

Dual Listings of Australian Companies on U.S. Exchanges

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- Nearly 2,000 lawyers, in 40 offices, across four continents
- International corporate and securities financing and corporate governance for public and private companies, e.g.,
 - IPOs and following-on offerings,
 - Dual listings,
 - public and private equity and debt offerings,
 - public and private M&A transactions, and
 - alternative public listings.

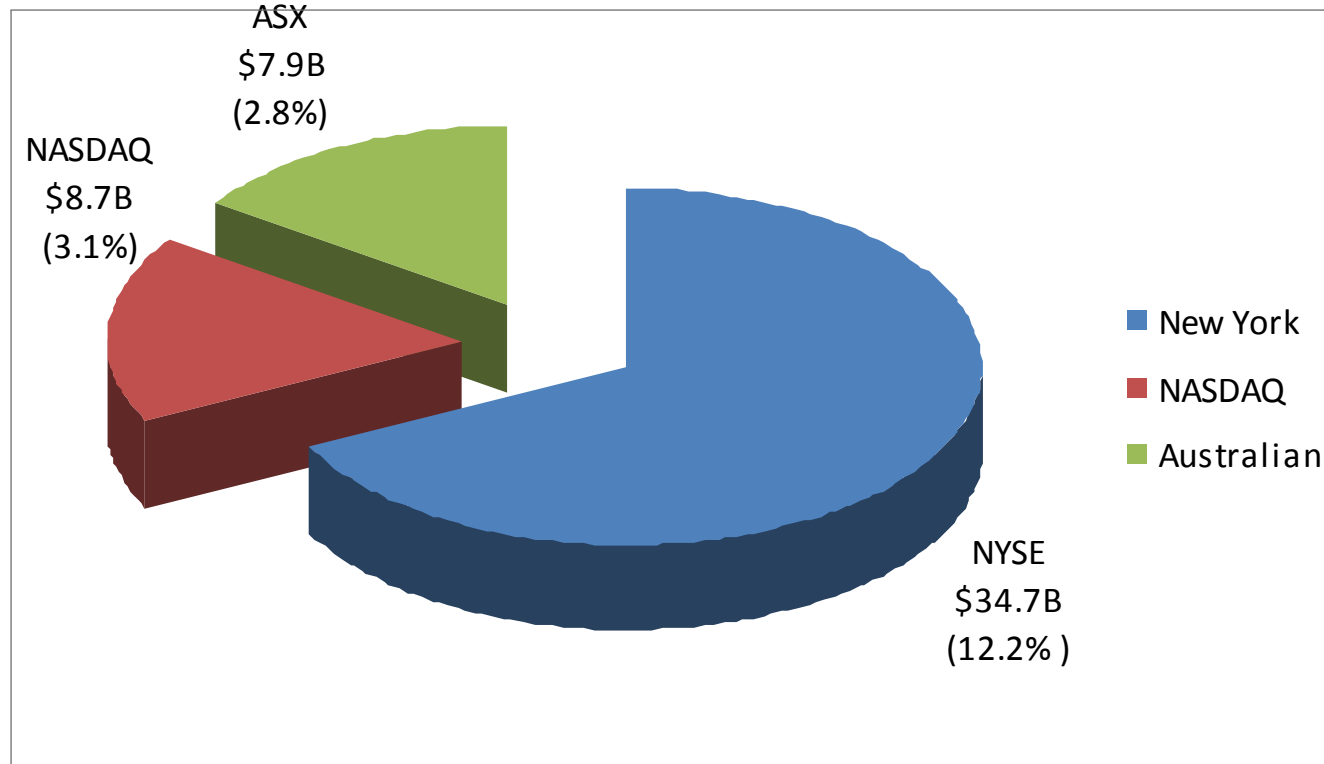
Overview

1. Advantages
2. Disadvantages
3. IPO and Listing
4. Listing Only
5. Ongoing Obligations and SEC Accommodations
6. Delisting

Advantages of dual listing

- Access to one of the world's most vibrant capital markets

2010 IPO Activity: ASX, NYSE and Nasdaq



*Global IPO Trends 2011 Report, Ernst & Young

Advantages of dual listing (cont'd)

Australian vs. US Markets

June 2009 to June 2011 - The ASX200's new capital raising was down relative to the US and other markets:

- 91%, relative to Europe,
- 84% relative to Asia (excl. Japan), and
- **80% relative to the US.**

First half of 2011:

Deal value of Australian IPOs was \$560 million vs. global IPO value of \$130 billion (**~0.5%** -- Australia usually at 2-3%).

- worst for IPOs since 2002, and
- worst for equity issuance since 2005.

**According to Deutsche Bank Global Market Research Report, Australian Financial Review, Dealogic; August 3, 2011*

Advantages of dual listing (cont'd)

Trading benefits	Operational benefits
<ul style="list-style-type: none">▪ Increased liquidity▪ Broader investor base▪ Around-the-clock trading▪ Increased pricing certainty based on ASX trading prices	<ul style="list-style-type: none">▪ Increased brand awareness with prestigious listing on NYSE / NASDAQ▪ “Acquisition currency” for potential M&A activity in the US▪ Facilitate equity-based compensation to US employees▪ SEC Accommodations— corporate government and public reporting

Disadvantages

- Increased costs
- Regulatory burden (e.g., Sarbanes-Oxley Act, Dodd Frank Act, ...)
- Litigious nature of US investors
- Arbitrage risk in trading prices

Listing process – “foreign private issuer”

All foreign companies are considered “foreign private issuers” unless:

- more than 50% of the voting securities are owned by US residents, *and any of the following apply*:
 - a majority of officers or directors are US citizens or residents; *or*
 - more than 50% of the company's assets are in the US; *or*
 - the company's business is administered principally in the US.
- Purpose - make sure that US companies cannot take advantage of the relaxed disclosure and other accommodations.
 - Test annually at the end of second fiscal quarter.

1. IPO and listing

Where an Australian company seeks to simultaneously conduct a significant capital raise in the US market and list its securities on a US exchange.

- ***Duration*** - process can take 4 to 6 months.
- **Pre-filing preparation work.** Company, bankers, attorneys, and auditors prepare for the offering. Create timetable, prepare financial statements, conduct due diligence, draft disclosure documents,...

1. IPO and listing (cont.)

- **Form F-1** - registration statement under the US Securities Act to register a public offering by a foreign private issuer.
 - covers a specific number or dollar amount of securities to be offered and sold to the public.

Disclosures required:

Risk Factors	MD&A	Security Ownership
Offering Information	Business	Shares Eligible for Future Sale
Use of Proceeds	Management	Description of Securities Being Offered
Dividend Policy	Executive Compensation	Tax Consequences
Capitalization and Dilution	Corporate Governance	Underwriting
Selected Financial Data	Related Party Transactions	Financial Statements

1. IPO and listing (cont.)

- ***SEC comment process (4 to 7 rounds)***
- ***Listing application submitted***
- ***Form F-6.*** Registration of ADRs (if applicable)
- ***Underwriter matters.*** e.g., underwriter's counsel coordinates approval from FINRA for underwriter compensation.
- ***Listing when:***
 - Clear SEC comments and declare F-1 effective
 - Obtain FINRA approval
 - NYSE / Nasdaq approves listing application
 - Underwriting matters completed

2. Listing only

Duration - process can take 3 to 5 months

Form 20-F:

- the registration for a foreign private issuer's equity securities under the Exchange Act
- automatically effective in 60 days (even if SEC comments not cleared)
- also sets forth the disclosure requirements for a foreign private issuer's annual report.

Listing application submitted

F-6 - registration of ADRs (if applicable)

SEC comment process (4 – 7 rounds)

- Listing occurs after clear SEC comments and listing application approved

2. Listing only (cont.)

Optional future offerings on Form F-3:

- short-form “shelf” registration statement on Form F-3 for more efficient primary offering
- “take down” offerings less expensive and faster than F-1 IPO offering
- must timely report for at least twelve months
- additional limitations for smaller reporting companies

3. Listing hybrids

Other alternatives:

- no “one-size-fits-all”
- for younger, smaller companies, there are tailored transactions for listings
- can include restructuring of the operating company, smaller private capital raise, then a subsequent larger capital raise conducted in connection with the initial listing

What do I list?

Alt #1 - Ordinary shares

- same as may be traded on ASX
- can be traded on a US national securities exchange
- issues arise from potential application of both Australian and US laws

Alt #2 - ADRs

- American Depositary Receipts (a.k.a. American Depositary Shares, or ADSs)
- longtime solution for listing foreign securities on a US exchange

ADRs

Definition:

- A negotiable certificate that trades in the US market and represents an ownership interest in a foreign company's securities.
- A US depository bank issues ADRs after the issuer delivers the underlying securities to the depository's local custodian bank in the foreign company's home market.

Benefits: easier for US investors to invest in foreign companies:

- denominated in US dollars
- pay dividends in US dollars
- avoid any foreign stamp duty or transfer taxes
- coordinate voting and shareholder communications through depository bank
- can use multiples or fraction interest of the ordinary shares

ADRs (cont)

Australian laws:

- No stamp duty
- No capital gains tax for US investor as long as less than 10% owner
- If more than 10%, may be taxed depending on issuer's assets

Australian company can list ADRs or ordinary shares

SEC Accommodations - Accounting

What accounting standards required?

- Australian issuers may use financial statements prepared in accordance with Australian equivalents to International Financial Reporting Standards (“AIFRS”).
- Pre-2007 – SEC required a reconciliation of the AIFRS to US GAAP
- In 2007, the SEC abolished the reconciliation requirement
- Now SEC moving towards IFRS and away from US GAAP.

SEC Accommodations — Corporate Governance

“Home Sweet Home” – Australian companies can generally follow home country corporate practices.

Exemptions from US req'ts (not required to follow)	Required to follow
<ul style="list-style-type: none"> ▪ majority of independent directors on the Board ▪ nominations committee ▪ regular executive sessions where only independent directors are present 	<ul style="list-style-type: none"> ▪ <i>Audit Committee</i>—comprised of three independent directors. ▪ <i>Disclosure</i> - must describe in its 20-F each requirement not complied with and the applicable Australian home country practice.

SEC Accommodations – Public Reporting

Australian foreign private issuers are exempt from numerous US public reporting requirements:

Exemptions from US req'ts (not required to file)	Required to file
<ul style="list-style-type: none"> ▪ Proxy Rules (Section 14) ▪ Insider reporting (Section 16(a)) ▪ Insider short-swing profits (Section 16(b)) ▪ Current and Quarterly Reports (8-Ks and 10-Qs) ▪ Selective Disclosures (Reg FD) 	<ul style="list-style-type: none"> ▪ Form 6-K ▪ Form 20-F: Annual Report ▪ Section 13D/G Filings ▪ Foreign Corrupt Practices Act ▪ Sarbanes-Oxley (certain provisions)

SEC Accommodations – Public Reporting (cont.)

Form 6-K:

- Press releases (most common)
- New issue announcements, application for quotation of additional securities (Appendix 3B)
- Change of director's interest notice (Appendix 3Y)
- Circular to shareholders including notice of AGM
- Quarterly reports (Appendix 4C)
- Half year reports (Appendix 4D)
- Annual reports (Appendix 4E)

Delisting (deregistration)

...has become easier

2002 - when SOX was enacted, many foreign issuers wanted to deregister. They had to prove that they had fewer than 300 US beneficial security holders.

2007 - the SEC adopted rules making it easier for foreign issuers to deregister.

- Rule 12b-6: may deregister if in a recent 12-month period the security's US average daily trading value (ADTV) is no greater than 5% of its worldwide ADTV
 - Other conditions must also be met (e.g., not delinquent in filings, no recent US offerings, traded on foreign exchange,...).
- Form 15F: file and becomes effective in 90 days to complete the deregistration.



Thank you.

Any questions?