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Depositary Receipt Programs

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Today's Speakers

David Bakst, Partner, Capital Markets
David Bakst is a partner in Mayer Brown's New York office and a member of the Capital Markets practice. His practice focuses on a wide variety of public and private securities offerings ranging from large New York Stock Exchange and NASDAQ listed IPOs and multibillion-dollar debt offerings to smaller private offerings. David has more than 20 years of capital markets experience with a particular focus on securities offerings involving non-US issuers. He has led securities offerings for a number of the most prominent issuers in Europe, Asia, Australia and Latin America. He advises clients from a broad range of industries.

Ganesh Sarpotdar, Managing Director, Global Head of Account Management, Depositary Receipts
Ganesh is the Global Head of Account Management and responsible for managing client relationships, executing product delivery and ensuring a high standard of client service at Citigroup. Prior to heading Account Management, Ganesh was Global Product Head, responsible for product development and ensuring that Citi's product offering is best-in-class. Before joining Depositary Receipt services, Ganesh worked with Citi's Corporate Strategy and M&A in New York and led efforts on strategic divestitures. He has also held positions within Citibank Treasury, Citi's Consumer Business in London and Citi India. Ganesh holds a Bachelor's degree in Commerce from University of Mumbai and is a Chartered Accountant and a CFA.

Shelby Strattan, Senior Analyst, Account Management & Product, Depositary Receipts
Shelby joined Citi through the Capital Markets Analyst Program and spent her first year on the Agency & Trust team, working primarily with the CLO and Aviation Product team. She assisted with business and product development strategy for key partnerships. Shelby now works on the Depositary Receipts team within Account Management and Product, developing client relationships and analyzing process strategies for issuers. Prior to joining Citi, Shelby received her Bachelor's degree in Finance from Tulane University.

What is a Depositary Receipt (DR)?

Negotiable certificates issued by depositary banks **evidencing ownership in securities of non-U.S. companies**

DRs trade on **exchanges** (NYSE, Nasdaq, LSE,etc .) and also in **over-the-counter** (OTC) markets

DRs are regulated by the **trading and settlement procedures of the DR trading venue**

Four main variants: **ADR, GDR, GDN, Local DR**

Types of Depositary Receipts

- American Depositary Receipts (ADRs) - since 1928
  - An ADR represents ownership in the shares of a foreign company trading on U.S. financial markets. ADRs enable U.S. investors to buy shares in foreign companies without undertaking cross-border transactions
- Global Depositary Receipts (GDRs) - since 1990
  - GDRs are DRs offered to investors in two or more markets outside the issuer's home country, usually pursuant to Rule 144A and Regulation S under the Securities Act of 1933
- Global Depositary Notes (GDNs) - since 2007
  - GDNs offer an alternative way for international investors to invest in a domestic bond. This product is particularly attractive for countries with currencies that do not settle through Euroclear
- Local Depositary Receipts (LDRs) - since 2008
  - LDR programs extend the traditional ADR concept to markets globally such as Hong Kong depositary receipts

Comparing Different Structures

	ADR				GDR
	Broaden shareholder base with existing shares		Raise capital with new shares		
	Over-the-Counter Level 1	U.S. Listing Level 2	U.S. Listing and Public Offering Level 3	U.S. Private Placement Rule 144A GDR	Non-U.S. Private Placement Regulation S GDR
Description	Unlisted program in the U.S.	Listed on a major U.S. exchange	Offered and listed on a major U.S. exchange	Private placement in U.S. to Qualified Institutional Buyers (QIBs)	Placement in non-U.S. markets May also be accompanied by a U.S. tranche as a Rule 144A placement
Trading	OTCMarkets	NYSE Nasdaq	NYSE Nasdaq	OTCMarkets	London Stock Exchange SGX
SEC and GAAP Requirement	No U.S. GAAP reconciliation required	SEC compliance and partial reconciliation to U.S. GAAP or qualifying IFRS	Full SEC compliance including full U.S. GAPP reconciliation of qualifying IFRS	GAAP conformity not required	GAAP conformity not required
SEC Filing(s)	File form F-6	File forms F-6, 20F	File forms F-6, F-1 and 20F	No SEC registration requirements	No SEC registration requirements

The Benefits of Depositary Receipts

Benefits to the Company

- Access capital outside the issuer's home market
- Broaden and diversify shareholder base
- Expand opportunity to increase local share price as a result of global demand/trading
- Enlarge the market for the company's shares, potentially increasing liquidity
- Facilitate merger and acquisition activity through use as acquisition currency
- Build company visibility internationally
- Adhere to transparency and disclosure standards of the world's largest equity market

Benefits to the Investor

- Facilitate geographic diversification
- Trading, clearing and settling in accordance with practices of the investor's home market
- DRs are quoted and pay dividends in the currency of the market it trades in
- DRs overcome obstacles that mutual funds, pension funds and other institutional investors may have in purchasing and holding securities outside their local market
- Eliminating cross border custody safekeeping charges

Legal Considerations for ADR Programs

- **Level 1**
- A Level 1 ADR program is the simplest for foreign issuers and requires that only Form F-6, a highly simplified 1933 Act registration statement, be filed with the SEC.
- To establish a Level 1 program a company must have securities already traded on a foreign stock exchange and must publish its annual reports in English.
- In the United States, Level 1 ADRs trade in the over-the-counter ("OTC") market.
- A Level 1 ADR program will not be subject to ongoing U.S. reporting requirements so long as the foreign issuer publishes in English on its website certain periodic information that would allow it to qualify for a Rule 12g3-2(b) exemption under the 1934 Act.

Legal Considerations for ADR Programs *(cont'd)*

- Sponsored vs Unsponsored ADRs, ADRs may be either "sponsored" or "unsponsored."
- A depositary can create an unsponsored ADR facility if the issuer is either: (i) subject to the periodic reporting requirements under the 1934 Act or (ii) exempt from these reporting requirements pursuant to Rule 12g3-2(b) under the 1934 Act.
  - Rule 12g3-2(b) automatically exempts FPIs from the registration and periodic reporting requirements of the 1934 Act if the issuer (i) is not currently required to file or furnish reports under Section 13(a) or 15(d) of the 1934 Act, (ii) has a class of securities listed on one or more exchanges in its primary trading market (at least 55% of its worldwide trading volume) and (iii) has published on a web site English translations of the material information it has (a) made public under home country laws, (b) filed with a securities exchange or (c) distributed to its security holders, including, at a minimum, English translations of its annual report, interim reports, and all direct shareholder communications.

Legal Considerations for ADR Programs *(cont'd)*

- "Unsponsored" ADRs are issued by a depositary for already outstanding foreign shares without an agreement with the issuer of the shares.
- A depositary can establish an unsponsored ADR program unilaterally based on investor and broker-dealer demand. As a result, the issuer bears no cost or additional reporting obligation in connection with the establishment of an unsponsored ADR program.
- Multiple unsponsored ADR facilities may exist for the same issuer because an unlimited number of depositaries may issue unsponsored ADRs. Unsponsored ADRs trade in the United States on the OTC market only.

Legal considerations for ADR Programs *(cont'd)*

- "Sponsored" ADRs are issued by a depositary pursuant to an agreement with the issuer for shares that are already outstanding or for shares issued specifically for an offering of ADRs in the United States.
- A single depositary establishes the sponsored ADR facility, which cannot be duplicated by other depositaries. Sponsored ADR facilities also provide the issuer the flexibility to list the ADRs on a U.S. stock exchange.
- An FPI that chooses to issue shares in the United States through a sponsored ADR program enters into a deposit agreement (the "deposit agreement") with the depositary, which sets forth the rights and obligations of the ADR holders and covers matters such as the issuance of ADRs upon deposit of underlying shares, dividends, voting and amendment and termination.

Legal considerations for ADR Programs *(cont'd)*

- ADRs are typically issued in global book-entry form (the ADSs are issued in book-entry), although many deposit agreements allow investors to exchange book-entry ADRs for certificated ADRs.
- The deposit agreement also specifies the fees of the depositary for the issuance and cancellation of ADRs, which generally are waived for an initial issuance in connection with a public offering, but are paid by investors for the subsequent deposit and withdrawal of the underlying shares.

SEC Registration Requirements

- 1933 Act Registration Requirements. Offerings ADRs involves registering two securities – the underlying shares and the ADRs.
  - The ADRs are registered by filing a Form F-6, which consists mainly of the deposit agreement and a sample ADR certificate.
  - The main registration statement is for the underlying shares, typically on Form F-1, and must include information about the business and operating and financial history of the issuer and a description of the securities being offered. The prospectus included in the registration statement is the main selling document for a US public offering.
  - SEC typically takes 30 days to review and provide first set of SEC comments on F-1; the time required for resolution of those comments will depend materially on their number and difficulty. F-3 is considerably faster process.
  - SEC confidential submission available.

Disclosure Requirements

- Form 20-F is the main form containing the disclosure requirements for FPIs which, when registering in the US for the first time, will need to prepare detailed disclosure including business description, risk factors, MD&A, compensation and a variety of other matters.
- The financial statements are one of the most significant work streams in preparing a US public offering. Item 18 requires all information mandated by SEC regulations. Financial statements of a foreign private issuer must either be prepared in accordance with IFRS or U.S. GAAP or have a reconciliation and meet other burdensome requirements.

Disclosure Requirements *(cont'd)*

- Other considerations
  - Auditor Independence
  - 1934 Act Registration and Reporting Requirements
  - Disclosure Controls and Procedures and Internal Control Over Financial reporting.
  - Sarbanes-Oxley Act CEO and CFO Certifications
  - Management Evaluation of Internal Control over Financial Reporting
  - Section 404(b) Exemption for EGCs and First-time Registrants

EGC Accommodations

- An emerging growth company (or "EGC") is a company with less than US$1.07 billion in revenue for the last fiscal year.
- An EGC can take advantage of specified reduced reporting and other requirements that are otherwise applicable generally to public companies.
- Exemptions include:
  - Ability to include only two years of audited financials and only two years of related MD&A.
  - Exemption from auditor attestation requirements of Section 404 of Sarbanes-Oxley in the assessment of internal control over financial reporting.
  - Reduced executive compensation disclosure obligations
  - Extended transition period for complying with new or revised accounting standards applicable to public companies which allows for delay until standards applicable to private companies (for US GAAP filers)

EGC Accommodations *(cont'd)*

- These accommodations last for up to five years or until last day of first fiscal year with revenues above $1.07 billion or the date on which company issues more than $1 billion in non-convertible debt securities during previous three years or first day of year following year in which on the last fiscal day of the second quarter more than $700 million public float / large accelerated filer.

Foreign Private Issuer Accommodations

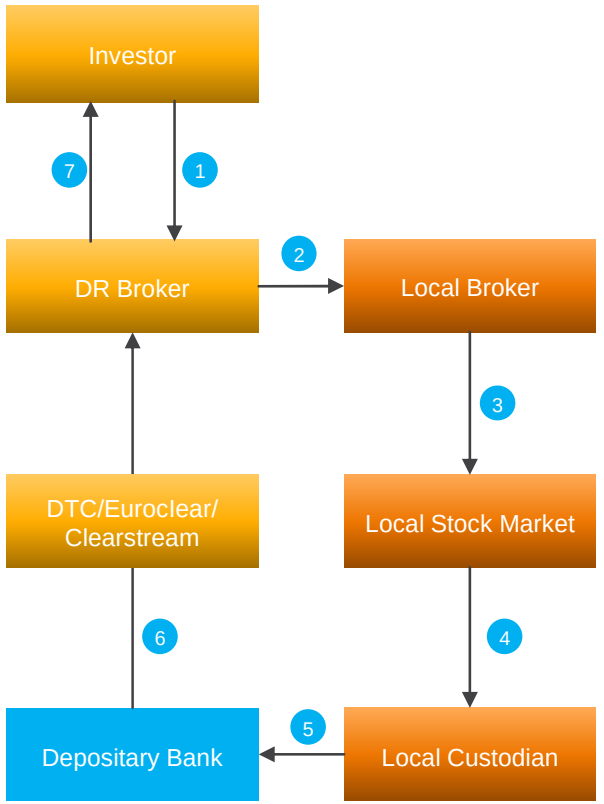
- Can prepare financial statements under IFRS or local country with US GAAP reconciliation
- Exempt from US proxy rules
- Exempt from US Section 16 requirements
- Furnish information under Form 6-K rather than more stringent quarterly reporting on Form 10-Q with certifications and current reporting on Form 8-K
- Annual report on Form 20-F due four months after fiscal year end
- Loss of FPI status if more than 50% of shares held by US and any of the following: (i) majority of directors or executives are US citizens or residents; (ii) more than 50% of assets located in US; or (iii) business administered principally in the US.

Depositary Receipts vs Direct Listings

	Asset Servicing	Share Price Alignment	Fungibility	Indexation	Flexibility	Investor Base	Costs
Depositary Receipts	▲ Depositary handles all asset servicing	▲ Ability to set and adjust the DR price	▲ Seamless fungibility to better match market supply and demand	• No difference in indexation	▲ Deposit Agreement provides a high level of flexibility	• No difference in investor base	▲ DR banks may offer financial incentives to help offset the cost of listing
Direct Listings	▼ Issuers responsible for all asset servicing	▼ No share price alignment	▼ Less fungibility	• No difference in indexation	▼ Limited flexibility as issuers must make regulatory adjustments	• No difference in investor base	▼ Issuers are responsible for all costs associated with direct listings

Depositary Receipt Issuance Process

1. Investor contacts broker and requests the purchase of a DR issuer company's shares
2. The broker contacts a local broker in the issuers home market
3. The local broker purchases ordinary shares on an exchange in the local market
4. Ordinary shares are deposited with a local custodian
5. The local custodian instructs the depositary to issue DRs that represent the shares received
6. The depositary issues DRs and delivers them in physical form or book entry form through DTC/Euroclear/Clearstream (as applicable)
7. The broker delivers DRs to the investor or credits the investors account



DR Program Documentation

Citi Agreements

Deposit Agreement

- Negotiated, fairly standard document (For ADRs this is filed with the SEC)
- Details the responsibilities of all parties: the Issuer, Citi and the Investors
- Details of fees, voting procedures and rights around AGM, depositary service fees, etc.
- In buying an DR, it is understood the investor accepts the terms of the Deposit Agreement

Engagement Letter

- Private document setting out the commercial terms between Citi and the Issuer

Closing Documents

Form F-6 *(ADRs)*

- Public document registering a specific number of ADRs with the SEC. The limit can be revised upwards as it nears the threshold. It is signed by half the board plus 1 US representative

Legal Opinions

- U.S. legal opinion
- Local legal opinion

Form F-1 *(ADRs)*

- Section describing the ADRs to be included in the Prospectus to be filed with the SEC

Form 20-F*(ADRs)*

- Annual SEC filing that contains all relevant financial information including ADRs

Liability

- Civil Liabilities under the 1933 Act and the 1934 Act
- A number of provisions of the 1933 Act and 1934 Act prohibit manipulation or fraud in connection with securities offerings.
  - Under Section 11 of the 1933 Act, any person who purchases a security covered by a registration statement has a private right of action, if at the time the registration statement became effective it contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, against (i) the issuer, (ii) its principal executive officer, its principal financial officer and its principal accounting officer, (iii) its duly authorized representative in the United States, (iv) every person who is, or who consented to be named as a person who is about to become, a director at the time the registration statement became effective, (v) every accountant, engineer, appraiser or other professional person who has with his consent been named as having prepared or certified any part of the registration statement, and (vi) every underwriter of the security.

Liability *(cont'd)*

- Under Section 11, the issuer is absolutely liable for material deficiencies in the registration statement irrespective of good faith or the exercise of due diligence. Directors, officers and underwriters under Section 11 are held to a somewhat less stringent framework. For "expertized portions" of the registration statement (audited financials or other expert reports), the officer, director or underwriter will not be liable if they can prove they had "no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy or extract from the report or valuation of the expert."

Liability *(cont'd)*

- For non-expertized portions of the registration statement (including unaudited financials), defense that "after reasonable investigation, reasonable ground to believe and did believe" at time of registration statement effectiveness that the statements in such non-expertized portion were true and that there was no omission of a material fact required to be stated or necessary to make the statements not misleading. Officers, directors and underwriters must exercise "due diligence" with respect to the preparation of the registration statement. They may not avoid liability by relying solely upon counsel or some other person to prepare the registration statement.
- Under Section 12(a)(2) of the 1933 Act, the purchaser of a security has a right of action for damages or rescission against the person who offered or sold the security to him by means of any prospectus or oral communication containing a material misstatement or omission (unless the purchaser was aware of the misstatement or omission).

Liability *(cont'd)*

- Section 12(a)(2) provides the seller with a "due diligence" defense, although one couched in somewhat different terms from that of Section 11
- The seller is not liable they can prove that they "did not know, and in the exercise of reasonable care could not have known, of such untruth or omission."
- Rule 159 under the 1933 Act provides that information conveyed to an investor after the time of sale should not be taken into account in determining whether the information conveyed to an investor at the time of sale (including any free writing prospectus) was materially deficient under Section 12(a)(2) of the 1933 Act. For these purposes, the SEC considers the time of sale to be the time at which the investment decision was made.

Liability *(cont'd)*

- The determination of whether information has been conveyed to an investor at or prior to the time of sale is a facts and circumstances test, though the SEC has confirmed that the correct standard to apply is what information is "reasonably available" to the investor and not what the investor "truly knew."
- One of the most significant anti-fraud and anti-manipulation provisions of the U.S. securities laws is contained in Section 10(b) of the 1934 Act which forbids the use of any "manipulative" or "deceptive" device in connection with the purchase or sale of any securities.

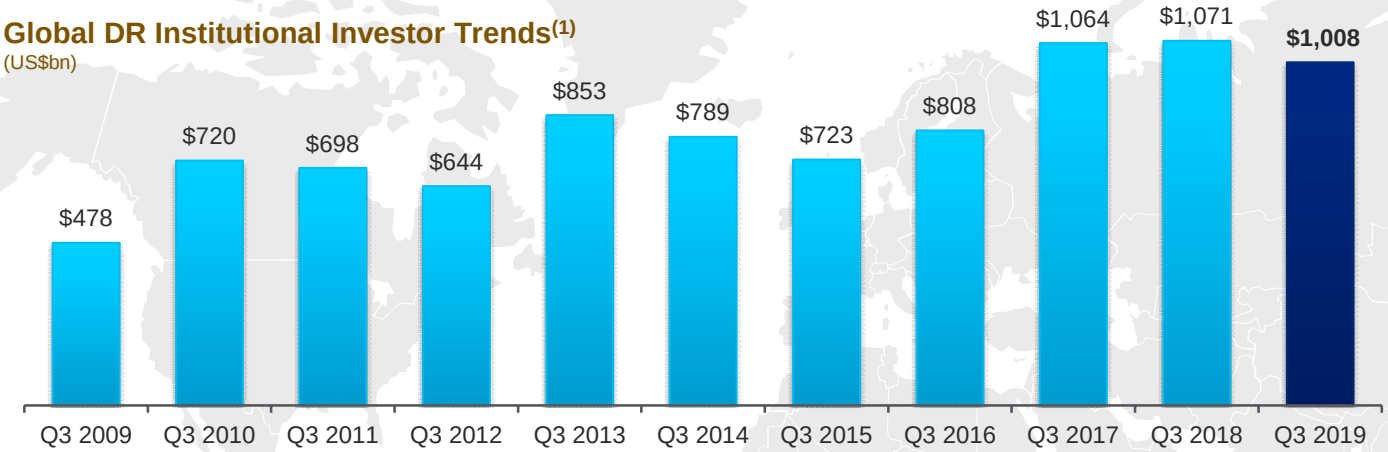
Liability *(cont'd)*

- Rule 10b-5 prohibits: (i) the use of any device, scheme or artifice to defraud; (ii) the making of any untrue statement of a material fact or the omission of a material fact necessary to make the statements made not misleading; or (iii) the engaging in "any act, practice or course of business" that would operate to deceive any person in connection with the purchase or sale of any securities.
- Under Rule 10b-5, the issuer and its employees or agents may be liable for disseminating false or misleading information or suppressing material information about the issuer, whether or not the issuer or any of its employees or agents purchased or sold any securities.
- Liability can be based on information filed in a registration statement or report filed with the SEC (including on Form 6-K), or upon public statements issued by the company.

DR Capital Raising and Investor Trends

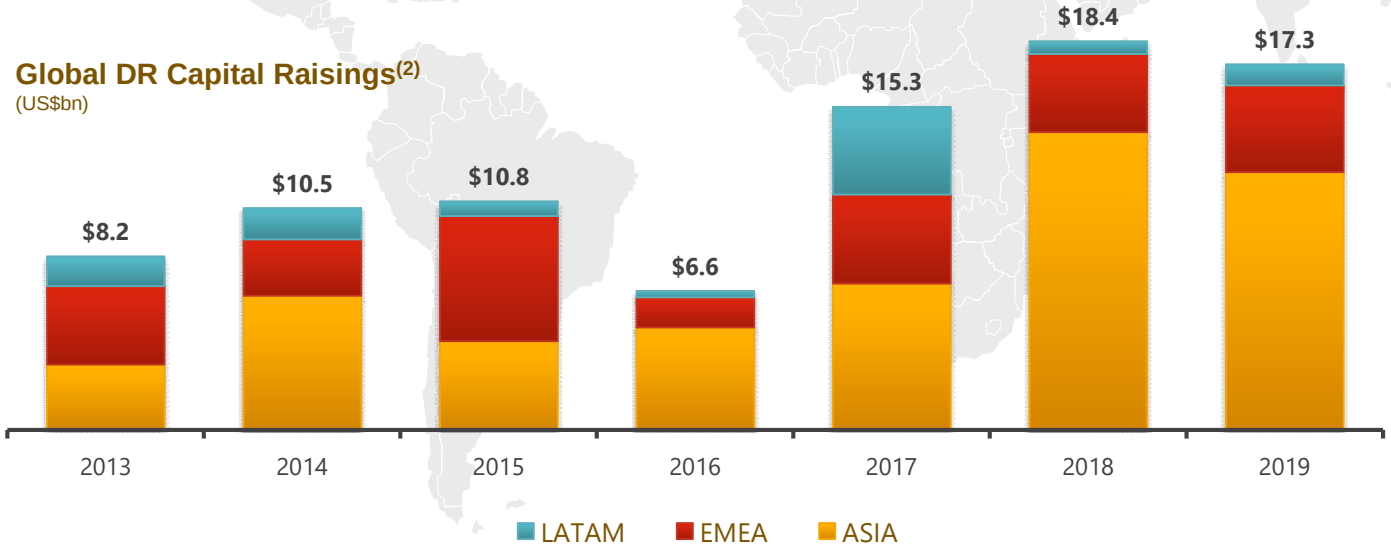
Global DR Institutional Investor Trends[1]

(US$bn)



Global DR Capital Raisings[2]

(US$bn)



APAC

2019
Trading Volume: 59.8B
Trading Value: $1.9T

EMEA

2019
Trading Volume: 59.7B
Trading Value: $1.1T

LATAM

2019
Trading Volume: 42.6B
Trading Value: $0.4T

Sources: Bloomberg, Depositary Data Interchange; (1) Data as of 12/31/2019, excludes Softbank Group Corp.; (2) Data as of 12/31/2019; excludes Alibaba IPO in 2014.

Shanghai-London Stock Connect Overview

Stock Connect Chinese Depositary Receipts (CDRs)

- CDRs are depositary receipts issued and listed on SSE representing premium-listed shares of qualified issuers on LSE, settled and cleared at the CSDC, and subject to the rules and regulations of the CSRC
- Eligibility criteria include:
  - Maintain a minimum average market capitalization of RMB 20bn over the 120 trading days prior to the offering application date
  - Remain LSE-listed for at least 3 years and premium-listed for at least 1 year
  - List at least 50mm CDRs representing at least RMB 500mm in market value

Stock Connect Global Depositary Receipts (GDRs)

- GDRs are negotiable instruments that evidence ownership of shares in a non-U.S. company and are usually offered to institutional investors through a private offering (Rule 144A for U.S. investors and Reg. S for non-U.S. investors)
- Eligibility criteria include:
  - Fulfill LSE Admissions and Disclosure Rules
  - Publish a Financial Conduct Authority (FCA) approved prospectus
  - Have a market capitalization greater than or equal to RMB 20bn at admission
  - Only 10-15% of total shares registered allowed in GDR form
  - Offer price must not be less than 90% of the 20-day average trading price for A Shares prior to the offer period
  - Minimum 25% of GDRs in public hands in one or more EEA states

Global Depositary Notes

- Evidence Ownership of Local Debt Securities
- Facilitate Global Settlement and Trading
- Denominated and Transacted in USD
- Multiple Applications for Issuers and Investors
- Established as an 'Unsponsored' Arrangement

Existing GDN Markets

GDN Offering Transactions

Republic of Peru Primary Offering US$450mm 2007	Republic of Peru Primary Offering US$1.5bn 2010	Pemex Primary Offering US$516mm 2011	Republic of Peru Primary Offering US$450mm 2012
Pemex Re-Tap Offering US$90mm 2013	Pemex Primary Offering US$85mm 2013	Federal Republic of Nigeria Primary Offering US$55mm 2014	Pemex Primary Offering US$190mm 2014
Pemex Re-Tap Offering US$180mm 2014	Pemex Re-Tap Offering US$260mm 2014	Republic of Peru Tender & Exchange + Primary Offering US$1.8bn 2014	Republic of Peru Tender & Exchange + Primary Offering US$800mm 2015
Republic of Peru Tender & Exchange + Primary Offering US$1.3bn 2016	Fondo MIVIVIENDA Primary Offering US$282mm 2017	Republic of Peru Tender & Exchange + Primary Offering US$363mm 2018	

Questions?

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