

Securities Practice: White & Case

Law 360, New York (July 30, 2008) — As more major initial public offerings involve multijurisdictional components, it becomes increasingly important for law firms to have operations in various countries with special knowledge of local law, according to securities attorneys at White & Case LLP.

The benefits of the firm's global reach were realized when White & Case served as lead counsel for Visa in its \$19.7 billion IPO, the largest in U.S. history. The U.S. portion of the deal was just one part of a global effort by the firm which required the diligence of more than 75 attorneys working in more than 170 legal jurisdictions.

The firm's representation of Visa in the matter first began with the credit card company's need to reorganize its various entities in preparation for becoming a public company.

"It is more common that you often have to deal with the fact that a company has operations in different jurisdictions and you have to deal with each of them separately," said Gary Kashar, co-chair of White & Case's securities practice. "Visa took this to the extreme with its particular set of circumstances."

Visa's various companies had been owned by networks of different banks in different countries and it was White & Case's job to set up a single company that could be publicly offered.

"The company needed to completely reorganize its corporate view in order to IPO itself," Kashar said. "Few firms can call on resources around the world like we can. Our attorneys have real securities expertise, not just in the U.S. and London but in different offices all over the place."

From October 2006 to October 2007, the firm's various attorneys negotiated agreements with Visa's entities on what each would own in the public company while also maneuvering through the laws of multiple jurisdictions.

The deal touched many of White & Case's practices, including M&A, antitrust, tax and intellectual property. It even included an employment aspect, in which the firm helped devise an equity incentive compensation plan for the credit card company's more than 5,000 employees worldwide.

Visa Inc. was formed through the merger of Visa International, Visa USA and Visa Canada, while Visa's European banks retained ownership of that region's operations with an exclusive license to Visa products in Europe.

Visa's IPO took place in March concurrently in the U.S., Canada and Japan.

“The IPO market is not particularly hot,” said John M. Donovan, a partner in the firm’s securities section. “I don’t think anyone thought we would get the performance that Visa did.”

Donovan said that the firm’s securities practice has doubled in size to about 320 attorneys in the last four years.

“Our global growth is clearly a result of the real development of the securities markets outside the U.S.,” Donovan said.

He said a combination of high-yield debt, cross-border and equity IPO work has accounted for the growth, with the IPO work involving both domestic and international companies, particularly in Israel and China, listing in the U.S.

“We’ve had significant growth in the last two years, in some ways we are building our reputation and we are getting to the point where we are being recognized properly,” Kashar said. “If you ask most people who did the biggest IPO, they wouldn’t have said us, but we’re getting there.”

“I think over time, both the fact that we were handling such a complex transaction and the fact other participants recognize the quality will help the securities practice on all fronts,” Donovan said.

Donovan said that while the capital markets have slowed down significantly, the firm continues to handle a large volume of deals in Brazil, Asia and elsewhere.

In April, White & Case advised Saudi bank Alinma Bank in its \$2.8 billion IPO, the largest ever in Saudi stock market history. The firm characterized the deal as a “milestone” in the development of the Saudi equity market.

In March, the firm represented Canada Housing Trust and Canada Mortgage and Housing Corp. in the sale of \$11 billion in Canada Mortgage Bonds, the largest debt offering in Canadian history.

In May, the firm advised Kazakh oil and gas company Zhainkmunai in its \$100 million IPO in London. The offering represented the first-ever listing of global depository receipts in London by a limited partnership, which required a change in law in the Isle of Man.

“Even if you are not a big international company today, you will probably be more global five years from now, and we would already be ahead of you going there,” Kashar said.

The credit crunch which has slowed the IPO market is affecting other areas of work for the securities practice.

“In the absence of lending activity, a lot of assets for both funds and brokers I would say are trading at very depressed prices below what is the real or intrinsic value,” Donovan said.

He said the firm is helping clients evaluate ways to value assets properly.

Donovan also predicted more litigation regarding subprime mortgage securities for failure to warn investors of the markets possible downfall.

He said some in the securities industry have viewed the claims as more legitimate than prior class action litigation, with discovery allowing plaintiffs to discover when companies had problems with underlying securities.

Meanwhile, he said typical company warnings in disclosure statements about changes in the marketplace which were used for years remained unchanged prior to the market downturn, a major contention in such suits.

Donovan said such cases differ significantly from the class action model of shareholder litigation because the litigation usually involves large institutional investors on both sides.

“A lot more of the cases are settled because of the size of the claim and people on each side generally tend to work in the market in the future,” Donovan said. “When two institutions go after each other, a lot less is in court and it may be that suits are filed in prelude to settlements.”

Donovan said the credit crunch has also led to more concern about increased regulation.

“As a result of the credit crisis, legislators and the SEC have become concerned about the role of hedge funds in the economy,” Donovan said. “Though there is no specific piece of legislation like on the taxation issue, Funds are keeping a very close eye on any purported activity which limits their activity.

He said broker-dealers, investment banks and other financial institutions are also wary of increased regulation, with one area under the microscope involving the credit default swap market.

— *By Ron Zapata*