

Reopenings: Issuing Additional Debt Securities of an Outstanding Series

A Practical Guidance® Practice Note by
John Berkery and Rimmelt Reigersman, Mayer Brown LLP



John Berkery
Mayer Brown LLP



Rimmelt Reigersman
Mayer Brown LLP

This practice note discusses reopenings of debt securities issuances. It begins with the reasons for reopening an existing debt issue, such as better pricing and decreased time and expense. Then, it discusses the processes and mechanics of reopening a debt issuance. It notes that the original indenture must permit additional debt issuances and the additional indebtedness incurred by the company must not violate the indenture covenants or other material contracts. Reopening a debt issuance, whether of registered or unregistered debt, is similar to the original offering process, including a due diligence phase, similar disclosure obligations, document preparation, and compliance with regulations. Next, it discusses disclosures in offering documents that is particular to a debt reopening. For example, the offering document should state that the debt securities are an additional issuance of, and are fungible with, the original debt securities. Other required disclosures pertain to the issue price including interest since the original issue and the incorporation by reference of the issuer's latest financial statements and other business developments. Finally, it covers U.S. federal income tax considerations, including the test for whether the securities in the new issuance are fungible with the securities in the old issuance.

[Click here](#) For full access to this Practical Guidance® document.

John Berkery, Partner, Mayer Brown LLP

John Berkery is a partner in Mayer Brown's Corporate & Securities practice. He represents underwriters, issuers and selling stockholders in a wide range of capital markets transactions, including registered public offerings (IPOs, follow-on offerings, continuous offering programs), private placements (including Rule 144A/Reg S offerings and PIPE (private investment in public equity) transactions), leveraged buyouts, restructurings and liability management transactions (exchange offers, tender offers and consent solicitations). He is experienced in a broad spectrum of securities products, ranging from high-yield to investment-grade debt securities and from simple common equity to complicated convertible debt and other hybrid and equity-linked securities. His practice also includes assisting clients with their ongoing reporting obligations, corporate governance requirements and other compliance issues arising under the Securities Exchange Act of 1934, the NYSE and NASDAQ, as well as general corporate law matters.

Remmelt Reigersman, Partner, Mayer Brown LLP

Remmelt Reigersman is a partner in Mayer Brown's Palo Alto office and a member of the Tax Transactions & Consulting practice. He concentrates his practice on federal and international tax matters. Remmelt advises on a wide variety of sophisticated capital markets transactions and represents issuers, investment banks/financial institutions and investors in financing transactions, including public offerings and private placements of equity, debt and hybrid securities, as well as structured products. Remmelt's areas of experience also include restructurings (both in and out of bankruptcy), debt and equity workouts, domestic and international mergers, acquisitions, reorganizations and joint ventures.

This document from Practical Guidance[®], a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis[®]. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.