

# Top 10 Practice Tips: Comfort Letters

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



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This practice note provides a comprehensive overview of key considerations for legal counsel involved in reviewing and negotiating comfort letters in securities offerings. It explains the role of comfort letters in supporting underwriters' due diligence defenses under U.S. securities laws and emphasizes the importance of understanding applicable auditing standards, particularly AS 6101. The text outlines the procedural and logistical aspects of coordinating with auditors, including the timing of comfort letter delivery, the 135-day rule, and the necessity of SAS 72 representation letters in certain offerings. It also discusses the varying levels of assurance auditors can provide based on the type and timing of financial information, from audited annual statements to unaudited interim and internal monthly data. The document highlights the importance of proper "circle-up" practices, the limitations of tick-and-tie comfort, and the challenges of obtaining comfort on pro forma financials and for foreign private issuers. It concludes by encouraging proactive planning, alternative diligence strategies, and documentation to mitigate risks when full auditor comfort

is unavailable. The guidance is framed within the broader context of securities law compliance and effective transaction execution.

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### **Anna Pinedo, Partner, Mayer Brown LLP**

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.

### **Ryan Castillo, Partner, Mayer Brown LLP**

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 2024 ranks Ryan as a "Next Generation Partner" for Capital Markets: Debt Offerings, calling him an "emerging talent," and recommends him for Capital Markets: High-Yield Debt Offerings. He has also been recommended for Capital Markets: Global Offerings. IFLR1000 2024 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.

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