

Top 10 Practice Tips: Negotiating an Underwriting Agreement

A Practical Guidance® Practice Notes by Anna Pinedo, Brian Hirshberg, and Ana Estrada, Mayer Brown LLP



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This practice note provides a high-level overview of key issues and strategic considerations that legal practitioners should be aware of when negotiating underwriting agreements in the context of securities offerings. It emphasizes the importance of understanding the roles and expectations of both issuers and underwriters, particularly in balancing risk allocation and ensuring regulatory compliance. The document discusses the negotiation of indemnification clauses, representations and warranties, and due diligence obligations, all of which are central to managing legal exposure and aligning interests between parties. It also addresses the procedural aspects of deal execution, such as

coordinating closing logistics, managing disclosure schedules, and ensuring timely and accurate documentation. The role of legal counsel is highlighted throughout, especially in drafting, reviewing, and advising on complex contractual provisions. Additionally, the document underscores the need for familiarity with SEC regulations and stock exchange requirements, which shape the legal framework within which underwriting agreements operate. This document serves as a practical guide to common challenges and negotiation dynamics, applies to experienced practitioners and those seeking to deepen their understanding of underwriting negotiations, and aims to enhance legal practitioners' strategic awareness and effectiveness in transactional settings.

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Anna Pinedo represents issuers, investment banks and other financial intermediaries as well as investors in financing transactions, including public offerings and private placements of equity, equity-linked and debt securities. She also advises on structured products and derivatives matters.

Anna 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.

Brian Hirshberg, Partner, Mayer Brown LLP

Brian Hirshberg represents US and foreign private issuers, sponsors, and investment banks in registered and unregistered securities offerings, including:

Initial public offerings

Follow-on offerings

Private placements (including Rule 144A and PIPE transactions)

At-the-market offerings

Registered direct offerings

Liability management transactions

Preferred stock and debt offerings

Secondary offerings on behalf of issuers in a variety of industries

Brian serves clients on specialty finance, real estate and real estate investment trusts (REITs), business development companies (BDCs), and life sciences company deals. He also assists public company clients with ongoing securities law compliance requirements, listing standards of the major US stock exchanges, SEC public reporting obligations, shareholder-related disputes, and governance matters.

Ana Estrada, Associate, Mayer Brown LLP

Ana Estrada is an associate at Mayer Brown Houston's office and a member of the Corporate & Securities practice. Her practice focuses on capital markets, mergers and acquisitions, commercial transactions and corporate governance matters.

Ana represents issuers, investment banks/financial intermediaries and investors in financing transactions, including, follow-on offerings, private placements (including PIPE transactions), at-the-market offerings, preferred stock and debt offerings. She also represents sellers and purchasers in mergers and stock and asset acquisitions throughout the United States and Latin America. Ana has experience advising public and private companies and private equity portfolio companies in multi-state and cross-border transactions.

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