

US Capital Markets: Elements of Successful Transactions

9th Annual Capital Link Shipping, Marine Services and Offshore Forum

October 5, 2016

By: Robert E. Lustrin

Partner, *Capital Markets Group*



**SEWARD &
KISSEL LLP**

125
YEARS

One Battery Park Plaza
New York, New York 10004
Tel: (212) 574-1420
Fax: (212) 480-8421
E-Mail: lustrin@sewkis.com
Website: www.sewkis.com



General State of Shipping/Offshore

- Oversupply of assets in virtually all shipping and offshore sectors
- Poor demand due to *global* economics
- China pullback
- Collapsing crude oil prices



General State of US Capital Markets

- Deal flow at low levels, as companies struggle to obtain financing on favorable terms
- Limited “windows” of opportunity
- Re-emergence of “SPAC” structures (up to 2 year look)
- Strongest sectors: Technology, REITs
- Some secondary/follow-on equity offerings
- Commercial banks trying to force companies to raise equity
- Deals *can* get done, but valuations/pricing may not be adequate

What can companies do in 2016?



US Capital Markets Opportunities

- “Windows” open and close; is the window open??
- Industries, sectors come in and out of favor
- But capital markets deals can get done *at a price* ...
- US institutions and hedge funds continue to be flush with cash
- There are discreet times when demand for capital markets securities soar
- Preparation is necessary to take advantage of these “open windows” and heightened demand



END
WORK ZONE



BE
PREPARED
TO STOP

Is Your Company in the “Sector of the Day”?

- Tanker offerings in the news ...
 - **September 29, 2016:** Ship Finance International Limited today announced that it, subject to market and other conditions, intends to offer \$200 million aggregate principal amount of Convertible Senior Notes due 2021
 - **September 27, 2016:** Nordic American Tankers Limited (the "Company") today announced an underwritten public offering of 11,000,000 common shares pursuant to the Company's effective shelf registration statement
- LNG offerings in the news ...
 - **September 28, 2016:** Teekay LNG Partners L.P. ... announced today that it plans to offer Series A Cumulative Redeemable Perpetual Preferred Units (Series A Preferred Units), representing limited partner interests, in a public offering
 - **August 2, 2016:** New York-listed GasLog Partners, the master limited partnership focused on owning, operating and acquiring LNG carriers, has on Monday announced a public offering of its common units to raise up to US\$53.6 million

Organizing the Team in a US Capital Markets Offering

- Issuer
- Selling security holders
- Underwriters / Placement Agents
- If listed, NYSE / Nasdaq
- Existing lenders / counterparties
- Lawyers
- Auditors
- Experts
- Financial Printer
- The Transfer Agent
- Registrar (debt)
- Rating Agencies (debt)

Keys to Conducting a Successful Process

- Confer with your investment bankers / advisors early; choose the right deal (public vs. private; institutional vs. retail; traditional IPO, SPAC, MLP, convertible bond)
- Choose the right team for your deal
- Lay out a strategy for the process
- Identify roadblocks to execution; address them with a sense of urgency
 - Auditor independence and comfort letter issues
 - Necessary approvals/consents from third parties
 - Make sure there are no covenant issues with existing loans, agreements and investor banker/advisor engagement letters
 - Setting up bank accounts and brokerage accounts
 - Effecting internal reorganization to create ‘silos’ of assets
 - Divestment / de-consolidation (will you need time consuming *pro forma* financial statements or “*carve-out*” financial statements)

Observed Elements of Success

- Size matters; investors seem to be more attracted to larger enterprises
- Using the strength of precedent to make the selling effort easier
- Mastery of the SEC's accounting rules; get your auditors US team involved early in the process
- Demonstrating transparency and good corporate governance
 - Independent board
 - Powerful audit committee
 - Unbiased nomination and compensation committees
 - Avoiding conflicts of interest/preferential commercial arrangements

Observed Elements of Success

- Good public relations management; keeping the public messaging consistent
- Making the most from dialogue with key investors
- Avoiding gymnastics with metrics; providing a rational basis of comparison to peers
- fostering frequent communications among team members

Keys to efficiency

- Make and keep goals
- Know your long-term strategies and needs when negotiating terms/covenants
- Encourage cooperation rather than adversity
- Remain engaged and be persistent
- Identify and rectify sources of delay

Timing the “Road Show” and Pricing

- When the Underwriters are ready to market the deal (and SEC comments have been dealt with in a registered transaction), the “red herring” preliminary prospectus for the road show is printed
- Timing of launch and the end (pricing) of the road show is critical
- Responding to feedback – remaining flexible
- Must measure execution risk vs. available terms

United States Public Offerings

- SEC registration requirements; time to “effectiveness” may affect ability to time the deal launch / pricing precisely
- Prospectus delivery requirements by statute and SEC rules

The US Congress and the SEC Want More Public Listings in the US

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

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, the issuer must have less than \$1.0 billion in gross revenue in its last fiscal year, and not already be 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
- ***But***, 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 Foreign Private Issuers

- Easier on forming committees
- Easier on corporate governance
- Exemption from SEC proxy rules
- Exemption from “Section 16” liability for “short-swing” trading profits and related SEC reporting
- No Disclosure of individual compensation

Certain Prospectus Disclosure Requirements for Foreign Private Issuers

- Most recent audited financial statements typically no more than 12 months old for initial public offerings
- Quarterly unaudited financial statements, as a practical matter, may be no more than 135 days old in order to obtain the auditor's "comfort letter"
- Must disclose share ownership of the directors and senior management personnel
- Must disclose beneficial owners of 5% or more of each class of the company's voting securities

SEWARD &
KISSEL LLP 125 YEARS