



BLG'S GLOBAL ACCESS TO CAPITAL

Seminar Series

BLG
Borden Ladner Gervais

Raising Capital in the United States

BLG has launched a series of “Master Classes” focused on Global Access to Capital.

On December 13, 2016, BLG hosted a panel discussion on raising capital in the United States, chaired by Jeff Graham, the head of BLG's Life Science practice. Attendees heard from an experienced panel of senior life science executives and financial, legal and accounting advisers who have successfully raised billions of dollars in the U.S. capital markets for numerous Canadian life science and other innovative companies. The panelists had all participated in the recent success of Cynapsus Therapeutics Inc. in accessing the U.S. capital markets and shortly thereafter being acquired by Sunovion Pharmaceuticals Inc. Biographies of each of the panelists are found on pages 3 and 4.

Meeting Summary

A summary of the key observations and insights are set out below.

Andrew Williams, the former CFO/COO of Cynapsus led off the discussion. His message was that whether the goal is accessing the US capital markets or otherwise, the achievement of that goal is a function of execution which in turn depends on a carefully planned and prepared forward looking strategy. While it may have appeared to outsiders that Cynapsus success occurred overnight from its TSX uplisting in 2014 to a US listing on NASDAQ in 2015 and a significant exit via its all cash C\$841 million sale in 2016, the journey was a long one that involved hard work and careful planning along the way. From fairly early on, Cynapsus understood the importance of tapping into the U.S. financial markets, but was careful and patient in waiting for the appropriate time to cross-list.

The panel discussed different types of financings recognizing that at different stages in a company's life cycle, some may or may not be available. The panel discussed the importance of taking advantage of government or research grants, when to consider private placements, public offerings, U.S. listings, and private and public cross border offerings.

It was acknowledged that a grant or financial contribution or recognition from a U.S. or international body with credibility in the segment of the market in which the company was seeking to build a profile and business. There was a discussion of the importance of building from day one a corporate profile that would be comparable to U.S. competitors, including a management team, and advisers who had experience with the U.S. and other international markets.

The panel focused on the benefits of the U.S./Canada multi-jurisdictional disclosure system (MJDS) which provides a streamlined procedure for Canadian companies that meet reporting and size thresholds to fairly easily access the U.S. capital markets. By availing themselves of the MJDS, issuers raising capital in the U.S. can typically save two to three months' time as compared to issuers for whom the MJDS is not available.

RESERVE A PLACE AT FUTURE EVENTS

Seminars being planned for 2017 will include:

- A session on strategies for success in navigating the going public process in Canada and the U.S. with panel members to include representatives from both the NASDAQ and the TSX
- Innovative ways to raise capital in Europe
- Seeking strategic investments from large multinational partners

More information will be forthcoming in the coming weeks on these and other events.

If you have any questions regarding this seminar, or future seminars in the Global Access to Capital Series, please contact **Paul Fortin**, BLG National Business Director at pfortin@blg.com

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Underlying all of these factors is the need for constant presence, knowledge and awareness of what is happening in the company's competitive environment. Andrew Williams recounted how Cynapsus was able to access financing on more than one occasion by being aware of transactions involving its competitors and "following the money" to interested investors. He also spoke to the importance of the tenacity with which Cynapsus' former President and CEO, Anthony Giovino, approached marketing the company to potential investors.

During the discussion, the panelists emphasized the importance of the following factors for companies considering a United States listing:

- **Listing on OTC Markets and Cross Over Financings** – Prior to completing a full listing or public offering in the U.S., Canadian issuers may find it helpful to get a foot print in the U.S. and some recognition among U.S. investors. There are various ways that this can be done, including non-deal road shows and other less formal marketing endeavours to give potential investors insight into a company. Issuers should consider private placements into the U.S. and the benefits of listing on OTC exchanges such as the QX and QB prior to engaging in a full listing in the U.S. These steps can help provide a platform on which investors can trade and gain familiarity with a company's stock without incurring the significant costs or reporting obligations that will arise following listing on a larger U.S. stock exchange.
- **Board Preparedness and Education** – It was noted that it was essential for a Canadian company's board to understand the importance of being U.S. facing to have access to U.S. capital. In addition, it is crucial that board members understand what is involved in becoming a public company in the United States. As companies grow, boards should continue to examine the mix on the board and whether additional directors with varied backgrounds and potentially nationalities will add to the experience and breadth of the board. Many Canadian issuers will add a U.S. director or one with experience in the U.S. capital markets when moving to a U.S. listing.
- **Maintaining a Data Room** – Companies should consider creating and maintaining a data room to educate potential investors as to who they are and what they are trying to do. Timing is of the essence leading up to a financing or transaction, making the establishment of diligence materials and non-disclosure agreements an essential component of the preparation phase.
- **Intellectual Property** – Companies should understand the differences in the concept of patent ownership between the United States and Canada. Investors look for assurance that an organization has the freedom to operate and ownership of the patent rights that are required in order to execute its business plan. Companies should also consider an IP audit to ensure proper and adequate protection of IP prior to going public in the U.S.
- **Financial Statements** – One of the first things investors or potential investors will want to review are a company's financial statements, and those stakeholders will want to know that those financial statements are audited. Even early stage companies should, to the extent possible, have audited financial statements available for review. Care should be taken when preparing such audited statements to ensure that there is adequate disclosure and the accounting has been properly assessed, especially related to transactions. Life science companies in particular need to understand how some equity financing arrangements can be considered analogous to debt by regulators, given this sector tends to have more complex financing arrangements, which further emphasizes the importance of starting the planning process early. Prior to moving to a U.S. listing, consideration should be given whether to move to a Big 4 accounting firm. Members of the panel gave a few real life examples of situations where a Big 4 accounting firm was able to step in and help avoid serious Canadian regulatory or SEC accounting issues.

CYNAPSUS CASE STUDY AND SUCCESSSES:

- (i) Significant U.S. investor relations with over C\$170 M raised in U.S., including U.S. IPO
- (ii) developed a phase 3 PD drug candidate, and
- (iii) successfully completed an all cash M&A deal of C\$841M