Top 10 Practice Tips: Comfort Letters

A Practical Guidance® Practice Note by Anna Pinedo and Ryan Castillo, Mayer Brown LLP

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This practice note discusses 10 practice points that can help you, as counsel to underwriters or initial purchasers, skillfully navigate the task of reviewing and negotiating comfort letters. A comfort letter is a letter delivered by an issuer's independent accountants to the underwriters or initial purchasers in connection with an offering that provides certain assurances with respect to financial information included in a registration statement, prospectus, or offering memorandum used for the securities offering.

For more on IPOs generally, see Initial Public Offerings Resource Kit.

Underwriting agreements and purchase agreements typically require the delivery of one or more comfort letters, in form and substance reasonably acceptable to the underwriters, initial purchasers, or their counsel, as a condition to closing the securities offering. Comfort letters assist underwriters in establishing a due diligence defense under Section 11 of the Securities Act and in creating a record of their reasonable investigation of the issuer and its financial condition to ensure there are no material misstatements or omissions in the offering document.

1. **Review AS 6101 and Relevant Comfort Letter Precedents.** The first order of business is to familiarize yourself with Auditing Standards No. 6101: Letters for Underwriters and Certain Other Requesting Parties (AS 6101) issued by the Public Company Accounting Oversight Board (PCAOB). AS 6101, available at AS 6101: Letters for Underwriters and Certain Other Requesting Parties, superseded AU Section 634 of the PCAOB which, in turn, had codified the earlier Statements on Auditing Standards No. 72 (SAS 72) issued by the American Institute of Certified Public Accountants (AICPA). While AS 6101 is the latest iteration of the relevant U.S. accounting standard, in common practice, the term SAS 72 has nonetheless stuck and practitioners today often refer to a SAS 72 comfort letter or a SAS 72 review. AS 6101 provides guidance to auditors on the form and content of comfort letters, including whether it is appropriate for auditors to comment on specified matters, and if so, the form that those comments should take. It also contains sample language and forms of letters suitable for various offerings, and sets forth practical suggestions on how to reduce or avoid uncertainties regarding the nature and extent of the accountant's responsibilities in connection with a comfort letter. You also should review the Appendix in AS 6101 as it contains sample comfort letters that are oftentimes either replicated verbatim or substantially adopted by auditors. For instance, Example A in the Appendix prescribes language to be employed in a typical comfort letter, while Example B shows the language to use when the issuer files a short-form registration statement (such as a Form S-3) that incorporates by reference previously filed Forms 10-K and 10-Q.

Next, you should gather relevant comfort letter precedents. These would include comfort letters issued by the same audit firm for the same issuer in earlier offerings that are similar in type as the current offering; those issued by the same audit firm in securities offerings for other issuers that are peers of, or are active in the same industry as, the issuer; or those delivered by audit firms, in earlier similar deals, to joint book-runners or initial purchasers that are also participating in the current deal.

2. **Obtain a SAS 72 Rep Letter for Unregistered Offerings and Coordinate with Auditors Regarding Any Needed Preliminaries.** In an SEC-registered offering, accountants may issue a comfort letter to named underwriters, as well as to other parties with a statutory due diligence defense under Section 11 of the Securities Act, such as, for instance, an agent under a registered medium-term note program. In the latter case, the requesting party must deliver to the accountants either an opinion from counsel that such party has a due diligence defense under Section 11 of the Securities Act or a SAS 72 representation letter as described below. In an exempt offering (such as a Rule 144A or a Regulation S offering), accountants may issue a comfort letter to a broker-dealer or other financial intermediary, acting as principal or agent in an offering of securities, if such broker-dealer or financial intermediary delivers a signed SAS 72 representation letter. In such a letter, the broker-dealer or financial intermediary represents that the due diligence undertaken by it in connection with the exempt offering is substantially consistent with the diligence that would have been undertaken in connection with acting as an underwriter in an SEC-registered offering. An example of a SAS 72 representation letter is provided in paragraph .07 of AS 6101, although in practice, each audit firm will have its own standard form. It is important for counsel to coordinate early with auditors and the broker-dealers regarding a requirement for, and the form and content of, the SAS 72 representation letter. Note that, in some instances, absent a signed SAS 72 representation letter, some audit firms will not participate in an accounting due diligence session or commence work on the comfort letter process. Also, remember that a named underwriter in an SEC-registered offering need not provide a SAS 72 representation letter. Ask the accountants to confirm that they are in a position to timely deliver the comfort letter and that any administrative or preliminary matters they need completed prior to their issuance of the comfort letter have been accomplished. Since the auditors are engaged by the issuer itself, some audit firms will not deliver or release the comfort letter absent receipt of a signed engagement letter from the issuer or a management representation letter.

3. **Plan Ahead.** Be mindful of the nature of the deal and communicate in advance comfort letter coverage, timing, and logistics with the auditors. Capital markets transactions come in different shapes and sizes and have varying execution timelines. A good lawyer always plans ahead, clearly communicates goals, expectations, and follows through. Recognize that shelf takedowns, such as investment grade debt offerings, can go to market quickly, hence the comfort letter process must commence immediately and proceed on an accelerated timeline. Right after the kickoff call or deal engagement, and with the permission of the issuer or its counsel, reach out to the audit firm so that they are aware of the deal, the offering timeline, the documents as to which comfort will be requested, and the required timing for delivery of the comfort letter and any bring-down comfort letter. Bear in mind that audit firms themselves have their own internal processes (e.g., national office approval), and these processes often require some lead time. Identify at the start of the transaction which documents would be covered by the comfort letter. These documents would include not only financial information contained in the actual offering document (e.g., financial information and schedules included in an offering document), but also documents incorporated by reference into the offering document (e.g., the issuer's financial statements and financial schedules included in the short-form registration statement, its Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statement, and any free writing prospectus). Request a draft of the comfort letter from the auditors, provide comments on the draft, and send to the auditors the draft circle-up early in the offering process. Agree on the final form of the comfort letter as soon as practicable before pricing the offering. Ideally, the final draft of the comfort letter should be in agreed form before filing the registration statement or before finalizing the preliminary offering document (e.g., the preliminary offering memorandum or preliminary prospectus supplement) that is used to market the deal to investors. Note that the practice in most U.S. underwritten offerings is that a fulsome comfort letter is delivered at pricing (the time of sale) and a shorter, bring-down comfort letter is issued at closing. Make sure the auditors are aware of the time of pricing and confirm they are able to deliver the comfort letter shortly thereafter. The accountants will usually ask to see the executed underwriting agreement before they release the signed comfort letter on pricing day. For closing, note that a number of audit firms will only issue and release the bring-down comfort letter on the closing date itself, so remember to remind the auditors regularly that they will need to deliver the bring-down letter

early in the morning so that settlement of the deal can commence promptly on closing day. Note that the timing and frequency of comfort letters may also vary depending on the nature of the transaction. For instance, in medium-term note programs and at-the-market offerings, comfort letters are required in connection with the establishment of the program and may be brought down in the future, for instance, periodically, on a quarterly or annual basis, or in connection with a syndicated takedown.

4. **Mind the 135-day Rule and the Dates for Delivery of the Comfort Letter.** Accountants may provide negative assurance as to subsequent changes in specified financial statement items as of a date **less than** 135 days from the end of the most recent period for which the accountants have performed an audit or a review. If 135 days or more have elapsed since the date of the issuer's most recent audited annual financial statements or reviewed interim financial statements, on one hand, and the cut-off date of the comfort letter, on the other hand, then auditors will not be able to give any negative assurance as to subsequent changes in specified financial statement items. Rather, they will be limited to reporting procedures performed and findings obtained. To illustrate, if the accountants have reviewed the issuer's interim financial statements for the third quarter ended September 30, 2022, then they may provide negative assurance on increases or decreases in specified financial statement items as of any date up to February 11, 2023 (134 days subsequent to September 30, 2022). From February 12, 2023, which is the 135th day, the auditors will refuse to give negative assurance on the change period, since the September 30, 2022 interim financial statements then would not be less than 135 days old. See paragraphs .46 and .47 of AS 6101 for some illustrations of the application of the 135-day rule. Since the type of comfort that auditors would be willing to provide underwriters will be limited (i.e., from negative assurance to agreed-upon procedures) as of the 135th day following the most recent audited or reviewed financial statements, it is important to pay particular attention to the issuer's financial reporting cycle and factor this into the deal timeline. Underwriters will often be unwilling to proceed with the deal if they do not receive negative assurance on the change period. In the above illustration, the underwriters may decide to postpone the deal until after the issuer files its 2022 Form 10-K (that contains the year-end audited financial statements) in March 2023.

   Pay particular attention to the dates specified in the comfort letter. The comfort letter is dated and delivered as of the date of the pricing of the offering, while the bring-down comfort letter is dated and issued as of the closing date. The comfort letter will include a cut-off date, which is the date up to which the auditors have performed their procedures as specified in the comfort letter. Paragraph .23 of AS 6101 says that the comfort letter should state that the inquiries and other procedures performed by the auditors do not cover the period from the cut-off date to the date of the comfort letter. While the cut-off date is subject to some negotiation, it is common practice for a comfort letter to have a cut-off date that is one to three business days before the date of the comfort letter, and for a bring-down comfort letter to have a cut-off date that is one to two business days before the closing date.

5. **Understand the Different Levels of Comfort That Auditors Provide.** The procedures undertaken by accountants with respect to financial information contained in or incorporated by reference into the offering document will dictate the level of comfort they are willing to provide on such information. In reviewing the comfort letter to determine whether you are receiving the appropriate level of comfort, visualize a cascading waterfall, where each level represents a particular time period in the issuer's financial reporting cycle, the procedures performed by the accountants on available financial numbers covering that period, and the corresponding level of comfort accountants are willing to give as a result of those procedures.

- **Year-End Audit of Annual Financial Statements.** At the top level are annual financial statements audited by accountants in accordance with the standards of the PCAOB and covered by an auditor's unqualified opinion. Regulation S-X under the Securities Act generally requires reporting companies to include two years of audited balance sheets and three years of audited statements of income, comprehensive income, changes in stockholders' equity, and cash flows in their registration statement and in the Annual Report on Form 10-K. Remember that the preparation of financial statements is the responsibility of management. Accountants in turn perform an audit, which consists of a set of procedures that enable them to obtain reasonable assurance that the financial statements present fairly in all material respects the financial results of the issuer and are free from material misstatements. Such procedures include testing evidence that support amounts and disclosures in the financial statements, assessing accounting principles used and assumptions and estimates made by management, obtaining and testing samples from the company's accounting records, and evaluating management's presentation. The objective of the audit is for auditors to express an unqualified opinion that (1) the financial statements audited present fairly, in all material respects, the financial condition and results of

operations of the issuer and its consolidated subsidiaries as of and for the periods covered and (2) that the financial statements have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP) or International Financial Reporting Standards (IFRS) as adopted by the International Accounting Standards Board (IASB). This positive assurance or formal opinion is the highest level of comfort possible. Since the audited financial statements and the auditor's report containing the auditor opinion are typically included in the registration statement or incorporated by reference into the offering document, no additional procedures need to be performed on the audited financials for purposes of the comfort letter. The comfort letter need not repeat the contents of the auditor opinion. Instead, the comfort letter will contain an acknowledgment that the accountants have audited the issuer's annual financial statements included in the offering document and have issued an opinion. Moreover, it is typical for underwriters to request accountants for another form of positive assurance, one relating to compliance as to form of the audited financials. In particular, underwriters will usually request, and the comfort letter will contain, language to the effect that, in the opinion of the accountants, the consolidated financial statements audited by them and included in or incorporated by reference in the registration statement comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and related rules and regulations adopted by the SEC.

- **Interim Review of Quarterly Financial Statements.** AS 6101 states that procedures short of an audit provide accountants with a basis for expressing, at most, negative assurance. Negative assurance consists of a statement by accountants that, as a result of performing specified procedures, nothing came to their attention that caused them to believe that specified matters do not meet a specified standard. With respect to quarterly financial statements of reporting companies, accountants perform a limited interim review in accordance with Auditing Standards No. 4105: Reviews of Interim Financial Information (AS 4105) issued by the PCAOB, which was formerly codified as Statements on Auditing Standards No. 100 (SAS 100) issued by AICPA. A review of interim financial information differs significantly from an audit of financial information because a review does not include the collection of corroborative evidence through the performance of typical substantive audit tests. In performing a SAS 100 review, the accountants will, among other things, (1) review minutes of shareholder and board meetings, (2) make inquiries of management as to whether the interim financial statements are prepared in accordance with GAAP and whether there have been any changes in accounting principles or practices or in business activities, (3) compare current interim period financial statements to the comparable prior interim period financial statements, and (4) compare recorded amounts to expectations. The resulting level of comfort will be one of negative assurance. The typical formulation would be that, nothing has come to the attention of the accountants that caused them to believe that (1) any material modifications should be made to the unaudited quarterly financial statements for these to be in conformity with GAAP and (2) the unaudited quarterly financial statements do not comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and related rules and regulations adopted by the SEC.
- **Specified Procedures on Internal Monthly Financial Statements.** The period between the end of the last fiscal quarter up to the cut-off date of the comfort letter is commonly referred to as the "change period" or "bring-down period." This period can be further divided into the time period for which the issuer has prepared internal monthly financial statements, and the remaining period for which no internal financial statements are available. The procedures accountants can perform on the period covered by internal monthly financials are more limited than a SAS 100 review. These would include reading the monthly financial statements and making certain inquiries of officials of the issuer who have responsibility for financial and accounting matters, such as whether the monthly statements are stated on a basis substantially consistent with the audited consolidated financial statements incorporated by reference in the offering document. Accountants will compare (1) key balance sheet items found in the most recent monthly statements against the corresponding items found in the most recent balance sheet included or incorporated by reference in the offering document and (2) key income statement line items found in the most recent monthly statements against the corresponding items found in the income statements for the comparable period in the prior year. Key line item changes usually include changes in common stock or preferred stock, increases in long-term debt, decreases in consolidated total assets or shareholder's equity, decreases in consolidated total revenues or net sales, decreases in total or per share amounts of income before extraordinary items, and decreases in total or per share amounts of net income. The list of key financial statement line items may change depending on the issuer's business or industry practice. On the basis of applying such procedures, accountants can provide negative assurance that, except as disclosed

in the comfort letter or except for changes, increases, or decreases that the registration statement discloses have occurred or may occur, nothing has come to their attention that caused them to believe that there was any change in specified balance sheet items compared with the prior quarter or that there was any change in specified income statement items as compared with the prior-year period. If material changes in key financial statement line items have in fact occurred during the change period, counsel should disclose this fact to the underwriters and determine if it is necessary to craft disclosure describing those changes, for inclusion in the offering document.

- **Specified Procedures for Remaining Period Where No Internal Monthly Financial Statements are Available.** The accountant's procedures for this period would be much more limited and would usually consist of reading the minutes and making inquiries of responsible officers of the issuer regarding changes to key line items since the last balance sheet and period-end date. Based on these procedures, auditors can provide negative assurance that nothing has come to their attention that caused them to believe there had been any change to the key line items except for changes specifically identified in the comfort letter or except for such changes that the registration statement discloses have occurred or may occur.

6. **Circle like a Pro.** In preparing your circle-up of the offering document and the documents incorporated by reference into the offering document, know what to circle, what not to circle, and why. Generally, accountants will only provide tick-and-tie comfort to those circled numbers that can be traced back to or derived from the issuer's audited financial statements, reviewed interim financial statements or internal accounting records. Paragraph .55 of AS 6101 provides that accountants should generally only comment on information that (1) is expressed in dollars (or percentages derived from such dollar amounts) and that has been obtained from the issuer's accounting records that are subject to its controls over financial reporting, (2) has been derived directly from such accounting records by analysis or computation, or (3) is quantitative and that has been obtained from an accounting record if the information is subject to the same controls over financial reporting as the dollar amounts. Examples of numbers you should generally not circle include square footage of facilities, number of employees (except as related to a given payroll period), and backlog information. AS 6101 also tells accountants not to comment on information subject to legal interpretation, such as beneficial share ownership. There is no need to circle up the actual numbers appearing in the audited financial statements and accompanying notes because those have already been audited, are covered by the auditor opinion, and are incorporated by reference into the offering document. Same with the numbers appearing in the actual quarterly financial statements and accompanying notes since those have been reviewed by the auditors, covered by the negative assurance in the comfort letter and are incorporated by reference into the offering document. Do not circle numbers that do not pertain to the issuer such as general industry data, market statistics, or other nonfinancial or market data about the issuer's industry or competitors. Do not circle numbers pertaining to estimates and projections, as auditors generally comment only on historical figures. Other examples of numbers that are generally not comforted by accountants include operating statistics, contracted amounts such as interest rates of financial instruments, or the principal amount of notes outstanding reflected in a global note or indenture, other legal concepts, non-GAAP financial information, and certain financial ratios of banks and bank holding companies. Note however that there are variations in practice and some audit firms may be willing to provide a low level of tick-and-tie comfort on certain of these numbers, rather than not comforting them altogether. Auditors may also comfort certain numbers covering issuers in particular industries (e.g., real estate investment trusts, banks). It is always a good idea to review relevant comfort letter precedents for their circle-up and tick-and-tie comfort for comparison. In some instances, accounting firms may take the lead in circling up numbers and provide underwriter's counsel with a draft comfort letter, along with their tick-and-tie comfort, instead of underwriter's counsel preparing the initial circle-up.

7. **Aim High but Be Realistic.** Negotiate for the highest level of tick-and-tie comfort possible, but recognize that auditors can ultimately comfort only what they can trace back to audited or reviewed financial statements or verifiable accounting records. Accountants will review the circle-up, and for each circled number, provide a tickmark that "ties" or traces back the number to a particular source. The applicable tickmark letter, number, or symbol is placed next to each circled number in the offering document or documents incorporated by reference. The tickmarks represent varying levels of comfort depending on whether information is derived from audited financials, reviewed interim financials, or other accounting books or records of the issuer. Generally speaking, there are several possible levels of tickmark comfort, including (arranged in descending order of comfort), that the auditors have compared or recalculated the number or percentage (1) to or from amounts in the audited financial statements and found them to be in agreement,

(2) to or from amounts in the reviewed interim financial statements and found them to be in agreement, (3) to or from amounts in the company's accounting records and found them to be in agreement, (4) to or from amounts in a schedule prepared by the company based on its accounting records, and (5) that the auditors have verified the arithmetic accuracy of certain calculations. The legend explaining the particular meaning of each tickmark is usually provided in tabular format in the comfort letter. With respect to levels (3) and (4), note that based on AS 6101, accountants can cover such numbers if they are derived from the company's accounting records that are subject to the company's system of internal accounting controls. If circled numbers are not derived from the issuer's accounting records and are not subject to internal control over financial reporting, then the accountants may not cover these items. Internal control over financial reporting refers to systems and processes that are designed to provide reasonable assurance regarding the reliability of financial reporting. If those systems are weak, then accountants may have reason to provide no comfort. Pay particular attention to numbers that are tied to a company-prepared schedule. If the numbers in those schedules are tied back to anything other than the issuer's financial statements or accounting books and records, then the value of such comfort decreases. If the sources are themselves not comforted by the accountants, then the numbers in the company-prepared schedule may be valueless.

8. **Pay Special Attention to Pro Forma Information.** Obtaining comfort on pro forma financial information requires special attention and advance planning. Pro forma information presents historical balance sheet and income statement information adjusted as if a transaction had occurred at an earlier period. Pro formas assist investors in understanding the impact of a significant transaction, such as a merger, business combination, or disposition, by showing how such consummated or proposed transaction might have affected the issuer's historical financial numbers. Auditors will typically only provide negative assurance that the pro forma financial information complies as to form in all material respects with the applicable accounting requirements of Rule 11-02 of Regulation S-X. Accountants may also be asked to comment on the arithmetic accuracy of the pro forma adjustments to confirm whether the pro forma adjustments have been properly applied to the historical amounts in the compilation of the pro forma financial statements. Note however that, per AS 6101, accountants may provide such negative assurance or such comment only if (1) they "have an appropriate level of knowledge of the accounting and financial reporting practices" of the entity (or, in the case of a business combination, of a significant constituent part of the combined entity) and (2) they have performed an audit of the annual financial statements, or an AS 4105 review of the interim financial statements, of the entity (or, in the case of a business combination, of a significant constituent part of the combined entity) to which the pro forma adjustments were applied. On a practical level, these limitations can be problematic where the pro formas include large acquisitions of companies that the issuer's accounting firm did not audit or review. In such situation where the financial statements of the target company or target companies are required to be included in the offering document, then there would be multiple audit firms issuing multiple comfort letters (e.g., one for the acquirer and one for each target). Counsel should ensure to discuss these matters with issuer, issuer's counsel, and the underwriters and involve the target's auditors as early in the offering timeline as practicable.

9. **Pay Attention to Special Considerations for Foreign Private Issuers (FPIs) and for Comfort Letters Issued by Non-U.S. Accounting Firms.** When dealing with FPIs, remember that certain rules and practices come into play and these may differ from those applicable to U.S. domestic issuers. FPIs generally do not prepare their financial statements in accordance with U.S. GAAP, but rather, in accordance with IFRS. If those financial statements are prepared in accordance with IFRS as issued by the IASB, then the FPI can utilize those statements without need for any reconciliation to U.S. GAAP. FPIs do not usually prepare quarterly financial statements and are not required to file unaudited quarterly financial information on Quarterly Reports on Form 10-Q, unlike U.S. domestic issuers. Certain FPIs that are Canadian issuers may utilize certain rules and procedures under the Multijurisdictional Disclosure System (MJDS) adopted by the SEC and Canadian Securities Administrators, which allow them to utilize streamlined registration statements permitting reliance on Canadian periodic filings to satisfy U.S. securities requirements.

   All of these may impact the content and preparation process of the comfort letter. For example, the comfort letter should state that the accountants are "independent" not only within the meaning of the Securities Act and the applicable rules and adopted by the SEC and the PCAOB, but also in accordance with the local standards applicable to the non-U.S. accounting firm. For MJDS issuers, the comfort letter would typically also state that the issuer's audited financial statements comply as to form in all material respects not only with the Securities Act and Securities Exchange Act, but also with related

rules and regulations adopted by the SEC applicable to entities filing under the MJDS. FPIs that utilize IFRS instead of U.S. GAAP may provide negative assurance on compliance of the interim financial statements with the IASB's International Accounting Standard No. 34, Interim Financial Reporting, instead of AS 4105 for U.S. domestic issuers. Pay particular attention to applicable standards cited in the comfort letter. Since FPIs may not have readily available quarterly financial statements, discuss this early on with issuer, issuer's counsel, and underwriters. Note however that a number of the larger FPIs that regularly issue securities into the U.S. market do prepare and file quarterly financial statements on Form 6-Ks with the SEC. Moreover, currency translations can add a layer of complexity to tick-and-tie comfort in the comfort letter, so discuss the same with the auditors. Last, some audit firms in non-U.S. jurisdictions request a written letter of "arrangement" or "engagement" (especially if the securities are intended to be sold outside of the United States) that are commonly used outside of the United States. Some of these letters may limit the liability of and provide indemnification for, the accountants. Review these letters closely, socialize and discuss with underwriters' in-house counsel if appropriate, and ensure that any exculpation or indemnification provisions do not limit the value of the comfort letter in possible future litigation.

10. **Have a Back-Up Plan.** Take comfort that it's not the end of the world if you receive no or limited comfort from auditors or unearth red flags. Comfort letters are a part of the larger process of establishing a due diligence defense under the federal securities laws. They are not prepared, reviewed, and negotiated in a vacuum. Any financial numbers not comforted by auditors should be covered by another type of diligence and additional back-up. Ask the issuer's CFO to confirm the accuracy of such numbers by way of a CFO certificate. This is a standard document that is widely used and accepted in securities offerings. A management letter to the same effect can also be utilized. Prepare a supplemental circle-up or back-up request covering these numbers and ask the issuer to provide documentary support. Employ heightened due diligence procedures to address limited comfort or red flags including discussing with auditors the underlying reasons for being unable to provide the desired comfort level, arranging specific calls with management and auditors on recent financial results or other significant developments or trends, and having conversations with auditors and the issuer's accounting team and audit committee, particularly with respect to tracing back numbers to accounting records, and the adequacy of existing internal controls. Consider beefing up the offering document to add protective or enhanced disclosure in the risk factors, management discussion and analysis (MD&A), overview, trend disclosure, or recent developments sections. Consider strengthening issuer representations related to financial information in the underwriting agreement. After exhausting alternatives, do not be afraid to take out problematic financial information that cannot be adequately addressed. Create and maintain a clear, organized written record that adequately documents the steps you have taken to assist your clients' conduct of a reasonable investigation of the issuer and its financial results.

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Anna Pinedo is a partner in Mayer Brown's New York office and co-leader of the Global Capital Markets practice. She concentrates her practice on securities and derivatives. Anna represents issuers, investment banks/financial intermediaries and investors in financing transactions, including public offerings and private placements of equity and debt securities, as well as structured notes and other hybrid and structured products.

She works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer and specialty finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters.

Anna regularly speaks at conferences and participates in panel discussions addressing securities law issues, as well as the securities issues arising in connection with derivatives and other financial products. She is the co-author of the leading capital markets treatise, *Corporate Finance and the Securities Laws*, published by Wolters Kluwer (6th Ed., updated 2020); co-author of *A Deep Dive Into Capital Raising Transactions*, published by the International Financial Law Review (2020); co-author of *JOBS Act Quick Start* (International Financial Law Review, 2013; updated 2014, 2016); contributor to *OTC Derivatives Regulation Under Dodd-Frank: A Guide to Registration, Reporting, Business Conduct, and Clearing* (Thomson Reuters, first ed. 2014, second ed. 2015, third ed. 2016, fourth ed. 2017); co-author of *Considerations for Foreign Banks Financing in the US* (International Financial Law Review, 2012; updated 2014, 2016); co-author of *Liability Management: An Overview* (International Financial Law Review, 2011, updated 2015); co-author of *Structuring Liability Management Transactions* (International Financial Law Review, 2018); co-author of *Covered Bonds Handbook*, published by Practising Law Institute (2010, updated 2012-2014); co-author of the treatise *Exempt and Hybrid Securities Offerings*, published by Practising Law Institute (2009, second ed. 2011, updated 2014, third ed. 2017); and co-author of *BNA Tax and Accounting Portfolio: SEC Reporting Issues for Foreign Private Issuers* (BNA Accounting Policy and Practice Series, 2009, second ed. 2012, third ed. 2016, fourth ed. 2020). Anna is also a contributing author to *Broker-Dealer Regulation* (2011, second ed. 2012, updated 2020), published by Practising Law Institute. She co-authored "The Approaches to Bank Resolution," a chapter in *Bank Resolution: The European Regime* (Oxford University Press, 2016). Anna contributed to *The Future of Bank Funding and Capital: Solutions for Issuers, Opportunities for Investors* (IFR Market Intelligence, 2009). Additionally, Anna co-authored "The Ties that Bind: The Prime-Brokerage Regulation," a chapter in *Global Financial Crisis* (Globe Law and Business, 2009); "The Law: Legal and Regulatory Framework," a chapter in *PIPEs: A Guide to Private Investments in Public Equity* (Bloomberg, 2006); and "The Impact Security: Reimagining the Nonprofit Capital Market," a chapter in *What Matters: Investing in Results to Build Strong, Vibrant Communities* (Federal Reserve Bank of San Francisco and Nonprofit Finance Fund, 2017). Anna is a contributor to Practising Law Institute's "BD/IA: Regulation in Focus" blog.

Anna is a member of the American Bar Association's (ABA) Committee on the Federal Regulation of Securities, a member of the subcommittee on Disclosure and Continuous Reporting, chair of the subcommittee on Securities Registration, chair of the subcommittee on Annual Review, and a member of the task force on the future of securities regulation.

She has participated in the drafting committee for the ABA's comment letters on such topics as securities offering reform, revisions to the definition of accelerated filer and smaller reporting company, amendments to the accredited investor definition; amendments to the exempt offering framework; and various JOBS Act-related and disclosure effectiveness related matters. Anna also is a member of the ABA Committee on the Regulation of Futures and Derivatives Instruments. Anna is a chair of the Structured Products Association Legal, Regulatory and Compliance Executive Committee. She is a member of the Mortgage Bankers Association's Mortgage REIT Council and a member of the MBA's Secondary & Capital Markets Committee.

Anna is an adjunct professor at the George Washington University School of Law and member of the George Washington University Center for Law, Economics & Finance Advisory Board. She is a member of the Visiting Committee of the Law School of the University of Chicago. Anna was a member of the University of Chicago Legal Forum during her time at the University of Chicago Law School.

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Frederick Ryan Castillo is a partner in Mayer Brown's New York office and a member of the Capital Markets practice. His work focuses on securities and corporate finance transactions. Ryan advises issuers, investment banks and sponsors in connection with public offerings and private placements of debt, equity and hybrid securities, including initial public offerings, follow-on offerings, investment grade and high-yield debt offerings, private investment in public equity, tender and exchange offers, consent solicitations, medium-term note programs and other capital markets transactions in the United States, Canada and the Euro markets. He represents companies and financial intermediaries involved in a broad range of industries, including financial services, technology, telecommunications, retail, life sciences, real estate and energy. He also advises clients on corporate governance, securities law compliance and general corporate matters.

The Legal 500 US 2023 ranks Ryan as a "Next Generation Partner" for Capital Markets: Debt Offerings, calling him an "emerging talent," and also recommends him for Capital Markets: Global Offerings and for Capital Markets: High-Yield Debt Offerings. *IFLR1000* 2022 names him a "Rising Star Partner" for Capital Markets: Debt and Capital Markets: Equity in the United States. He was ranked as a "Rising Star" for the same categories by *IFLR1000* 2021, 2020, and 2019. *Euromoney* recognized Ryan as a "Rising Star" in the capital markets category at its 2020 Rising Stars Americas Awards. He is named a "Rising Star" for the Americas in the Capital Markets category in *Euromoney's Expert Guides*: Rising Stars in 2022 and 2021. Ryan is recognized by Best Lawyers: Ones to Watch 2021 for his work in Securities and Capital Markets law in the United States.

Ryan is co-author of A Deep Dive Into Capital Raising Alternatives (2020) and author of Non-GAAP Explained (2017), both published by the International Financial Law Review. He regularly writes on securities law issues and has authored a number of capital markets-related thought leadership pieces, including articles published by *LexisNexis*, *Thomson Reuters*, *The Business Lawyer* and the *Harvard Business Law Review*. Ryan serves as an adjunct professor at the George Washington University School of Law, where he teaches a course on securities regulation.

Ryan earned his Master of Laws degree with a concentration in international finance from Harvard Law School, where he served as editor of the *Harvard Business Law Review*. He earned his JD with honors from the Ateneo de Manila Law School, where he served as captain of the World Champion team in the 45th Philip C. Jessup International Law Moot Court Competition. He holds a BA in Economics, with honors, from the Ateneo de Manila University. Ryan previously worked in the capital markets group of another global law firm in New York. Prior to that, he worked in a regional law firm in Singapore, where he advised clients on capital markets and cross-border transactions across the Asia-Pacific.