

## VI. *Dual-Listed IPOs*

### A. Introduction

A corporation performs a dual-listed initial public offering (IPO) when for the first time a private company offers its shares publicly simultaneously on an exchange based in the company's home country and on an exchange in the United States.<sup>1</sup> A company headquartered outside of the United States, e.g., a foreign corporation, is able to take advantage of unique benefits of listing on an exchange in the United States.<sup>2</sup> The main benefit of listing IPOs on multiple exchanges is access to additional investors and capital.<sup>3</sup> Other benefits are derived from compliance with regulations required by major stock exchanges and regulatory bodies in the United States.<sup>4</sup> These benefits include higher quality information for investors and additional investor protections.<sup>5</sup> However, the benefits must be weighed against increased costs and risks.<sup>6</sup> Projected costs include compensation of counsel to ensure ongoing regulatory compliance in not only the company's home market, but also the United States, as well as costs to ensure disclosures are synchronized.<sup>7</sup> Access to a U.S. listing may be particularly expensive given necessary compliance with the Sarbanes-Oxley Act of 2002, which increases the costs of financial reporting.<sup>8</sup> Other unique risks include failing to continually meet the disclosure requirements of the two countries and ensure consistency among the disclosures in both markets.<sup>9</sup> A company that considers a dual-listing for an IPO must use a complex cost-benefit approach to evaluate whether access to additional capital outweighs heavy regulatory

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<sup>1</sup> Tom Zanki, *Dual-listed IPOs Carve a Small but Steady Niche*, LAW360 (Aug. 4, 2016), <http://www.law360.com.ezproxy.bu.edu/articles/824591/dual-listed-ipos-carve-a-small-but-steady-niche> [<https://perma.cc/FNC5-P7W5>].

<sup>2</sup> *Id.* (describing unique benefits afforded by dual-listed IPOs).

<sup>3</sup> See *Cross-Listed International Stocks: Another Investing Alternative*, CHARLES SCHWAB (May 23, 2014), <http://www.schwab.com/public/schwab/nn/articles/Cross-Listed-International-Stocks-Another-Investing-Alternative> [<https://perma.cc/NTJ7-MEM6>].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See Zanki, *supra* note 1.

<sup>7</sup> See *id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *id.*

compliance costs.<sup>10</sup> Moreover, the company must consider whether a public offering of stock is the best method to raise capital in the current market.<sup>11</sup>

This article discusses the advantages of a dual-listed IPO, the potential costs of a dual-listed IPO, and whether the market is currently conducive to a dual-listed IPO. First, Section B discusses advantages of dual-listed IPOs. Section C discusses the unique costs associated with dual-listed IPOs. Finally, Section D discusses recommendations for dual-listed IPOs in our current market conditions and alternatives to capital raising in the equity markets such as debt financing.

## **B. Advantages of Dual-Listed IPOs**

### **1. Brand Awareness**

A company increases its brand awareness by listing an IPO in two markets.<sup>12</sup> In July 2016, Line, a Japanese messaging application, listed an IPO on the New York Stock Exchange in addition to the Tokyo Stock Exchange.<sup>13</sup> Line's decision to engage in a dual-listing was partially based on its desire to increase its brand recognition overseas in the crowded market of messaging applications.<sup>14</sup> Moreover, by listing on an exchange such as the NASDAQ, a company can essentially say to a potential customer, "we are on the NASDAQ. You can look us up and see what kind of company we are .

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<sup>10</sup> *See id.* (explaining companies considering dual-listing should consider costs of compliance against any benefits).

<sup>11</sup> *See* Bob Bryan, *Activity Has All But Dried Up in the Riskiest Part of the Stock Market*, BUS. INSIDER (Mar. 5, 2016), <http://www.businessinsider.com/ipo-market-has-dried-up-in-2016-2016-3/> [<https://perma.cc/UXT9-YUJM>].

<sup>12</sup> Edward Bibko & Clifford Tompsett, PRICEWATERHOUSE COOPERS IPO CENTRE, 'EQUITY SANS FRONTIÈRES' 17, 19 (2012), <https://www.pwc.com/gx/en/audit-services/ipo-centre/assets/pwc-cross-border-ipo-trends.pdf> [<https://perma.cc/J3HF-998N>].

<sup>13</sup> Alexander Martin, *Line, a Japanese Messaging App, Raises Over \$1 Billion in IPO; Planned Listing Could be Japan's Biggest*, WALL ST. J. (July 11, 2016), <http://www.wsj.com/articles/japanese-messaging-app-line-raises-over-1-billion-in-ipo-1468199800> [<https://perma.cc/72C5-BYUB>].

<sup>14</sup> *See id.*

. . .”<sup>15</sup> Line’s strategy to increase brand recognition by listing on an exchange in the United States highlights a key advantage of dual-listed IPOs.<sup>16</sup> A company that dual lists can essentially open a new market for its products, such as a messaging platform.<sup>17</sup> Brand awareness can also help a company based outside of the United States attract more talent to work at the company.<sup>18</sup> Potential hires are attracted to companies who list public offerings in the United States due to the prestige offered by the listing.<sup>19</sup>

## 2. Investors with Expertise

Companies looking to list on a stock exchange in the United States may also take advantage of foreign investors with specialized or more advanced knowledge than domestic investors.<sup>20</sup> Investors from the United States may be able to better account for risks in emerging markets and apply more sophisticated valuation techniques leading to an overall higher valuation for the company.<sup>21</sup> Access to sophisticated investors can be an even larger advantage for companies that are in extremely technical industries.<sup>22</sup> One industry that particularly benefits from this advantage is life sciences, where companies can take advantage of the unique investor base in the United States with the requisite expertise.<sup>23</sup> The United States is an attractive venue to list an IPO for special access to investors that have specialized and advanced industry as well as general expertise in valuations.<sup>24</sup>

## 3. Credibility from Disclosure Requirements

There is an overall recognition that a company based outside of the United States gains unique credibility with investors in the

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<sup>15</sup> See Chelsea Naso, *5 Reasons Israeli Cos. Are Flirting With US Markets*, LAW360 (Nov. 13, 2014, 3:51 PM), <http://www.law360.com/articles/593614/5-reasons-israeli-cos-are-flirting-with-us-markets> [<https://perma.cc/T9TR-K7DE>].

<sup>16</sup> See Bibko & Tompsett, *supra* note 12, at 19.

<sup>17</sup> See *id.*

<sup>18</sup> *Id.* at 20.

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 18.

<sup>21</sup> See *id.*

<sup>22</sup> See Zanki, *supra* note 1.

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

company's domestic market and abroad by dual-listing an IPO.<sup>25</sup> This is partly due to enhanced corporate governance standards that must be met.<sup>26</sup> This credibility is sourced in the increased amount of disclosure typically required for exchanges in the United States.<sup>27</sup> The increased disclosure requirements afford credibility to a company that performs a dual-listed IPO because it allows potential investors to be more confident in their investments from the additional due diligence.<sup>28</sup> A company looking to list on a U.S. exchange such as the New York Stock Exchange may find the disclosure requirements especially stringent.<sup>29</sup>

#### 4. Credibility from Corporate Governance Requirements

Dual-listed IPOs are also significantly more attractive to investors because of the investor protection derived from increased corporate governance under the requirements of U.S. laws and stock exchanges.<sup>30</sup> This advantage can be critical because investors that are risk averse are more willing to make investments in foreign corporations with these enhanced requirements.<sup>31</sup> For example, the NASDAQ requires a one-third quorum for shareholder meetings.<sup>32</sup> The Sarbanes-Oxley Act of 2002 is one example of rigorous corporate governance standards from U.S. law.<sup>33</sup> Corporate governance protections under the Sarbanes-Oxley Act include:

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<sup>25</sup> See Bibko & Tompsett, *supra* note 12.

<sup>26</sup> See *id.*

<sup>27</sup> See Thomas J. Chemmanur et al., *Competition and Cooperation among Exchanges: Effects on Corporate Cross-Listing Decisions and Listing Standards*, 20 J. APPLIED CORP. FIN. 76, 85 (2008).

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at 82.

<sup>30</sup> See *Cross-Listed International Stocks: Another Investing Alternative*, *supra* note 3.

<sup>31</sup> See *id.*

<sup>32</sup> See Ariel Yehezkel, *Foreign Corporations Listing in the United States: Does Law Matter? Testing the Israeli Phenomenon*, 2:351 N.Y.U. J. L. & BUS. 351, 378 (2006).

<sup>33</sup> See *Cross-Listed International Stocks: Another Investing Alternative*, *supra* note 3.

Section of the Sarbanes-Oxley Act	Description of Corporate Governance Requirement
Section 302	Requires principle and executive officers to certify that they are responsible for establishing and maintaining internal controls at the company. Officers must also disclose to investors significant deficiencies in internal control and that financial statements are fairly presented in all material aspects. <sup>34</sup>
Section 402	Officers or directors cannot take loans from the company. <sup>35</sup>
Section 304	CEO or CFO must provide reimbursement for any material non-compliance with financial reporting requirement under securities law. <sup>36</sup>
Section 102	Financial statements issued must have been prepared with the aid of a registered public accounting firm. <sup>37</sup>

Overall, additional corporate governance requirements for dual-listing IPOs can add to the credibility of a company both abroad and domestically.<sup>38</sup>

## 5. Other Advantages

A company that is considering dual listing in the United States may enjoy a slew of additional advantages.<sup>39</sup> A dual-listed IPO can more easily engage in an acquisition or merger than a single-listed IPO in the company's home country partly because the company will be easier to value.<sup>40</sup> Moreover, a company that is dual-listed has more attractive stock to use in a merger or acquisition than its domestic competitors due to the reporting and corporate governance requirements noted above.<sup>41</sup>

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<sup>34</sup> 15 U.S.C. § 7241 (2012).

<sup>35</sup> § 78m(k).

<sup>36</sup> § 7243.

<sup>37</sup> § 7212.

<sup>38</sup> See Bibko & Tompsett, *supra* note 12.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

Another advantage of dual-listed IPOs is benchmark facilitation.<sup>42</sup> Benchmarking is the ability to easily compare competing companies that may or may not be combined for purposes of a market fund.<sup>43</sup> Benchmarking can be critical for a company that does not have appropriate peer competitors domestically.<sup>44</sup> With a dual-listed IPO, the company can increase the likelihood that it can be compared to other competitors with similar product lines in the due to the sheer number of companies already listed in the United States.<sup>45</sup>

## 6. Access to Liquidity

The biggest advantage of dual-listing is the superior access to the liquidity and the capital of the U.S. market.<sup>46</sup> The ability to easily buy and sell shares on demand in the U.S. market can potentially lower the financing costs of a dual-listed IPO.<sup>47</sup> This increased access is mainly driven by “enhanced liquidity and trading volumes offered by an exchange with a greater number of trading partners, investors and a more sophisticated asset management infrastructure.”<sup>48</sup> For example, in 2015 the total value of shares traded on all U.S. stock exchanges was approximately \$46 trillion.<sup>49</sup> In the same period all exchanges in Europe, the Middle East, and Africa the total value of shares traded was only approximately \$14 trillion.<sup>50</sup> Companies that choose to dual-list IPOs are afforded even more liquidity because of advantages from having shares traded in different time zones and currencies.<sup>51</sup> The advantage of liquidity will depend on a comparison between the potential dual-listed company’s home market exchange and the

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<sup>42</sup> *See id.* at 18.

<sup>43</sup> *See id.*

<sup>44</sup> *See id.*

<sup>45</sup> *See id.*

<sup>46</sup> *Cross-Listed International Stocks: Another Investing Alternative*, *supra* note 3.

<sup>47</sup> *See id.*

<sup>48</sup> *See Bibko & Tompsett, supra* note 12, at 18.

<sup>49</sup> WORLD FED’N EXCH., WFE FULL YEAR STATISTICS SHOW 2015 GLOBAL EQUITY TRADING VOLUMES RISE 55% AS VOLATILITY BOOSTS ACTIVITY (2015), <http://www.world-exchanges.org/home/index.php/files/18/Studies%20-%20Reports/293/2015%20Market%20Highlights.pdf> [<https://perma.cc/7X2C-P8U4>].

<sup>50</sup> *See id.*

<sup>51</sup> *Cross-Listed International Stocks: Another Investing Alternative*, *supra* note 3.

exchange based in the United States.<sup>52</sup> For example, a U.S. exchange likely offers more liquidity than an Israeli exchange.<sup>53</sup>

Dual-listed IPOs allow a foreign issuer to gain creditability in the eyes of investors both in the United States and abroad as a result of stringent regulations in corporate governance and disclosure requirements.<sup>54</sup> In addition, dual-listing increases brand awareness outside of the company's home market and allows it to gain access to sophisticated investors in the United States.<sup>55</sup> Importantly, the access to liquidity and capital are overall the most significant benefits gained by a company that executes its initial public offering in the United States and in its home country.<sup>56</sup>

### C. Dual-Listed IPOs Analysis and Recommendations

#### 1. Costs of a Dual-Listed IPO

An IPO is a costly mechanism for U.S. exchange listings due to additional requirements for governance and disclosures.<sup>57</sup> Underwriter costs can be up to 7 percent of total gross proceeds from the IPO depending on the total proceeds from the offering.<sup>58</sup> The legal and accounting costs can be over \$4 million depending on the size of the company.<sup>59</sup> These costs are compounded by the unique needs of dual-listed IPOs that include the need for consistency in disclosures for regulatory bodies in both countries.<sup>60</sup> This alone requires intense coordination between the company and counsel in both countries.<sup>61</sup>

The cost to list an IPO does not end at the offering stage, as there are significant ongoing compliance costs that must also be met.<sup>62</sup>

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<sup>52</sup> *See generally id.*

<sup>53</sup> Naso, *supra* note 15.

<sup>54</sup> *See* Bibko & Tompsett, *supra* note 12.

<sup>55</sup> *See id.*

<sup>56</sup> *See id.* at 18.

<sup>57</sup> Zanki, *supra* note 1.

<sup>58</sup> PwC, CONSIDERING AN IPO? 7 (July 2012), <http://www.pwc.com/us/en/deals/publications/assets/pwc-cost-of-ipo.pdf> [<https://perma.cc/QEL7-BR5L>].

<sup>59</sup> *See id.*

<sup>60</sup> Zanki, *supra* note 1.

<sup>61</sup> *See id.*

<sup>62</sup> *See* DANA T. ACKERLY II & ERIC J. PAN, COVINGTON & BURLING, DUAL-LISTING SECURITIES IN EUROPE AND THE UNITED STATES 22–32 (2002), <https://www.cov.com/files/Publication/d4d94c97-19c9-46ee-8590>

First, a dual-listed company must file an annual report with the Securities and Exchange Commission (SEC).<sup>63</sup> This report requires strict disclosures and must be audited contributing significantly to the yearly costs of a dual-listed company.<sup>64</sup> Furthermore, the company will have to meet costly disclosure requirements between annual reporting periods.<sup>65</sup>

## 2. Decline in IPO Market

A company considering a dual-listed IPO in the United States should consider whether the market is currently conducive.<sup>66</sup> Moreover, a company can consider a variety of capital sources including debt.<sup>67</sup> In 2016–17, this option could be more attractive because lower interest rates have led some lenders to take on riskier investments in companies in pursuit of better returns.<sup>68</sup>

IPOs in the United States have recently faced a significant slowdown in the market.<sup>69</sup> One big factor in the slowdown has been the large decrease in returns offered by these investments.<sup>70</sup> Notably, the average return for an IPO in 2015 was negative 19 percent and 72 percent of IPOs were being traded below their issuing price.<sup>71</sup> Furthermore, the equity market in the United States is currently very volatile.<sup>72</sup> Dual-listed IPOs are typically seen as risky investments, which historically do not perform well in a volatile market space.<sup>73</sup>

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4ea898654348/Presentation/PublicationAttachment/2b16c0da-3688-434d-bd53-52ca2fa2ad70/oid5954.pdf [https://perma.cc/Y5YB-ZKRJ].

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See generally *id.*

<sup>66</sup> See Telis Demos, *Fintech's Answer for Chilly IPO Market? Debt*, WALL ST. J.: MONEYBEAT (Aug. 18, 2016, 11:53 AM), <http://blogs.wsj.com/moneybeat/2016/08/18/fintechs-answer-for-chilly-ipo-market-debt/> [https://perma.cc/7KJ4-U43B].

<sup>67</sup> See generally *id.*

<sup>68</sup> See *id.*

<sup>69</sup> John Burke, *4 Reasons for the IPO Market Slowdown in 2016 (IPO)*, INVESTOPEDIA (June 14, 2016), <http://www.investopedia.com/articles/markets/061416/4-reasons-ipo-market-slowdown-2016-ipo.asp> [https://perma.cc/R4SM-BXSA].

<sup>70</sup> See *id.*

<sup>71</sup> *Id.*

<sup>72</sup> See Bryan, *supra* note 11.

<sup>73</sup> See generally *id.*



Another notable reason for the decline in the IPO market is the Jumpstart Our Business Startups Act (JOBS Act).<sup>74</sup> A company may sell up to \$1 million worth of shares to non-accredited investors per year and up to 2,000 shareholders before it must meet public financial statement disclosure requirements.<sup>75</sup> The JOBS Act could provide access to investors in the United States to a foreign company without the cost and hassle of meeting the full compliance requirements needed typically for initial public offerings.<sup>76</sup> Evidence of the attractiveness of the JOBS Act can be seen by Israeli companies that considered listing in the United States but instead decided to access investors through the JOBS Act while waiting for a potential rebound of the initial public offering market.<sup>77</sup> The JOBS Act offers a cheaper way to raise capital but a company would lose the credibility benefits of being listed on a stock exchange in the United States.<sup>78</sup>

#### D. Conclusion

Foreign companies considering a dual-listing in the United States and their domestic market must first consider significant additional regulatory costs to performing an IPOs in multiple markets.<sup>79</sup> However, these costs may ultimately be outweighed by the advantages of listing on a stock exchange in the United States.<sup>80</sup> The credibility gained by a foreign entity that meets the corporate governance and disclosure requirements of an exchange in the United States can attract investors who may normally be risk averse to investments in foreign companies.<sup>81</sup> The biggest advantage to listing in the U.S. market is the significant liquidity for these companies.<sup>82</sup> The ability to raise capital can be even greater in the United States for companies in industries like life sciences that can tap into the sophisticated investors who can properly value their company.<sup>83</sup> Although there are unique benefits to a dual-listed IPO, the slowdown

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<sup>74</sup> Burke, *supra* note 69.

<sup>75</sup> *See id.*

<sup>76</sup> *See id.*

<sup>77</sup> Naso, *supra* note 15.

<sup>78</sup> *See* Bibko & Tompsett, *supra* note 12.

<sup>79</sup> Zanki, *supra* note 1.

<sup>80</sup> *See id.*

<sup>81</sup> *See* Bibko & Tompsett, *supra* note 12.

<sup>82</sup> *See id.*

<sup>83</sup> *See id.*

in the IPO market is likely to discourage foreign companies from listing in the United States for some time.<sup>84</sup>

Matthew Zolnierz<sup>85</sup>

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<sup>84</sup> Burke, *supra* note 69.

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