

Every second counts

Secondary listings on European and US exchanges provide significant opportunity for GCC issuers looking to diversify their capital, says **Alan Bannister, Patrick Dykstra and Claibourne Harrison**

In the turmoil of the current global financial crisis, plans for equity offerings and international listings have been shelved. For those companies that will weather this storm, the current market conditions offer chief executives, chief financial officers and other company executives the time to consider carefully longer-range plans and options for future sources of capital to aid in growth and stability. Global equity offerings and secondary listings of shares in markets that will provide access to a diversified source of capital can form a large part of this.

Secondary listings became increasingly popular for European, Latin American and Far East issuers during the 1990s, a trend that continued into the current decade. These issuers have recognised the benefits of a secondary listing of their equity securities in markets removed from their home country. These include: increased liquidity for investors; diversification of investor base, providing issuers with access to pools of capital abroad, which may be needed when the home market is less liquid; providing an acquisition currency for international acquisitions; and, overcoming local barriers to foreign investing.

DEEPENING APPEAL

Prior to the financial crisis, the market had begun to see increasing interest in secondary listings by GCC companies, including Depa Limited, Kingdom Hotels and Investcorp BSC, each of which listed their shares, in the form of global depository receipts (“GDRs” and, together with the equivalent for US public offerings, American depository receipts, “DRs”), on the London Stock Exchange in connection with further capital raising in the international market.



INSIDE THE NEW YORK STOCK EXCHANGE

London Stock Exchange

MINIMUM MARKET CAP	MINIMUM SHARES OR GDRS IN PUBLIC HANDS?	SPONSOR REQUIRED?	NUMBER OF YEARS AUDITED FINANCIAL INFO	APPLICABLE GAAP	FREE TRANSFER OF SHARES REQUIRED?
£700,000	Yes. At least 25%	No	31	IFRS or equivalent	Yes

New York Stock Exchange

MINIMUM NUMBER OF PUBLICLY HELD SHARES	MINIMUM MARKET VALUE OF PUBLICLY HELD SHARES	MINIMUM NUMBER OF SHAREHOLDERS	GLOBAL MARKET CAPITALISATION	REVENUES (MOST RECENT FISCAL YEAR)
2,500,000	US\$100,000,000	5,000	US\$750,000,000	US\$75,000,000

NASDAQ

MINIMUM NUMBER OF PUBLICLY HELD SHARES	MINIMUM MARKET VALUE OF PUBLICLY HELD SHARES	MINIMUM NUMBER OF SHAREHOLDERS	MINIMUM BID PRICE PER SHARE	MINIMUM NO. OF REGISTERED ACTIVE MARKET MAKERS
1,100,000	US\$8,000,000	400	US\$5	3

Secondary listings may have certain drawbacks (such as ongoing reporting obligations in the secondary market), but many of the traditional difficulties for such dual listings have slowly been removed. For example, the EU's acceptance of International Financial Reporting Standards ("IFRS") and the US Securities and Exchange Commission's ("SEC") recent embracing of IFRS as an alternative to US GAAP, has removed one of the biggest difficulties of multiple listings – the need to prepare financial statements each year under a variety of accounting principles.

When the market recovers, GCC companies that use IFRS will be well positioned to seek a secondary listing on any of the EU exchanges and/or on the principal US exchange or quotation system, the New York Stock Exchange (the "NYSE") or Nasdaq. Such companies may find, just as a number of US and other international companies have found in recent months, that in difficult economic periods at home, access to international capital and investors provided by such a listing can be crucial.

Traditionally, the NYSE and Nasdaq have been particularly attractive for non-US issuers in seeking a secondary listing. In recent years, the London Stock Exchange has become very popular as well, attracting more listings by international companies than the US exchanges. The decision of where to list will depend on a number of factors, not least the investor base that the issuer wishes to develop.

Each exchange has its own minimum listing requirements (see page 32). In addition, after a company has been listed on the NYSE or Nasdaq, the issuer must meet minimum requirements to maintain that listing.

NUTS AND BOLTS

Generally, although not strictly necessary, secondary listings on the LSE, the NYSE or Nasdaq are achieved in connection with: an international offering of DRs in the secondary market where listed, as well as other countries within Europe, the US and elsewhere; and, in some cases, a local offering of shares in the issuer's home country or region. Such further offerings allow the issuer to raise additional capital and to create an international investor pool immediately upon listing.

● **NYSE/Nasdaq** Issuers who seek to raise capital in the US in connection with a secondary listing are required to do so by filing a registration statement under the US Securities Act of 1933. This includes a prospectus meeting the requirements of the relevant form for such offering (an "F-1" for first-time "foreign private issuers" under the Securities Act). Such prospec-

LSE Reporting Obligations

ANNUAL REPORT	QUARTERLY REPORTS	DISCLOSURE OF PRICE-SENSITIVE INFORMATION
Yes, an annual financial report must include audited financial statements prepared in accordance with IFRS or other "recognised GAAP", a management report, analysis of issuer's business and its financial condition at year end, responsibility statements and a description of the principal risks and uncertainties facing the issuer.	No, however an issuer releasing information outside the European Economic Area (EEA) must be aware of the equality of information principle and should make such information available within the EEA if it "may be of importance" to the public in the EEA.	Must be disclosed to the markets.

SEC Reporting Obligations

ANNUAL REPORT	QUARTERLY REPORTS	CERTIFICATION BY CFO AND CEO AS TO FINANCIAL STATEMENTS AND AS TO ADEQUACY OF ACCOUNTING AND DISCLOSURE CONTROLS
Yes, an issuer must file an annual report on form 20-F, including annual audited financial statements prepared in accordance with US GAAP, IFRS or other recognised GAAP (if accompanied by a US GAAP reconciliation), and management's discussion and analysis of results of operations, financial condition and risk factors.	No, however an issuer must submit to SEC a copy, in English, of any interim information made public in its home jurisdiction or otherwise.	Annually set forth in annual report on Form 20-F.

tuses must include three most recent years' audited financial statements and description of the issuer's business and management.

Simultaneous with the registration process under the Securities Act, the issuer will separately apply to list the securities on the NYSE or Nasdaq, with trading starting after the registration statement has been declared effective.

● **LSE Offerings** and listings on a regulated market in the various EU member states must be effected in accordance with the prospectus directive, as implemented in each member state. The issuer must prepare and file, with the relevant regulator, a prospectus which meets the requirements of the directive as implemented in the jurisdiction of the listing. If there is no listing, the issuer must file in the jurisdiction where the issuer offers the securities to the public.

● **Rule 144A** Often issuers that place their shares in an international offering in connection with a London or other EU listing will, in lieu of a US public registered offering, also include a private placement of DRs to qualified institutional buyers in the US. This falls under Rule 144A of the Securities Act and further

expands the issuer's international investor base. Issuers that make such 144A offerings are not subject to the US reporting requirements that are applicable to companies that offer their securities in a US-registered public offering and/or otherwise become a registrant under the US Securities Exchange Act of 1934 in connection with a listing on the NYSE or Nasdaq. However, rule 144A issuers are required to make available to investors, upon request, certain limited information about their business and a copy of their most recent financial statements.

An issuer that obtains a secondary listing will be required to meet certain ongoing reporting obligations (see boxes above).

Many firms have already secured secondary listings. Often those firms chose to sell part of their equity in the international market and seek a secondary listing at a time when the companies' financial condition commanded strong prices. For GCC and other regional firms, the opportunity to obtain a secondary listing and effect an international placement of shares may soon be well timed. ●

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