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CAPITAL MARKETS

Innovative approaches to cross-listings

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A cross-listing of shares occurs when an issuer lists its shares on stock exchanges in two or more countries with the goal that the shares traded on each exchange are fungible with the shares traded on the other exchanges. To effect a cross-listing, an issuer needs to develop a share structure that complies with the laws of the jurisdiction of its organisation, the rules and regulations of each stock exchange where its shares will be listed and traded and applicable securities laws. To be fully fungible, the shares traded on each exchange must be denominated in the same currency and the holders of the shares must have the same economic and voting rights and the ability to purchase shares on one exchange and sell them on another exchange. These features mitigate currency risk, increase exposure to additional investors and analysts and ultimately enhance liquidity and price discovery of the shares. In certain cases, to accommodate the laws in the jurisdiction of the organisation or the applicable securities laws, different classes of shares, which are 'effectively' fungible, may be traded on different exchanges.

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Why do issuers cross-list?

Issuers often cross-list their shares when the size of the issuer's financial needs exceeds the capacity of its initial market or if an issuer seeks additional exposure and liquidity for its shares. A cross-listing increases the international visibility of an issuer with increased press and research coverage and allows access to markets with greater capital resources, which benefits not only the existing shareholders but also the shareholders in the new markets.

Structuring a cross-listing in the US

To carry out a cross-listing, an issuer needs to be able to legally reflect the shares in its share register that are eligible for trading on each exchange. This is a matter of local law. In addition, in the US, shares may only be listed and traded on a US exchange, such as the New York Stock Exchange or the Nasdaq Stock Market, if the issuer registers all of the shares to be traded on a US exchange with the US Securities and Exchange Commission (SEC) and uses only a US registered transfer agent to perform 'transfer agent functions' with respect to the SEC registered shares. This means that a US registered transfer agent is required to serve as the registrar and transfer agent of the shares eligible for trading on US exchanges, which can give rise to difficulties since certain jurisdictions, such as Norway, do not permit issuers to maintain a share register outside of their jurisdiction of incorporation.

One of the most important aspects of cross-listing is the ability to purchase shares in one market and sell those shares in another market. To facilitate these cross market transactions a 'link' must exist between the Depository Trust Company (DTC), the central securities depository in the US through which the overwhelming majority of US exchange traded shares clear and settle, and the central securities depository (CSD) that facilitates trading on the non-US exchange and maintains the relevant beneficial holder positions. It is through this 'link' that shares may be transferred or repositioned between markets to settle a trade where there is a purchase in one market and a sale in another market. This 'link' may be a direct relation between the DTC and another CSD, such as the paperless clearing and settlement system established between the DTC and the Canadian Depository for Securities Limited (CDS), or it may be an alternative link that is effectively created by an issuer through contractual arrangements between a DTC participant and the CSD.

Direct link

Cross-listing in Canada and the US works seamlessly for two reasons. First, the CDS and DTC are participants in each other, meaning that the DTC has a participant account at CDS and vice-versa, creating a direct link; so any transfer of shares from one system is done on a daily basis through book-entry net balancing of the two accounts. Second, transfer agents on each side of the border can act through co- or sub-transfer agents on the other side of the border, which permits the DTC shares that trade on US exchanges to be registered with a US registered transfer agent and CDS shares that trade on Canadian exchanges to be registered with a Canadian transfer agent. Shares that move from one system to the other are handed off between the two transfer agents, one of which keeps the 'master' register (depending on whether the issuer is a US entity or a Canadian entity). Cross-listed shares have the same CUSIP/ISIN number on both US and Canadian exchanges.

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Alternative links – Belgian model

Unlike the DTC arrangement with CDS described above, there are many CSDs in various jurisdictions which do not have a direct link with the DTC. For example, if an issuer is trading on the NYSE Euronext in Belgium and wants to establish a cross-listing in the US it would have to create a 'link' between the DTC and Euroclear, the Belgian CSD that facilitates trading on the NYSE Euronext, since a direct link does not exist. In view of this and the applicable Belgian and US law requirements, to complete a cross-listing of shares on a US exchange, a Belgian organised issuer that has shares trading on the NYSE Euronext could split its share register so that the shares registered and eligible for trading on a US exchange (the US Shares) would be registered in the part of the share register that would be kept in the US by the US registered transfer agent (the US Register) while the shares eligible for trading on the NYSE Euronext (the Belgian Shares) would be registered in the part of the share register that would be kept in Belgium by Euroclear (the Belgian Register). The US Shares and the Belgian Shares would be two separate classes of shares identified by different CUSIP/ISIN numbers. The US Shares would be deposited into DTC for distribution and transfer using DTC's standard process, which is familiar to US exchanges and investors. The Belgian Shares would continue to be reflected in Euroclear, so there would be no disruption in trading or change in the Belgian investor experience in connection with commencement of the cross-listing in the US.

This structure serves several purposes. First, it maintains the separateness of the split register and ensures that the transfer agent functions, with respect to the US Shares, are performed only by a US registered transfer agent. Second, it simplifies the issuer's recordkeeping process since only US Shares may be traded in the US and only Belgian Shares may be traded in Belgium. Finally, the US exchange is able to interface with DTC and the NYSE Euronext is able to interface with Euroclear using their normal and established processes. While the US Shares and the Belgian Shares technically would be different classes of shares, such shares would be effectively fungible since both classes of shares would have virtually the same voting and economic rights.

To facilitate purchases in one market and sales in another, the issuer would need to establish an automated process to reposition shares between the US Register and the Belgian Register. This can be accomplished by contractual arrangements whereby, upon the request of a broker or a shareholder, shares may be cancelled on one register to reflect the sale on one exchange and repositioned to the other register to reflect the purchase on the other exchange, which would result in such shares being moved from one clearing system to the other. To further facilitate trading between both exchanges and to ensure that trades settle within the normal settlement period, all of the issued and outstanding shares of the issuer would be listed for trading on each applicable exchange so that newly repositioned shares would already be listed and eligible for trading on the exchange in that market. All of these purchase and sale transactions would take place among the investors, the broker and the issuer's transfer agent and would not involve the issuer.

UK model

The Belgian model can be tweaked as necessary to accommodate the needs of other jurisdictions. For instance, an alternative link structure may be necessary for issuers organised in jurisdictions that have a stamp duty reserve tax (SDRT), such as the UK, that apply SDRT on certain share transfers. The SDRT, however, is not applicable to new issuances of shares into a CSD, such as DTC, and subsequent transfers within that CSD so long as the shares do not exit that CSD. In addition, UK law permits an issuer organised under English law to maintain one share register in the UK and a mirror share register in the US by the US registered transfer agent, which accommodates the US registered transfer agent considerations for DTC shares described above. This means that a UK issuer may, through a new issuance of shares, deposit all of its issued and outstanding shares into the DTC. All of the issuer's issued and outstanding shares would be reflected on the issuer's share register in the name of DTC's nominee and unlike the Belgian model only one class of shares identified by one CUSIP/ISIN number would be used. Once the shares are deposited into the DTC they may be registered in the US and listed on a US exchange. Then, to facilitate trading on an exchange outside of the US, the issuer engages a DTC participant (such as a US bank or broker) which will enter into a custody agreement with the applicable CSD to serve as custodian for all of the shares to be traded on the non-US exchange.

The DTC participant would act as the link between the DTC and the non-US CSD, because the shares to be 'transferred' from the DTC to the CSD are reflected on the DTC's books as being held by the DTC participant, and the CSD's side to be held in custody by the DTC participant. The CSD, in turn, maintains the beneficial shareholder positions for the shares held in custody by the DTC participant and makes the necessary updates to the shareholder accounts to reflect all of the subsequent trades on such exchange. The DTC position of the DTC participant acting as custodian for the shares 'transferred' to the non-US CDS do not change as a result of trades on the non-US exchange. However, if shares that are purchased on the non-US exchange are later sold on a US exchange, in order to settle this sale transaction in the US, the non-US CSD would debit the relevant investor's shareholder account, which would be communicated to the DTC participant acting as custodian, which would in turn debit its DTC participant account at the DTC by the same amount and the DTC participant account of the purchasing investor would be credited and reflected in the purchasing investor's account.

A mirror process would be followed if shares were purchased on a US exchange and sold in the foreign exchange. Similar to the Belgian model, all of these purchase and sale transactions would take place among the investors, the broker and the issuer's transfer agent and would not involve the issuer. ■