

# Global Securities Advisory Agent: Flattening the Peaks and Valleys of Cross-Border Transactions



While the world economy may have become “flattened”, in the term popularized by the author Thomas Friedman, global mergers and acquisitions nonetheless have many peaks and valleys that can obstruct the successful completion of major transactions. Today’s global scope of M&A has left public and private issuers frequently having to navigate uncharted waters, dealing with multiple jurisdictions, international share transfers, currency issues and many other unexpected obstacles. With the increase in cross-border deals – there were \$84 billion in such transactions in the first few months of 2010, up 79% in value from 2009, according to Thomson Reuters – the need to bring order to this situation is clearly evident.

The BNY Mellon Shareowner Services team has championed the role of Global Securities Advisory Agent (GSAA) as an invaluable resource for issuers attempting to complete the myriad aspects of a cross-border transaction. All too often, issuers and their financial and legal advisors are focused on the long road leading up to the negotiation and consummation of a cross-border deal, and may overlook the “last mile” of execution needed to complete the transfer of ownership of an international business.

If engaged during the early planning stages of a deal, a GSAA can help ensure that the transaction is executed seamlessly in all markets. Aligned closely with the working group, a GSAA can make deal participants aware of potential pitfalls and propose alternatives in terms of the transaction’s structure to eliminate these hazards. Assuming a lead position, a GSAA can look after all the considerations that impinge on successfully completing the mechanics of the transaction. Specific considerations include:

- **Multi-jurisdiction considerations** – M&A working groups should consider a GSAA that operates as part of a well-established global financial network. This will help ensure the seamless processing of complex events like M&A transactions and share transfers that involve equities moving between international and U.S. exchanges, as well as redemptions. Engaging a GSAA with global network connectivity will give issuers the assurance that their transaction will be completed in compliance with local regulatory requirements.

As advisor to the working group on a particular transaction, the GSAA can assist in selecting the equity instrument(s) best suited to the deal, an important first step in meeting issuer-specific goals, including

investor ownership and employee compensation/ownership objectives. Local requirements may also dictate the need to employ sub-custodians, paying agents, and/or escrow agents. Requirements in connection with each can vary depending on the jurisdiction.

- **Awareness of local business cultures** – The business cultures that prevail in the jurisdictions involved in a given transaction can have a major impact on the deal’s success. For example, time zone issues and normal working hours in different countries may complicate the timing of when international investors can be serviced. A GSAA will consider international exchange issues and local currency (FX) payment options. Beyond these technical considerations, an acquiring company also may benefit from assistance on issues that may arise when the employee stock holdings and compensation plans of multiple entities based in different geographies are combined.

By helping the issuer to get out ahead of these considerations, the GSAA can make a major contribution to ensuring that cross-border events are completed efficiently and effectively.

## The Value of a Global Perspective

Much of the deal team's work preparing for a cross-border M&A event is focused on terms and details related to announcing and ultimately closing the transaction. Issuers and their deal teams often seek transaction agent specialists, registrars and payments banks within the relevant geographies as an afterthought, with no broad global strategy for knitting together the individual country solutions. This can lead to situations that are not well integrated or coordinated, compounding complications for the investors involved. Planning for cash transfers or share movements in unfamiliar geographies are just a few of the many weighty considerations that can cause unintended consequences and complications when M&A participants are operating outside of their home markets or geographic zones of comfort.

Consider the largest cash acquisition transaction on record, which involved a Dutch-listed acquiring company and a U.S.-listed target. In this transaction, an agent was engaged to facilitate the cash disbursement mechanism, taking into account the various considerations applicable to all of the relevant geographies. Because the target company had a large U.S. employee base, and the acquiring company wanted to meet an employee ownership objective using a security traded in the U.S., an agent worked with the acquiring company to implement a depository receipt (DR)

program. Today, those same DRs are considered as the underlying security for equity compensation paid to the company's U.S. employees.

## Share Transfer and Recordkeeping

Global issuers seeking non-traditional equity administration methods have a similar need for recourse to a GSAA. For example, a Norwegian-based offshore drilling company domiciled in Bermuda and maintaining operations in eight international locales recently made the strategic decision to move more than 3.3 million shares previously listed on the Oslo Stock Exchange (OSL) to the New York Stock Exchange (NYSE). This share transfer will help the issuer better access the U.S. capital markets. Drawing on its intimate knowledge of regulatory requirements in the relevant jurisdictions, a GSAA can engage the appropriate intermediaries — e.g. the DTCC, NYSE, Euronext — and local market central securities depositories (CSDs) on the issuer's behalf. The GSAA can also liaise with regulatory bodies such as the SEC.

## Redomestication

The practice of incorporating in countries solely because of the host country's reputation as a tax haven has come under increased scrutiny of late, prompting a number of large corporations to change their jurisdiction of incorporation. In the past few months alone, several Fortune 500 companies have redomesticated

from Bermuda or the Cayman Islands to Switzerland or Ireland.

Redomestication can be a highly complex transaction, and generally involves a number of considerations that can benefit from the insights of a GSAA. For example, issuers may have to physically exchange and register "old" to "new" shares. Or, the issuer may have to arrange for the disbursement of dividends to holders in different currencies or in different geographies. In addition, companies may have to re-engineer existing investor services processes to take into account international requirements, including tax rules and specific tax withholding requirements that may apply to the new shares.

## Solutions Across Borders and Boundaries

In an M&A environment increasingly oriented toward large cross-border transactions, it is no longer prudent to leave the selection of a provider of securities agent services to the last minute, or to source those services in a piecemeal fashion in different jurisdictions. Rather, engaging a Global Securities Advisory Agent in the early stages – to align with the entire working group, identify any executional obstacles and develop global solutions – can help pave the way to a seamless transaction that will deliver on the issuer's strategic objectives.

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## Who's Helping You

BNY Mellon Shareowner Services is a world-class provider of corporate equity solutions for more than 2,100 institutional clients representing 35 million shareowner accounts worldwide, and administers employee stock plans that service more than 2.7 million optionees and employee stock plan participants. BNY Mellon Shareowner Services is part of BNY Mellon's Issuer Services group, which is also a leading provider of corporate trust services, serving more than \$11 trillion in outstanding debt, and is the market leader in depository receipts, with more than 1,300 sponsored programs. More information about Shareowner Services is available at [www.bnymellon.com/shareowner](http://www.bnymellon.com/shareowner).



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