaudited interim financial statements
- “Management's Discussion and Analysis of Financial Condition and Results of Operations”

Key documents

- Underwriter's engagement letter
- Prospectus: "Red Herring" and Final
- Underwriting Agreement/Purchase Agreement
- Indenture/Warrant Agreement/Subscription Agreement
- Closing documents

SEC Disclosure Requirements for Foreign Private Issuers

- Most recent audited financial statements typically no more than 12 months old for initial public offerings
- By SEC rules, only annual reports on Form 20-F are required, but the market will expect quarterly reporting
- Quarterly unaudited financial statements, as a practical matter, may be no more than 135 days old
- Annual reports contain risk factors
- Must disclose share ownership of the directors, administrative, supervisory and management personnel
- Must disclose beneficial owners of 5% or more of each class of the company's voting securities

Recurring SEC Issues

- Are ships a “business” requiring the disclosure of pro forma financial information?
- Use of puffery/bravado
- History of environmental issues
- Disclosure of compensation and benefits
- Accounting effects of options
- Climate change
- Doing business with “State Sponsors of Terrorism”

Dealing with SEC Accounting Comments

- Auditors have primary role
- Know the SEC's accounting rules
- Foreign companies can use IFRS as adopted by the IASB
- The SEC legislates GAAP through its comments
- Setting precedent can affect future offerings not only for you, but for all

Keys to efficiency

- Make and keep goals
- Get the auditors and their US securities experts involved early
- File your listing application early
- Know your long-term needs
- Avoid the “battle of the drafts”
- Be persistent
- Who is responsible for delays?

The “Road Show”

- When the Underwriters are ready to market the deal and any remaining SEC comments are not material, the “red herring” preliminary prospectus used on the road show is printed
- It can be a question: whether to start the road show before all the SEC comments have been dealt with



Setting the Price

- When the SEC's comments have finally been satisfied and the underwriters have given a prospective pricing date to the Company, the Company asks the SEC to declare the registration statement "effective" on 48 hours notice
- The underwriters "build a book" and offer a price
- The company will have a pricing committee, which will determine to accept or reject the offer
- At the pricing, it is the first time the Company and Underwriters enter into a contract for the distribution of the shares (the price is memorialized in the Underwriting Agreement)

When Do We Get Our Money?

- Typically, the pricing occurs after the close of the US markets on a Wednesday or Thursday
- The stock exchange listing is finalized, and trading commences the next day on a “when-issued” basis
- Three trading days later (“T+3”), the deal is closed; the shares are issued, and the issuer collects the net proceeds



Once A Public Company Lists: Corporate Governance Requirements

- Independent board
- Powerful audit committee
- Nomination and compensation committees
- No personal loans “to or for” any director or executive officer

NYSE Governance Rules for Foreign Private Issuers

- It's (almost) all voluntary
- The NYSE (and Nasdaq) rely on home country practice, which is usually the jurisdiction of incorporation
- There are no mandatory practices in the Marshall Islands!

NYSE Governance Rules for Foreign Private Issuers

- Must maintain an Audit Committee consisting of at least one independent Board member, but the definition of “independent” for this purpose is easier than the NYSE requirement for US companies

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