Capital Markets in the United States: Regulatory Overview

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Country Q&A | Law stated as at 01-May-2026 | United States

A Q&A guide to capital markets law in the United States.

The Q&A provides a high-level overview of the main equity and debt markets/exchanges, and the main regulators and legislation that govern them. The prospectus/main offering document requirements are also covered, together with any reduced disclosure obligations and exemptions from the requirements to publish/deliver a prospectus/main offering document.

Equity capital markets covers the following areas: requirements for a primary and secondary listing; offering structures; advisers and documents; marketing; bookbuilding; underwriting; timetable; stabilisation; continuing obligations; market abuse and insider dealing; and de-listing. Private securities offerings are also briefly discussed.

Debt capital markets covers the following areas: restrictions on offering/selling debt securities; structuring a debt securities issue; listing debt securities and admission to trading; continuing obligations; advisers and documents; timetable; and clearing and settlement of debt securities.

Main Equity and Debt Markets/Exchanges and Market Activity

1. What are the main public securities markets/exchanges in your jurisdiction? Outline the main market activity and deals (for both equity and debt) in the past year.

Main Securities Markets/Exchanges

Equity. The primary US public equity markets are:

- The *New York Stock Exchange* (NYSE): the Intercontinental Exchange, Inc operates:
  - the NYSE;
  - the *NYSE American; and*

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    - *the NYSE Arca*.

  As at 26 March 2026, there were approximately 2,300 NYSE-listed companies and the NYSE had an aggregate market capitalisation of USD28.8 trillion, according to the NYSE. According to its website, as at 26 March 2026, over 530 non-US issuers from 48 different countries were listed on the NYSE.

- The *Nasdaq Stock Market* (Nasdaq): Nasdaq operates:
    - the Nasdaq Stock Market, which has three markets (the Global Select Market, the Global Market, and the Capital Market);
    - additional US and European equity and option markets; and
    - the Nasdaq Market Center, which provides market participants with the ability to access, process, display, and integrate orders and quotes for stocks listed on Nasdaq and other exchanges.

  Nasdaq is the second largest stock exchange in the US. As at 31 December 2025, over 5,599 companies listed securities to trade on Nasdaq, with a collective market capitalisation of over USD40.6 trillion, only slightly less than the NYSE, according to Nasdaq.

Debt. Issuers typically offer investment grade debt securities in registered public offerings. Foreign private issuers (FPIs) can also market debt securities in registered offerings (Yankee bonds) or pursuant to exceptions from registration, such as that available under Rule 144A of the Securities Act. Offerings of high yield debt securities are typically conducted as private placements or Rule 144A and Regulation S of the Securities Act offerings (see *Question 2, Legislative Framework* and *Question 28*). Bank issuers, including foreign banks with US branches or agencies, can also issue debt securities exempt from registration under section 3(a)(2) of the Securities Act (see *Question 28*). Investment grade securities are usually not listed on an exchange.

Market Activity and Deals

Equity. The US equity markets make up approximately 41%, or approximately USD52 trillion, of the global equity market cap, according to the *Securities Industry and Financial Markets Association* (SIFMA). Equity issuances raised an aggregate of USD222.9 billion in 2024, which increased to USD232.0 billion in 2025. There were 164 IPOs in 2025, which raised approximately USD47 billion. Follow-on equity offerings made up USD169.8 billion, while offerings of preferred stock raised USD21.8 billion. Of this USD21.8 billion, USD6.4 billion was raised by non-US companies (see *SIFMA Research Quarterly Report: US Equity & Related, 4Q25*).

Notable IPOs in 2025 and the first quarter of 2026 included:

- Medline Industries, a major medical surgical supply manufacturer, raising USD6.3 billion in the largest IPO of 2025.
- Forgent Power Solutions, an electrical equipment manufacturer, raising USD1.51 billion.
- Karman Holdings, a fabricator of space and defence systems, raising USD581.9 million, with its shares rising over 200% since its IPO.

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- Coreweave, an artificial intelligence infrastructure management platform, raising USD1.5 billion.
- Figma, a web-based collaborative design platform, raising USD1.2 billion, with its shares experiencing an IPO pop of 250% in the first day of trading.

Uncertainty is likely to continue to plague the equity markets with increased market volatility due in part to ongoing geopolitical tensions.

Special purpose acquisition company (SPAC) IPOs saw a slight resurgence in 2025 compared to recent years, but overall deal counts remain significantly below that from the all-time highs witnessed back in 2021. ,. In 2025, there were 144 SPAC IPOs completed (raising USD30.4 billion) and 43 de-SPAC transactions completed (worth an aggregate USD47 billion). In the first quarter of 2026, there were 69 SPAC IPOs and three de-SPAC transactions (worth an aggregate of USD8 billion). On 24 January 2024, the *US Securities and Exchange Commission* (SEC) adopted new rules and amendments to existing rules and forms addressing the treatment under the securities laws of:

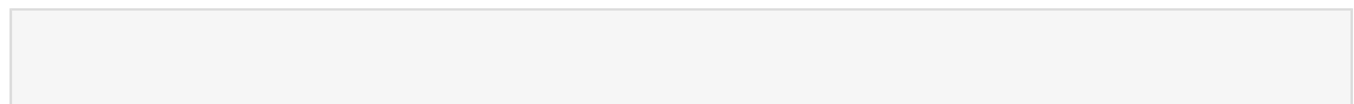
- SPACs in connection with their IPOs and their subsequent de-SPAC transactions.
- Business combinations with shell companies.
- The presentation of projections in SEC filings.

On 3 March 2025, the SEC announced a new policy expanding the accommodations for issuers that submit a draft registration statement for confidential review. Among other accommodations, the policy expanded the availability of the confidential review process for a de-SPAC transaction in situations where the SPAC is the surviving entity (that is, a SPAC-on-top structure), provided the target is eligible to submit a draft registration statement.

Debt. Approximately USD2.084 trillion of debt securities were issued by non-governmental borrowers in the US debt markets (both public and private) in the 12 months ending 31 December 2025 according to SIFMA. This figure represented an increase of approximately 12.6% from the roughly USD1.871 trillion issued in the comparable 2024 period (these amounts exclude mortgage-backed and asset-backed offerings and secured debt). The USD2.084 trillion issued by non-governmental borrowers primarily consisted of USD1.732 trillion of investment grade debt and USD353.1 billion of high-yield debt. Convertible debt issuance reached USD133.7 billion in 2025 (see *SIFMA US Fixed Income Securities Statistics*, as at 23 March 2026).

According to SIFMA, high-yield bond issuances in 2025 rose about 16.8% from the comparable 2024 period, with investment grade issuances also rising between 2025 and 2024, increasing by 10.3%. For the first quarter of 2026, there were more than USD399.9 billion in investment grade debt issuance, USD62.4 billion in high-yield debt issuance, and USD22.5 billion in convertible debt issuance, in each case surpassing the corresponding aggregate issuances in the first quarter of 2025.

Main Regulators and Legislation



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2. What are the main regulators and legislation that apply to capital markets in your jurisdiction?

Regulatory Bodies

The main securities regulator in the US is the *SEC* (see *Question 1, Market Activity and Deals*). The SEC's three-fold mission is to protect investors, maintain fair and efficient markets, and promote capital formation. The SEC is an independent US government agency that:

- Requires public companies to disclose financial and other information to the public.
- Oversees securities exchanges, securities brokers and dealers, investment advisers, and mutual funds.
- Has civil enforcement authority for violation of the securities laws.

The *Financial Industry Regulatory Authority* (FINRA) is the largest non-governmental regulator in the US securities industry. Operating as a self-regulatory organisation which is overseen, but independent of, the SEC, FINRA creates and enforces rules based on federal laws and regulations for its members and is dedicated to investor protection and market integrity through effective and efficient regulation, particularly of the offering process. With little exception, FINRA members mandatorily include broker-dealers and national securities exchanges, as SEC regulations effectively require such entities to become members of FINRA, thereby ensuring that FINRA's regulatory regime is enforceable.

Other large self-regulatory organisations that oversee capital markets in the US include, among others:

- The *Municipal Securities Rulemaking Board* (MSRB), which is generally charged with protecting municipal securities investors and municipal entities.
- The *Public Company Accounting Oversight Board* (PCAOB), which was established by Congress in 2002 to oversee the audits of US public companies and inspect public accounting firms to ensure sufficient ethics and quality control standards.

Legislative Framework

The SEC has rulemaking and enforcement authority, and administers the federal securities laws, including the following primary statutes regulating public offerings:

- The *Securities Act of 1933*, as amended (15 U.S.C. § 77a *et seq*) (Securities Act).
- The *Securities Exchange Act of 1934*, as amended (15 U.S.C. § 78a *et seq*) (Exchange Act).

In addition, the following US federal laws also affect the capital markets:

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- The *Sarbanes-Oxley Act of 2002* (Sarbanes-Oxley Act), parts of which are incorporated into the Exchange Act.
- The *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* (Dodd-Frank Act).
- The *Jumpstart Our Business Startups Act of 2012* (JOBS Act).
- The *Investment Company Act of 1940*, as amended.
- The *Trust Indenture Act of 1939* (for SEC-registered debt).

State-level securities laws also exist and vary depending on the specific jurisdiction. Often referred to as "blue sky" laws, these additional regulatory layers often address topics such as mandatory license registrations for broker-dealers and investment advisers, the state-level registration of securities offerings (often subject to exceptions), as well as the establishment of anti-fraud provisions.

For further information on the securities regulatory framework in the US, see *Practice Note, Securities Regulatory Framework: Overview (US)*.

Prospectus/Main Offering Document

3. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements for an offering?

Prospectus (or Other Main Offering Document) Required

Public offerings of both equity and debt securities are accomplished using a registration statement, which is filed with, and declared effective by, the SEC. A registration statement contains two parts:

- A prospectus, which is the main marketing and disclosure document.
- Other information filed with the SEC but not distributed to investors, including exhibits to the registration statement.

Main Publication, Regulatory Filing or Delivery Requirements

In a SEC-registered public offering, the issuer must deliver (or, under certain circumstances, make available electronically) a written prospectus meeting the requirements of the Securities Act to investors. During marketing of an IPO, written offers

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cannot be made unless a preliminary prospectus meeting the requirements of section 10 of the Securities Act, that includes items such as the expected price range of the shares, has been delivered.

All documents filed with the SEC (which excludes confidentially submitted registration statements until they are publicly filed), including prospectuses, are available on the SEC's website.

4. Are there any circumstances in which reduced disclosure obligations apply in respect of the prospectus (or other main offering document)?

Any company conducting a public securities offering in the US should expect to provide substantial disclosures regarding the company's business, results of operation, financial statements, and applicable risk factors. For certain smaller companies that qualify as an "emerging growth company" (EGC), certain reduced disclosures are permissible. To qualify as an EGC, the company must be "newly public" (that is, is within the first five fiscal years after completion of its IPO). Within these first five fiscal years after an IPO, EGC status is maintained by a company unless any one of the following events occur:

- Total annual gross revenues exceed USD1.235 billion.
- The company issues more than USD1 billion in non-convertible debt in the past three years.
- The company becomes a "large accelerated filer" as defined in Rule 12b-2 of the Exchange Act.

The primary benefits of being an EGC include scaled-down disclosure requirements (both in an IPO and for periodic reporting under the Exchange Act), relief from the auditor requirements contained in section 404(b) of the Sarbanes-Oxley Act, and a reduction in restrictions with respect to analyst communications and reports during the EGC IPO process.

A company may also qualify as a "smaller reporting company" (SRC) (as defined in Item 10(f)(1), Regulation S-K, Exchange Act). A company qualifies as an SRC if it either:

- Has public float of less than USD250 million.
- Has less than USD100 million in annual revenues and either:
  - no public float; or
  - a public float of less than USD700 million.

SRC status can exist simultaneously with qualification as an EGC, but maintenance of SRC status is not limited by the five fiscal year time frame that EGC status is, and a company can exist as an SRC indefinitely (assuming the qualifications above are met).

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If a company qualifies as an SRC, it can choose to prepare the disclosure required in the prospectus by relying on the scaled disclosure requirements that apply to SRCs (contained in Regulation S-K and Article 8, Regulation S-X, Exchange Act). According to the SEC, the scaled disclosure requirements for SRCs permit this type of company to both:

- Include less extensive narrative disclosure than required of other reporting companies, particularly in the description of executive compensation.
- Provide audited financial statements for two fiscal years in contrast to other reporting companies, which must provide audited financial statements for three fiscal years.

5.What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document) for an offering?

Equity

There are exemptions from the registration requirements of section 5 of the Securities Act, based on the type of security or the type of transaction. Generally, any issuer, including an FPI, can make a limited offer of securities (without registration) in a private placement to sophisticated or institutional investors, subject to a number of conditions (*see* Regulation D of the Securities Act, 17 CFR § 230.501). Those securities are then subject to transfer restrictions. There is also a limited exemption for offerings of the issuer's securities to employees; this exemption is also available to FPIs (see Rule 701 of the Securities Act, 17 CFR § 230.701).

A non-registered (exempt) offering does not require a statutory prospectus but is usually made using an offering memorandum that is often closely based on a statutory prospectus in form and content.

Debt

Section 4(a)(2) of the Securities Act (section 4(a)(2)), Regulation D of the Securities Act (Regulation D), Rule 144A of the Securities Act (Rule 144A), and section 3(a)(2) of the Securities Act (section 3(a)(2)) offerings (see *Question 28*) do not require a statutory prospectus as such offerings are exempt from the registration requirements of section 5 of the Securities Act. However, because section 4(a)(2), Regulation D, Rule 144A, and section 3(a)(2) offerings are still subject to sections 12 and 15 of the Securities Act and section 10(b) and Rule 10b-5 of the Exchange Act, such offerings are usually made using a private placement memorandum, offering memorandum or offering circular that closely tracks a statutory prospectus in form and content.

Certain classes of debt securities are excluded from registration under the Securities Act. These include short-term notes (with maturities of 270 days or less), such as commercial paper (which is exempt from registration under section 3(a)(3) of the Securities Act).

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6. What are the main content or disclosure requirements for a prospectus (or other main offering document) for an offering? What main categories of information are included?

The prospectus (or private placement memorandum, offering circular, or offering memorandum in the case of an unregistered offering) is the primary disclosure document for any equity or debt securities offering. The contents of a prospectus depend on the applicable SEC registration statement form. The disclosure must include all material information (that is, matters that a reasonable investor would likely deem important in determining whether to purchase the security). Generally, the contents of an offering circular or offering memorandum (in the case of an unregistered offering) will be very similar to the prospectus for a registered offering, particularly in a Rule 144A offering or a concurrent Rule 144A/Regulation S of the Securities Act offering.

As noted above, the prospectus is the primary disclosure document in a public offering. The contents of a prospectus depend on the applicable SEC registration statement form. The disclosure must include all material information (that is, matters that a reasonable investor would likely deem important in determining whether to purchase the security).

In an IPO, the issuer typically uses:

- Form S-1, if it is a US company.
- Form F-1, if it qualifies as an FPI.
- Form S-11, if the issuer is a real estate investment trust (REIT).
- Form N-2, if the issuer is a closed-end investment company.

In turn, to register debt securities, a first-time debt issuer typically uses Form S-1 if it is a US company, or Form F-1 if it qualifies as an FPI.

Canadian issuers may be able to use other forms to register equity or debt securities, including registration statement forms available under the US-Canada *Multijurisdictional Disclosure System*.

Once an issuer has been a public company for at least 12 months and has filed its periodic reports on a timely basis, it may be eligible to use Form S-3 (or Form F-3 for an FPI) to make subsequent public offerings. Form S-3 is a short-form registration statement that allows the issuer to refer in the prospectus to information from its SEC reports filed under the Exchange Act (see *Question 9*) that would otherwise be required to be stated in full.

A typical prospectus (or private placement memorandum, offering circular, or offering memorandum in the case of an unregistered offering) contains the following sections:

- A summary of the prospectus (or private placement memorandum, offering circular or offering memorandum in the case of an unregistered offering), including business and financial information and key offering terms.
- The risk factors.

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- The use of proceeds.
- The dividend policy (for equity securities offerings).
- The issuer capitalisation (not required but usually provided).
- The dilution, setting out calculations of the public contribution under the public offering and the effective cash contribution of insiders (officers, directors, promoters, and affiliates) (for equity securities offerings).
- The management's discussion and analysis of its financial condition and results of operations.
- The material aspects of the issuer's business.
- The issuer's management, providing a five-year employment history of directors and executive officers, and including disclosure about board committees, corporate governance guidelines, and codes of ethics. Smaller reporting companies can provide more limited information.
- A compensation discussion and analysis and the executive compensation (FPIs, EGCs, and SRCs may provide more limited information).
- Any related party transactions.
- The principal shareholders and, in the case of equity securities offerings, selling shareholders.
- A description of the capital stock (for equity securities offerings).
- A description of the debt securities (for debt securities offerings).
- The shares eligible for future sale and contractual and legal restrictions on certain resales, such as lock-up agreements (for equity securities offerings).
- The tax issues.
- The underwriting.
- The legal matters.
- An identification of the independent public accounting firm and any other experts that may be required to give an opinion on the prospectus.
- The financial statements, typically three years of audited financial statements and unaudited financial statements for any required interim periods. Under the JOBS Act, an EGC is permitted to include only two years of audited financial statements and the unaudited financial statements for the related interim periods. In addition, an issuer that is filing

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a registration statement or submitting a registration statement for confidential review can omit financial information for historical periods that otherwise would be required at the time of filing or submission, provided that the omitted financial information will not be required to be included in the Form S-1 or F-1 at the time of the consummation of the offering, and that prior to distribution of a preliminary prospectus to investors, the registration statement includes all required financial statements. If an FPI prepares its financial statements according to the International Financial Reporting Standards (IFRS) as issued by the *International Accounting Standards Board* (IASB), it need not reconcile its financial information to US Generally Accepted Accounting Principles (US GAAP).

Certain classes of companies may be required to make specialised disclosures in a public offering. The SEC publishes *Securities Act and Exchange Act Industry Guides* to assist in the preparation of disclosures for issuers operating in a certain industry. For example, Securities Act Industry Guide 5 provides guidelines on the preparation of registration statements for REITs. Within, the SEC specifies that a specific order should be shown of significant risk factors on the cover page, starting with tax aspects, use of proceeds, and conflicts of interest. This is followed by a section providing a breakdown of suitability standards, and another on the compensation and fees paid to the REIT's general partner and affiliates. While the final pieces of information in a REIT registration statement may be the same as those for a traditional issuer, prospective registrants should note that, depending on the nature of their business, the SEC may wish to see disclosures presented in a particular manner and order.

Other specialised disclosures may be mandated within filings by regulation. For example, companies operating in the mining and resource extraction space are required to make certain environmental and safety disclosures in a prospectus (and, in many instances, subsequent periodic reports filing under the Exchange Act). The SEC had indicated its interest in requiring more robust environmental disclosures, including aspects such as carbon emissions, for all entities. In March 2024, the SEC adopted final rules requiring registrants to disclose climate-related information in registration statements and annual reports, including disclosures of Scope 1 or Scope 2 (or both) greenhouse gas emissions on a phased-in basis for different classes of registrants. However, these rules were stayed pending judicial review in the Eighth Circuit. In March 2025, the SEC ended its defence of the climate disclosure rules, and they are not expected to take effect.

An FPI must include certain additional information in the prospectus (for example, information on the enforcement of judgments against the issuer and on any exchange controls and taxation of shareholders in the issuer's home jurisdiction).

The registration statement also contains additional information and required exhibits, including organisational documents, material contracts, and consents of experts. The issuer can request confidential treatment of sensitive information. In March 2019, the SEC adopted amendments that allow issuers to omit confidential information that is commercially sensitive, the disclosure of which would result in competitive harm to the issuer, without the filing of confidential treatment applications. As a result, most issuers have since chosen to rely on the amended provisions and do not often submit confidential treatment applications.

For a subsequent offering using a short-form registration statement, the issuer can include the information set out above or incorporate such information by reference to its SEC reports.

Disclosure of issuer credit ratings. In a debt offering, issuer credit ratings cannot be disclosed in registration statements and prospectuses for registered offerings, unless the consent of the applicable credit rating agency is obtained. However, "issuer disclosure-related ratings information" is allowed to be included in a registration statement without the consent of a credit rating agency. "Issuer disclosure-related ratings information" is defined as ratings information that relates only:

- To changes to a credit rating.
- To the liquidity of the registrant.

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- To the cost of funds for the registrant.
- To the terms of agreements that refer to credit ratings.

This would include, for example, risk factor disclosure about the consequences of failure to maintain a rating. For asset-backed issuers that must disclose ratings information under Regulation AB of the Securities Act and the Exchange Act, the SEC has stated that it will not recommend enforcement action so long as the disclosure meets the requirements under Regulation AB.

The consent of a credit rating agency is not required for inclusion of ratings information in free writing prospectuses (FWPs) (compliant with Rule 433 under the Securities Act) and term sheets or press releases (compliant with Rule 134 under the Securities Act).

For unregistered offerings (section 4(a)(2), Regulation D, Rule 144A, and section 3(a)(2) (see *Question 28*)), issuer credit ratings can be disclosed in private placement memoranda, offering circulars, or offering memoranda, as well as term sheets.

7. How is the prospectus (or other main offering document) prepared for an offering? Who is responsible or may be liable for its contents, and what is the nature of liability in respect of the prospectus (or other main offering document)?

Preparation

The issuer and its lawyers prepare the prospectus (or private placement memorandum, offering circular, or offering memorandum in the case of an unregistered offering) working with the underwriters and their respective lawyers, and the auditors. The underwriters and their lawyers conduct due diligence on the issuer and verify the information in the prospectus (or private placement memorandum, offering circular, or offering memorandum in the case of an unregistered offering). The diligence process includes:

- A review of organisational and corporate documents, shareholder lists, material contracts, litigation, intellectual property, and other legal and business matters material to the issuer.
- Detailed discussions with management about the contents of the prospectus, business plan, and road show presentation.
- Interviews with the issuer's auditors, main customers, suppliers, and distributors.

The SEC comments on the prospectus as part of the registration process (unless the registration statement is for a Well-Known Seasoned Issuer (WKSI), as such entities can file a shelf registration statement on Form S-3ASR (see *Question 28, Registered Debt Offerings*), with immediate effectiveness and no SEC review). The comments are intended to clarify issuer disclosure as well as verify compliance with the SEC requirements. The SEC does not independently verify any information contained in the registration statement.

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For a subsequent offering, most of the disclosure is taken from the issuer's ongoing SEC filings, so the prospectus (or private placement memorandum, offering circular, or offering memorandum in the case of an unregistered offering) drafting process is typically shorter. With respect to registered offerings, in most cases, the SEC does not comment on the prospectus for a subsequent offering, although it may have commented on the issuer's ongoing public filings.

Liability: Registered Offerings

In the case of registered offerings, the issuer is strictly liable for the content of the prospectus. The issuer's directors and officers, and underwriters and accountants, have potential defences to liability (see below, *Defences*). Liability arises primarily under sections 11, 12, and 15 of the Securities Act, and section 10(b) and Rule 10b-5 of the Exchange Act, as follows:

- Section 11 liability: if the registration statement contains an untrue statement of a material fact, or omits to state a material fact required to be stated in it (or that is necessary to make the statements not misleading), any buyer of a security under a registration statement can sue the issuer and the following persons:
  - anyone who signed the registration statement (a registration statement is signed by the issuer's chief executive, principal financial and accounting officers, and at least a majority of the issuer's directors);
  - any director (or person who consented to be named as a director) at the time the registration statement was filed;
  - every accountant, engineer, appraiser, or other expert who consented to be named as having prepared or certified the accuracy of any part of the registration statement, or any report or valuation used in the registration statement (but liability is limited to that information);
  - every underwriter.
- Section 12 liability: a buyer of a security can sue any person who either:
  - offered or sold the security to that buyer in violation of section 5 of the Securities Act;
  - offered or sold the security to that buyer by means of a prospectus or oral communication that included an untrue statement of a material fact (or omitted to state a material fact necessary to make a statement, in light of the circumstances under which it was made, not misleading).
- Section 15 liability: every person who controls (through share ownership, agreement, or otherwise) any other person that is liable under sections 11 or 12 of the Securities Act is jointly and severally liable with the other person, unless the controlling person had no knowledge of, or reasonable grounds to believe in, the existence of the facts that resulted in the alleged liability.
- Section 10(b) and Rule 10b-5 liability: it is unlawful for any person to do any of the following in connection with the purchase or sale of any security:
  - employ any fraudulent scheme;

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- make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- engage in fraud or deceit.

Note that US states also have similar laws governing liability that may also apply to registered offerings.

To succeed in a claim under Rule 10b-5 under the Exchange Act, the claimant must show that the person selling the security intended to deceive or had a reckless disregard of the truth. This "scienter" requirement does not apply under sections 11 and 12 of the Exchange Act. In addition, the US Supreme Court has limited the territorial application of Rule 10b-5 under the Exchange Act by holding that section 10(b) of the Exchange Act covers only:

- Transactions in securities listed on domestic exchanges.
- Domestic transactions in other securities.

This test is often referred to as the "transactional test". As a result, it was thought that "foreign-cubed" cases (foreign issuers, foreign claimants, and foreign transactions) could no longer be brought in US courts. In addition, one US federal appeals court held that to be liable for domestic transactions in other securities, a claimant must allege facts suggesting that irrevocable liability was incurred or title was transferred within the US.

However, there have been cases exploring the limitations of the transactional test and whether section 929P(b) of the Dodd-Frank Act supersedes it. Section 929P(b) of the Dodd-Frank Act directly addresses the issue of transnational securities fraud brought by the SEC or the US Department of Justice by amending section 22 of the Securities Act and section 27 of the Exchange Act, and providing that US courts have jurisdiction over an action or proceeding brought or instituted by the SEC or the US Department of Justice alleging a violation of section 17 of the Securities Act or section 27 of the Exchange Act involving either:

- Conduct within the US that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the US and involves only foreign investors.
- Conduct occurring outside the US that has a foreseeable substantial effect within the US.

This test is often referred to as the "conduct and effects test". In March 2017, a US district court held that section 929P(b) of the Dodd-Frank Act supersedes the transactional test, in a case involving a web traffic exchange that had 90% of its customers purchasing products over the internet while located outside the US. The US district court found that the legal context in which section 929P(b) was drafted, the legislative history, and the express purpose of section 929P(b) all point to a congressional intent that section 10(b) of the Exchange Act and section 17(a) of the Securities Act should be applied to extraterritorial transactions to the extent that the conduct and effects test can be satisfied. In January 2019, the Tenth Circuit of the Court of Appeals upheld the district court's decision. However, it remains to be seen whether other US district courts will continue to follow the transactional test in light of this decision.

Liability: Unregistered Offerings

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In the case of unregistered offerings (section 4(a)(2), Regulation D, Rule 144A, and section 3(a)(2)), where there is no registration statement and section 5 statutory prospectus, liability under section 11 of the Securities Act is not applicable. However, liability for issuers and underwriters may still arise under sections 12 and 15 of the Securities Act, and section 10(b) and Rule 10b-5 of the Exchange Act, as follows:

- Section 12 liability: a buyer of a security can sue any person who:
    - offered or sold the security to that buyer without establishing a valid exemption from registration (that is, failure to meet the requirements under section 4(a)(2), Rule 144A, or section 3(a)(2));
    - offered or sold the security to that buyer by means of an offering circular or offering memorandum or oral communication that included an untrue statement of a material fact (or omitted to state a material fact necessary to make a statement, in light of the circumstances under which it was made, not misleading).
- Section 15 liability: this is the same as in the case of registered offerings.
- Section 10(b) and Rule 10b-5 liability: this is the same as in the case of registered offerings.

Note that US states also have similar laws governing liability that may also apply to unregistered offerings.

Defences

A person other than the issuer (such as an underwriter) against whom a claim is made may have defences, including a due diligence defence.

Equity Capital Markets

Main Requirements for a Primary Listing

8. What are the main requirements for a primary listing on the main public equity markets/exchanges?

Main Requirements

To trade on a US exchange, an equity security must generally be both:

- Registered with the SEC (see *Question 10*).

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- Accepted for listing on an exchange.

The main NYSE and Nasdaq listing requirements are set out below.

NYSE. The NYSE requirements include:

- Quantitative listing standards for US companies: the financial criteria under these standards are less stringent than the alternate listing standards, but the share distribution criteria are based on US shareholdings only. A US company must satisfy the following criteria:
    - a minimum of 400 US shareholders, each holding at least 100 shares;
    - at least 1.1 million shares must be publicly held in the US with a minimum market value of USD40 million;
    - it must have a minimum bid price of USD4 per share; and
    - one of the following two financial tests with specified US dollar thresholds must be satisfied, as defined by the NYSE: the earnings test (adjusted pre-tax income for three fiscal years greater than or equal to USD10 million, each of the two more recent fiscal years greater than or equal to USD2 million, and each of the prior three fiscal years must have greater than zero income, subject to certain exceptions); or the global market capitalisation test (global market capitalisation of at least USD200 million);
    - REITs, closed-ended management investment companies, and business development companies do not have to meet the earnings test or global market capitalisation test, and instead must meet specific thresholds on either the market value of publicly held shares (in the case of REITs and closed-ended management investment companies) or a global market capitalisation of USD75 million (in the case of business development companies).
- Alternate quantitative listing standards for non-US companies: these take into account worldwide share distribution. Consequently, non-US companies often qualify under these standards, though they may also list under the US company standards. FPIs must satisfy the following criteria:
    - minimum of 5,000 shareholders worldwide, each holding at least 100 shares, and at least 2.5 million shares must be publicly held worldwide;
    - publicly held shares worldwide must have a market value of at least USD100 million (or USD60 million for companies qualifying under the affiliated company test);
    - four financial tests (each as defined by the NYSE): earnings; valuation/revenue with cash flow (based on global market capitalisation, revenues, and aggregate adjusted cash flows); pure valuation/revenue (based on global market capitalisation and revenues); and affiliated company (based on global market capitalisation, operating history, and whether parent or affiliated company is NYSE-listed).

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The NYSE allows companies to conduct concurrent primary offerings as part of a direct listing on the exchange. The NYSE will deem a company to have met the applicable aggregate market value of publicly-held shares requirement in order to proceed with the direct listing coupled with a primary offering if the company sells at least USD100 million in market value of its shares in the NYSE's opening auction on the first day of trading. In December 2022, the NYSE relaxed pricing limitations for primary direct listings from its previous standard, allowing the opening auction to be up to 20% below or 80% above the price range included in the effective registration statement.

Alternatively, the NYSE will determine that the company has met its market value of publicly-held shares requirement if the aggregate market value of the shares the company will sell in the opening auction on the first day of trading, and the shares that are publicly-held immediately prior to the listing, is at least USD250 million, with the market value calculated using a price per share equal to the lowest price of the price range established by the company in its registration statement.

The NYSE American maintains lower quantitative initial listing standards than the NYSE, and prospective issuers must satisfy one of each of the following "Standards" and "Options":

- One of the following "Standards":
    - Standard 1 (pre-tax income of USD750 thousand, market value of public float of at least USD4 million, stockholders' equity of at least USD4 million, and a minimum share price of USD3);
    - Standard 2 (market value of public float of at least USD15 million, stockholders' equity of at least USD4 million, a minimum share price of USD3, and operating history of at least two years);
    - Standard 3 (market cap of at least USD50 million, market value of public float of at least USD15 million, stockholders' equity of at least USD4 million, and a minimum share price of USD2);
    - Standard 4a (market cap of at least USD75 million, market value of public float of at least USD20 million, and a minimum share price of USD3); or
    - Standard 4b (total assets and total revenue of at least USD75 million, market value of public float of at least USD20 million, and a minimum share price of USD3).
- One of the following "Options":
    - Option 1 (at least 800 public shareholders and public float of at least 500 thousand);
    - Option 2 (at least 400 public shareholders and a public float of at least 1 million); or
    - Option 3 (at least 400 public shareholders, a public float of least 500 thousand, and a daily trading volume (six months prior) of at least 2,000 shares).

Nasdaq. An issuer is required to satisfy the following quantitative listing requirements which depend on which of the three markets within Nasdaq that the issuer is listing (the Global Select Market (which has the highest listing standards), the Global Market, or the Capital Market).

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Nasdaq Global Select Market:

- Financial requirements: companies, including those listing in connection with a direct listing, must meet all of the criteria under at least one of the following four financial standards: earnings, capitalisation with cashflow, capitalisation with revenue, and assets with equity, each as defined in the *Nasdaq Initial Listing Guide*.
- Liquidity requirements:
  - a minimum of 1.25 million unrestricted (that is, not subject to resale restrictions), publicly held shares with a market value of at least USD45 million (for seasoned companies, either USD110 million market value of unrestricted publicly held shares, or USD100 million market value of publicly held shares and USD110 million market value of unrestricted publicly held shares and stockholders' equity);
  - unrestricted listed shares must be held by at least 450 holders, each holding at least 100 shares or 2,200 total holders (seasoned companies and affiliated companies can also satisfy the requirement with 550 total holders and 1.1 million of average monthly trading volume over the past 12 months), and must have a bid price of at least USD4 per share: at least 50% of the company's required holders must each hold unrestricted securities with a market value of at least USD2,500;
  - for securities that previously traded over-the-counter (OTC), a minimum average trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security on the primary market with respect to an American Depositary Receipt (ADR)), with trading occurring on at least 16 of those 30 days.

Nasdaq Global Market: financial and liquidity requirements: companies (other than those listing in connection with a direct listing) must meet all of the criteria under at least one of the following four standards:

- Income standard (among other things, this standard requires income from continuing operations before income taxes in the latest fiscal year, or in two of the last three fiscal years, of at least USD1 million).
- Equity standard (among other things, the company must have at least USD30 million in stockholders' equity).
- Market value standard (among other things, the company's market value of listed securities must exceed USD75 million).
- Total assets/total revenue standard (where, among other things, the total assets and total revenue of the company must exceed USD75 million).

In all instances, the company must have a minimum of 1.1 million unrestricted publicly held shares with a market value of at least:

- USD8 million under the income standard.

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- USD18 million under the equity standard.
- USD20 million under the market value standard or the total assets/total revenue standard.

In addition to the above, the following requirements must also be met:

- Unrestricted listed shares must be held by at least 400 holders under all standards, each holding at least 100 shares, and must have a bid price of at least USD4 per share.
- For securities that previously traded OTC, a minimum average trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on at least 16 of those 30 days.
- A minimum of four market makers (unless the company qualifies for listing under the income or equity financial standards, which each require three market makers).

The direct listing requirements for the Nasdaq Global Market are largely similar to those for the Nasdaq Global Select Market, but with the key distinction that certain differences in valuation standards must be determined by a third party.

Nasdaq Capital Market: financial and liquidity requirements:

- A minimum of one million unrestricted publicly held shares with a market value of:
  - USD15 million, under the equity and market value of listed securities financial standards;
  - USD15 million, under the net income financial standard (increased from USD5 million, effective 16 January 2026, following SEC approval of amendments to Nasdaq Listing Rules 5405 and 5505 (see below).
- Unrestricted listed shares must have at least 300 holders, each holding at least 100 shares, and must have either:
  - a bid price of at least USD4 per share, or a closing price of at least USD3 per share (if the issuer is satisfying the equity or net income financial standards and certain other revenue, net tangible asset, or operating history requirements are met); or
  - a bid price of at least USD2 per share (if the issuer is satisfying the market value of listed securities financial standard and certain other revenue, net tangible asset, or operating history requirements are met).

  At least 50% of the company's required holders must each hold unrestricted securities with a market value of at least USD2,500.

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- For securities that previously traded OTC, a minimum average trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on at least 16 of those 30 days.
- The issuer must have at least three registered and active market makers.
- Similar to the financial standards of the Nasdaq Global Select Market and the Nasdaq Global Market, one of the following three financial standards with specified US dollar thresholds must be satisfied: equity, market value of listed securities, and net income, each with similar principles (but lower thresholds) as the aforementioned markets.

Similar to the NYSE, Nasdaq allows companies to conduct primary offerings concurrent with a direct listing. A company that has not previously had its equity securities registered under the Exchange Act can list its equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement under which the company will sell its shares in the opening auction on the first day of trading. Nasdaq will deem the market value requirement to be met if the amount of the company's unrestricted publicly-held shares before the offering, along with the market value of the shares to be sold by the company in its opening auction, is at least USD110 million (or USD100 million, if the company has stockholders' equity of at least USD110 million). In December 2022, Nasdaq relaxed pricing limitations for primary direct listings from its previous standard, allowing the opening auction to be up to 20% below or 80% above the price range included in the effective registration statement.

NYSE and Nasdaq qualitative listing requirements. Both the NYSE and Nasdaq have qualitative requirements for their listed companies relating to, among other things, corporate governance, including:

- Maintenance of audit and compensation committees comprised of independent directors.
- Compliance with ongoing requirements, such as distributing annual and interim reports.

On 11 December 2024, the US Court of Appeals for the Fifth Circuit struck down Nasdaq's board diversity rules, holding that the SEC overstepped its statutory authority when it approved the rules. The vacated rules required a Nasdaq listed company to have, or publicly disclose why they do not have, at least two diverse directors (including at least one self-identified female director and at least one director who self-identifies as an "underrepresented minority" or a member of the LGBTQ+ community), and would have required the company to publicly disclose board diversity statistics using a standardised format on an annual basis.

On 18 December 2025, the SEC approved amendments to Nasdaq Listing Rules 5405 and 5505, which heightened the financial standards for initial listings on the Nasdaq Global Market and the Nasdaq Capital Market. The amendments increased the minimum market value of unrestricted publicly held shares (MVUPHS) under the net income standard to USD15 million, aligning this requirement across all listing standards. In addition, on 5 December 2025, the SEC approved an amendment to Nasdaq Listing Rule 5810(c)(3), which accelerates de-listing determinations and trading suspensions when a company's closing bid price is USD0.10 or less for ten consecutive trading days. Nasdaq also introduced additional initial listing requirements for companies headquartered in, incorporated in, or whose business is principally administered in, China, requiring a minimum firm commitment offering of USD25 million. These amended rules became operative on 16 January 2026.

FPIs are exempt from many qualitative requirements if they comply with and disclose their obligations under the law of their home jurisdiction (see *Question 21, Continuing Obligations*).

To view and customise comparison charts on securities exchanges initial listing standards (available to PL Dynamic subscribers), see Quick Compare Charts:

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- *Securities Exchanges Initial Listing Standards - Operating History and Ownership Structure*.
- *Securities Exchanges Initial Listing Standards - Financial Performance*.
- *Securities Exchanges Initial Listing Standards – Liquidity*.

Minimum Financial Requirements

See *Main Requirements*.

Trading Record and Accounts

See *Main Requirements*.

For further resources on international accounting standards, see *Practice Note, International Financial Reporting Standards*.

Minimum Shares in Public Hands (Free Float)

See *Main Requirements*.

Main Requirements for a Secondary Listing

9. What are the main requirements for a secondary listing on the main public equity markets/exchanges?

Main Requirements

After completing an IPO, an issuer may want to raise additional capital by filing a registration statement covering additional securities it intends to sell to the public. This type of offering is referred to as a primary "follow-on" offering. A registration statement can also register both primary (new issue) shares and secondary (shares held by existing security holders) shares.

Follow-on offerings, whether for primary only or primary and secondary shares, are generally conducted using a registration statement on either *SEC Form S-1* (Form S-1) or *SEC Form S-3* (Form S-3). Each respective form requires a description of the securities being offered, the risk factors, and the plan of distribution. The primary difference between Form S-1 and Form S-3 is that Form S-3 allows the issuer to satisfy the form's disclosure requirements by referencing (or incorporating by reference) disclosure already contained in its previously filed reports with the SEC under the Exchange Act into the registration statement and, if such form is intended to be used as a "shelf registration statement", for offerings from time to time, to keep the registration statement current by incorporating future periodic filings made with the SEC. Form S-1 registration statements allow the issuer

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to incorporate by reference only Exchange Act reports filed prior to the date of the registration statement, and only under limited circumstances.

Form S-1. Form S-1 is the most common form of registration statement and all issuers are eligible to use Form S-1. Form S-1 is typically used by companies that are conducting IPOs. Form S-1 requires expansive disclosure of all items required by Regulation S-K of the Exchange Act. An issuer can incorporate certain information into its Form S-1 if it is already a public company subject to the reporting requirements of the Exchange Act, it has filed all Exchange Act reports during the past 12 months that were required to be filed, and it has filed an annual report on Form 10-K for its most recent fiscal year. Issuers meeting these requirements can incorporate its Exchange Act reports that have been filed on or before the date of the Form S-1 registration statement.

Form S-3. Form S-3 is a short-form registration statement that consists primarily of information about the specific transaction. As noted above, most of the information required by Regulation S-K of the Exchange Act can be incorporated by reference from the issuer's current and future periodic reports and proxy statements filed with the SEC. Because Form S-3 allows incorporation by reference of future filings made by the issuer, the registration statement is automatically updated every time the issuer files a new Exchange Act report or other filing incorporated by reference.

For an issuer to register securities on Form S-3, it must be a domestic issuer. Additionally, the issuer must:

- Have a class of securities registered under section 12, or have been subject to section 15(d), of the Exchange Act for the past 12 months.
- Have timely filed all Exchange Act reports required to be filed during the past 12 months (other than any Form 8-K reports required solely under Items 1.01, 1.02, 1.04, 2.03, 2.04, 2.05, 2.06, 4.02(a), or 5.02(e) of the Exchange Act).
- Have no defaults on any material debt or long-term lease since the end of the most recent fiscal year.
- Not have failed to pay any dividend on preferred stock since the end of the most recent fiscal year.

Form S-3 registration statement transaction requirements (public float). If an issuer satisfies the requirements stated above, it can use Form S-3 for offerings that comply with certain transaction requirements. If the issuer has a public float of USD75 million or more, it can register any offering of debt or equity for cash on a Form S-3 registration statement.

If an issuer has a public float of less than USD75 million, it can register the following securities offerings on a Form S-3 registration statement:

- Secondary offerings of securities that are of a class listed on a national securities exchange.
- Primary offerings of non-convertible securities, provided that the issuer meets one of the following requirements:
  - it has issued at least USD1 billion in aggregate principal amount of non-convertible securities (other than common equity) in registered primary offerings for cash in the past three years;
  - it has at least USD750 million in aggregate principal amount of non-convertible securities (other than common equity) outstanding, which were issued in registered primary offerings for cash;

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- it is a wholly-owned subsidiary of a WKSI; or
- it is a majority-owned operating partnership of a REIT that is a WKSI.

Minimum Financial Requirements

See *Main Requirements*.

Trading Record and Accounts

See *Main Requirements*.

Minimum Shares in Public Hands (Free Float)

See *Main Requirements*.

Main Steps for a Primary Listing

10. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depository receipts?

Procedure for a Primary Listing

To trade on a US exchange, an equity security must generally be both:

- Registered with the SEC.
- Accepted for listing on an exchange.

A company can also become a SEC-reporting company in the US without listing its securities on an exchange, and a company can list its securities on an exchange without raising capital in a public offering, by using a direct listing (see *Question 9, Main Requirements*). However, without a listing, companies cannot benefit fully from the advantages of being a US public company.

Public securities offerings are accomplished using a registration statement (section 5, Securities Act), which is filed with, and reviewed and declared effective by, the SEC. A private company undertaking a direct listing on the NYSE or Nasdaq must file a resale registration statement, which registers the resale of securities held by existing security holders who may have acquired their interests in private placements. A registration statement contains two parts:

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- A prospectus, which is the main marketing and disclosure document.
- Other information filed with the SEC but not distributed to investors, including exhibits to the registration statement.

The registration statement usually becomes effective on the pricing date for the offering. The issuer is then subject to all of the following:

- The continuing public reporting requirements of the Exchange Act.
- Other applicable SEC rules.
- The rules of the exchange on which its shares are listed.

Procedure for a Foreign Company

The procedures for SEC registration and listing on an exchange are substantially the same for FPIs and US issuers, although the specific disclosure and corporate governance requirements differ.

FPIs' equity securities are often listed and traded as ADRs. An ADR represents a fractional interest in the underlying security issued by the FPI. An ADR is:

- A negotiable certificate issued by a US commercial bank acting as depository.
- Transferable on the books maintained by the depository.
- Treated as a US security for settlement and other purposes.

FPIs may be likely to seek listing on US exchanges for shares or ADRs to gain greater visibility in the market (including coverage by broader base of equity analysts) or to engage a potentially larger pool of investors.

An FPI bases its decision whether to list shares or ADRs on a number of factors, including:

- A comparison of the pricing levels in its home jurisdiction to the typical pricing levels in the US markets.
- The perceived benefit of having its shares listed directly (not through ADRs).

Main Steps for a Secondary Listing

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11. What are the main steps for a company applying for a secondary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a secondary listing for shares or depository receipts?

Procedure for a Secondary Listing

See *Question 9, Main Requirements*.

Procedure for a Foreign Company

Foreign companies will need to use a Form F-1 for a secondary listing (see *Question 10, Procedure for a Foreign Company*, for ADRs).

Structuring an IPO

12. What are the main ways of structuring an IPO?

An IPO can be structured as an agented or firm-commitment underwritten public offering, and as either or both a:

- Primary offering: the issuer offers and sells newly issued shares.
- Secondary offering: the issuer's shareholders offer and sell already outstanding (unregistered or restricted) shares.

In both cases, as the IPO involves a public offering, the offer and sale must be registered with the SEC. The main advantage of a primary offering is the publicity and credibility that accompanies an initial IPO.

The enactment of the JOBS Act in 2012 brought about several changes to the IPO process (for example, the JOBS Act created another class of issuer, the EGC (see *Question 4*), which is defined as an issuer, domestic or foreign, with total gross revenues of less than USD1.235 billion). An issuer remains an EGC until the earliest of:

- The last day of the fiscal year during which the issuer's total gross revenues exceed USD1.235 billion.
- Five years from the date of the IPO.

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- The date on which the issuer has sold more than USD1 billion in non-convertible debt.
- The date on which the issuer becomes a large accelerated filer (public float of USD700 million).

Under the JOBS Act, companies that qualify as EGCs are permitted certain accommodations in connection with their IPOs. This is often referred to as the transitional on-ramp to encourage EGCs to pursue IPOs by phasing in certain disclosure requirements and governance requirements over time following their IPOs. The JOBS Act allowed EGCs to submit an IPO registration statement for confidential review by the SEC until the EGC is ready to market the securities. In 2017, the Staff of the Division of Corporation Finance of the SEC extended this ability to submit an IPO registration statement for confidential review to all issuers.

Companies can also become SEC-reporting companies without undertaking an IPO by undertaking a direct listing.

A myriad of factors are considered by a company in its decision to go public and the rationale will play a key role in deciding how to shape the structure of the IPO. Alternatives to a traditional IPO exist that allow a company to "go public", including reverse mergers (where a private company merges with and becomes the surviving successor to a public company that has active operations) or listing via merger with a SPAC, potentially without the full set of disclosures and high costs associated with an IPO. In recent years de-SPAC transactions (where a private company merges with the public SPAC) have decreased in popularity due in part to increased regulatory scrutiny, shareholder litigation, and decreased stock performance. Nonetheless, going public via a de-SPAC transaction may be a viable option for companies seeking to go public.

For further information on IPOs, see *Initial Public Offerings Toolkit (International)*.

Structuring a Follow On Equity Offering

13. What are the main ways of structuring a follow on equity offering? What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

A subsequent (or follow-on) public equity offering can be structured in the same way as an IPO (see *Question 12*). Although each public offering must be registered with the SEC, timing concerns are significantly diminished because the issuer is already subject to continuing SEC reporting requirements and its securities may be listed on a securities exchange. The issuer may also be able to use a shorter form of registration statement for registering additional offered securities (see *Question 6*).

A rights offering, which typically provides an issuer's existing shareholders the opportunity to purchase a pro rata portion of additional shares of the issuer's stock at a specific price per share, is not as common in the US as in other jurisdictions. Because the rights are granted to existing shareholders for no consideration, the rights do not need to be registered with the SEC, which is an advantage from a timing perspective. However, the issuer must register the shares that will be allocated to the shareholders who elect to participate in the rights offering. Not all issuers can benefit from rights offerings, particularly if there is no backstop commitment from a third party. Large, well-capitalised issuers which are looking to raise capital but do not have a specific capital-raising goal or which are established enough to expect many shareholders to exercise their rights may benefit from a

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direct rights offering. Also, issuers that have identified interest from an existing shareholder, or shareholders, may benefit from a direct rights offering.

In recent years, there has been an increase in confidentially marketed follow-on offerings, and at-the-market offerings have generally become more prevalent. A confidentially marketed follow-on offering is intended to provide additional certainty relating to deal execution. An at-the-market offering permits larger issuers to raise small (relative to their market capitalisation) amounts of capital over time through registered transactions which has allowed more issuers to come to market. Block trades also provide an opportunity for a company to raise additional capital in large amounts. Block trades are large, privately negotiated transactions with institutional investors that are structured in a manner that seek to have minimal to no impact on the company's stock price (such as by execution in multiple smaller orders).

Advisers and Documents in a Public Equity Offering

14. Outline the role of advisers used and main documents produced in a public equity offering. Does it differ for an IPO?

Advisers

The advisers for IPOs and subsequent offerings are generally the same. However, the adviser's role in an IPO is significantly more extensive and time intensive than in the case of a follow-on offering. The IPO prospectus must be newly drafted by the issuer's adviser, with a detailed description of the issuer's business, risk factors, and financial operations, and reviewed collectively by the IPO working group and the SEC. In a follow-on offering, the shelf registration statement containing the prospectus to be used in the offering has typically already been declared effective by the SEC. As a result, the prospectus supplement is generally limited to describing the terms of the particular offering, the securities offered, recent market developments, and the recent financial results and condition of the issuer.

Underwriters. The lead underwriters:

- Offer financial advice to the issuer, including valuation advice. This is more critical in an IPO, where there is no independent market valuation, but underwriters often recommend that an issuer sell its shares at a discount.
- Manage the marketing of the securities to prospective investors.

A broader syndicate of underwriters usually assists with marketing and distribution. Underwriters typically provide aftermarket support by repurchasing shares at the offer price in the secondary market to stabilise the price after the IPO. Underwriters also seek to maintain a long-term relationship with the issuer, so as to continue to underwrite future offerings.

Lawyers. The issuer's lawyers draft the registration statement and manage the legal aspects of the offering. The underwriters' lawyers participate in drafting the registration statement and lead the due diligence process. As part of the due diligence process, lawyers for the underwriters and the issuer usually prepare letters stating that, based on specific inquiries (and subject to exclusions for financial and other information provided by experts), they are unaware of anything that may indicate that the

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prospectus contains any material misstatement or omission (Rule 10b-5, Exchange Act). For companies in highly regulated industries or with non-US operations, the issuer and underwriters may retain lawyers that specialise in these matters. While preparation of the registration statement is most intense and time-consuming for an IPO, the process is generally similar for subsequent offerings.

The issuer's lawyers will review the issuer's SEC filings on an ongoing basis. The lawyers will then be prepared when a subsequent offering is proposed.

Independent registered public accounting firm. The registration statement includes annual financial statements, which must be audited by an independent public accounting firm registered with the PCAOB. The public accounting firm:

- Must consent to the use of its audit opinion in the registration statement.
- Reviews any unaudited interim financial statements included in the registration statement.
- Reviews the financial information in the registration statement as part of the due diligence process.
- Issues a comfort letter at the pricing of the IPO, addressed to the underwriters and the issuer's board of directors, relating to:
    - financial statements; and
    - other financial information included in the registration statement.

The public accounting firm will continue to audit and review the issuer's financial statements included in the issuer's SEC reports and will have the same responsibilities for any financial statements filed in, or incorporated by reference in, registration statements for subsequent offerings.

Others. At the IPO, an issuer appoints a transfer agent to facilitate the orderly trading of the shares. The transfer agent:

- Co-ordinates the issuance and tracking of the issuer's securities.
- Maintains a list of the names of record shareholders.

An issuer may also retain outside investor relations firms and other professionals. For subsequent offerings, these advisers are already in place.

Main Documents

The main offering document for an IPO is the prospectus that is included in the issuer's registration statement on Form S-1 (US domestic issuers) or on *SEC Form F-1* (FPIs and non-domestic issuers), which includes the required financial statements.

Marketing: Public Equity Offerings

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15.How are offered equity securities marketed? What are the main legal/regulatory restrictions on marketing activities?

IPOs are marketed through road shows. A road show is a concentrated marketing effort that typically begins shortly after the SEC's comments on the company's preliminary, or red herring, prospectus have been resolved. A road show for an IPO usually lasts from one to two weeks and comprises a series of live meetings between management and prospective investors at which management discusses the company's business and financial performance, and the offering and planned use of proceeds. Management prepares its presentation, which usually includes a slide show, in advance and typically answers questions from the prospective investors. Underwriters customarily manage the schedule for, and invitees to, the road show meetings, and are often in charge of making the presentations to prospective investors. Road shows are increasingly becoming virtual (a trend that began well before the COVID-19 pandemic), and for secondary offerings and alternative equity offerings virtual road shows are becoming the default. After the road show, the underwriters:

- Obtain indications of interest from prospective investors.
- Build a book of demand for the securities offered, based on the number of securities that investors indicate they would be willing to purchase at particular price points.

The JOBS Act permits an EGC, both before and after filing its IPO registration statement with the SEC, to engage in test-the-waters communications with qualified institutional buyers and institutional accredited investors. Based on the success of the test-the-waters provisions for EGCs, the SEC adopted a rule that extended the ability to engage in test-the-waters communications to non-EGCs. Under this rule, all issuers are allowed to gauge market interest in a possible IPO or other registered securities offering through discussions with certain institutional investors before, or following, the filing of a registration statement.

Issuers which are already public can use a variety of approaches to market their equity securities to minimise execution risk, including the potentially adverse impact on an issuer's stock price associated with an announced or marketed failed deal. Also, the mere announcement of a follow-on offering may lead to significant short selling in that issuer's securities in advance of pricing. If an issuer has an effective shelf registration statement, underwriters may engage in pre-marketing activities before public announcement of a transaction, by contacting institutional investors on a confidential basis to gauge their potential interest. These offerings are referred to as confidentially marketed public offerings or wall-crossed deals.

Following a successful pre-marketing phase, the issuer may publicly announce the transaction and have the underwriters market the securities to a broader group of investors with the expectation of very quickly (usually, in a matter of hours) pricing the offering.

There are also other methods of sale, including:

- An at-the-market offering, which is an offering of securities into an existing trading market for outstanding shares of the same class at other than a fixed price on, or through the facilities of, a national securities exchange, or to or through a market maker otherwise than on an exchange, and typically does not involve a broad distribution of securities.

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- A direct listing.
- Exempt offerings, such as a Private Investment in Public Equity (PIPE) transaction, which is a private placement of a public issuer's equity or equity-linked securities to investors, conditioned upon the filing of a resale registration statement with the SEC subsequent to closing.

Parties engaging in marketing efforts during the IPO process should be aware that it is generally unlawful to accept written or oral offers before a registration statement is filed, other than by means of a prospectus that complies with section 10 of the Securities Act, a FWP, or a communication falling within one of the SEC-created safe harbours such as that under Rule 163A of the Securities Act. In this context, such unlawful offers are generally referred to as "gun jumping" and can result in a company having to delay the offering or add additional disclosures if the SEC finds that the company conditioned the market or engaged in gun jumping. Further remedies also exist for investors who purchase securities in an instance of gun jumping, such as rescission of the purchase.

16. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

Generally, broker-dealers registered with the SEC and that are FINRA members can participate in public offerings in the US. Foreign broker-dealers are exempt from FINRA registration if they engage in certain permitted activities, including:

- Effecting unsolicited securities transactions.
- Furnishing research reports to major US institutional investors.
- Soliciting securities transactions from US institutional investors that are effected by US broker-dealers.
- Effecting securities transactions with foreign persons in the US.

(Rule 15a-6 of the Exchange Act, 15 § 17 C.F.R. 240.15a-6.)

While historically underwriters participating in an IPO cannot issue research reports until the quiet period following completion of the IPO has elapsed, the JOBS Act and subsequent FINRA rulemaking have effectively eliminated the quiet periods for pre-IPO and post-IPO research on EGCs and thus, in theory, would allow participating broker-dealers to publish research reports on an EGC before or immediately after the IPO pricing date. FINRA also subsequently amended its rules to reduce the research blackout period for non-EGC IPOs to ten days following pricing, although numerous other considerations under federal securities laws with respect to the distribution of research around the time of an offering continue to apply. In practice, a 25-day research quiet period is usually imposed on underwriters. If a distribution participant issues a research report improperly, this may violate section 5 of the Securities Act, which may create a rescission right for buyers. Additionally, the issuer and the underwriters may be liable for the information contained in the research report. However, the JOBS Act permits research

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reports before, during, and after the IPO offering period for EGCs, although market practice has not changed as a result of this more permissive regulation.

Once the issuer is public, an underwriter is subject to different rules regarding publication of research reports. Permissible research activities depend on several factors, including whether:

- The underwriter is an offering participant.
- The research report relates to the offered securities.
- The issuer meets the requirements for use of a short-form registration statement (which can indicate that the issuer has a larger capitalisation and greater market following).
- The underwriter regularly publishes reports of the kind being proposed.
- The underwriter typically consults counsel on deal-specific concerns.

FINRA also prohibits managers and co-managers of an offering from publishing research:

- Ten days after an IPO.
- Three days after the offering (for a follow-on offering).

None of these quiet periods (including the ten-day and three-day periods mentioned above) apply to offerings by EGCs under the JOBS Act and rule revisions by FINRA in response to that Act. In addition, there is no quiet period in relation to the expiration, waiver, or termination of a lock-up agreement entered into in connection with a public offering.

Bookbuilding: Public Equity Offerings

17. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

The bookbuilding procedure is commonly used. Most IPOs include a retail component (about 10% to 30% of the shares are marketed to retail investors). Issuers often use investment banks with significant retail distribution networks as co-managers or syndicate members to assist with this. The same process can apply in subsequent offerings.

The bookbuilding process will assist in determining the pricing recommendation for the offering, including the individual share price and ultimate number of shares that can be sold. Once the deal has priced, the issuing company will sign the final underwriting agreement where the underwriters will commit to buy a certain number of shares at a discounted price. The

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underwriters will then immediately resell the shares at the price determined by the company through the bookbuilding process (the offering price) that appears on the front page of the prospectus to the investors who have been allocated shares through the bookbuilding process and road show. This process is referred to as "confirming orders". The company's stock will open for trading the following day, which is the "related retail offer". Shares sold to retail investors are settled through the same trade settlement process in place for any other transaction of equity securities on a national listing exchange.

Underwriting: Public Equity Offerings

18. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee or commission?

In an IPO, underwriters usually commit, at pricing, to purchase the offered securities for resale to investors (firm commitment basis). This is distinguished from conditional arrangements, such as best efforts (or agency) commitments. Follow-on offerings may be completed on a firm commitment basis or agency basis. The structure of the underwriting agreement is generally similar. FINRA reviews underwriting arrangements for all IPOs and some follow-on offerings.

Purchase and Sale

The underwriters either:

- Commit to purchase the securities from the issuer at pricing and pay for the securities on settlement (subject to satisfaction of the closing conditions (see *Closing Conditions*)).
- Agree to use best efforts to solicit buyers, but the contractual purchase obligation is between the issuer and the investor.

In most firm commitment equity offerings, the issuer grants the underwriters an option to purchase up to an additional 15% of the number of offered securities to cover over-allotments.

The underwriting fee for firm commitment IPOs ranges from 5% to 7% of the gross proceeds. The range for subsequent firm commitment offerings are somewhat lower. Underwriting fees for best efforts offerings are variable, ranging from 3% to 8%. At-the-market offerings have lower underwriters' fees, often ranging from 1% to 3% no matter the size of the offering.

Representations and Warranties

The issuer represents and warrants both:

- The completeness and accuracy of the prospectus.
- A variety of other matters relating to its organisation and operations.

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Lock-Up Agreement

The underwriting agreement usually specifies a lock-up period (typically 180 days for IPOs and 30 to 90 days for subsequent offerings) during which the issuer and its directors, officers and, for IPOs, most shareholders, agree not to sell securities of the same class as the offered securities, subject to certain negotiated exceptions.

Closing Conditions

The underwriters are only obliged to purchase the securities if the underwriters receive a bring-down comfort letter from the auditor and legal opinions from the issuer's and underwriters' lawyers.

Underwriting agreements also usually limit the underwriters' obligation to purchase the securities if a material adverse change in the issuer's business occurs after the underwriting agreement is signed but before the offering closes. For both firm commitment and best efforts offerings, settlement usually occurs two business days after pricing.

Indemnification

The issuer agrees to indemnify the underwriters for any loss or liability resulting from an untrue statement of a material fact or a material omission in the registration statement or prospectus. Any selling shareholders will also indemnify the underwriters but usually only as to the information related solely to the selling shareholders, and their liability will be capped at their net proceeds.

Termination

The underwriters can terminate the underwriting agreement if a significant external event occurs, such as suspension of trading on the relevant exchange.

Timetable: Public Equity Offerings

19. What is the timetable for a typical equity offering? Does it differ for an IPO?

IPO Timetable

An IPO process can be a three- to six-month process, depending mainly on the time necessary to prepare the registration statement, which varies based on:

- The time needed to prepare SEC-compliant financial statements. FPIs can prepare financial statements according to IFRS as issued by the IASB, or with US GAAP. Financial statements of FPIs can also be prepared according to other accounting principles, provided they are reconciled to US GAAP.

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- The SEC comment process.
- The market conditions.
- The time needed to prepare and file a listing application.

There are three periods in the SEC registration process:

- Pre-filing period: during this quiet period, the registration statement and prospectus are prepared and due diligence is conducted. No offers, whether oral or written, are permitted. The SEC has adopted a rule to extend the ability to engage in test-the-waters communications to all companies, not just EGCs.
- Period between filing the registration statement and effectiveness: during this waiting period, the SEC comments on the registration statement (generally within 30 days of filing) and the road show and other marketing efforts are undertaken. Oral offers are permitted, but written offers cannot be made (apart from under a statutory prospectus) until the registration statement is declared effective.
- Period after effectiveness: during this period, the securities are priced, sales are confirmed, and the securities are delivered to investors, typically within two business days of pricing.

Subsequent Offerings Timetable

The timeline for a subsequent offering is typically much faster because most of the required disclosure will already be included in the issuer's ongoing SEC reports. If the issuer meets the requirements to use a short-form registration statement on Form S-3 (or *SEC Form F-3* for FPIs), the issuer can prepare the prospectus and registration statement up to three years in advance of any proposed use and may be able to conduct an offering virtually overnight. This is referred to as a shelf registration statement. Very large WKSIs can file a Form S-3 that will be effective immediately, allowing the WKSI to move quickly to take advantage of market opportunities.

For further information on the timeline for an IPO, see *Practice Note, Indicative Timeline for a Cross-Border IPO (US)*.

Stabilisation: Public Equity Offerings

20. Are there rules on price stabilisation and market manipulation in connection with a public equity offering?

The rules governing stabilisation (Regulation M, Exchange Act) are complex. It is generally unlawful for any person to stabilise, effect any syndicate covering transaction, or impose a penalty bid in connection with the offering of a security, unless certain conditions are met. Stabilising activities are permitted only to prevent or slow a decline in the market price of the security.

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Stabilisation is not permitted in connection with at-the-market offerings. The key conditions for stabilisation relate to notice, pricing parameters, timing, and priority for independent bids.

The length of the restricted period will differ depending on the type of covered security. For securities with an Average Daily Trading Volume (ADTV) of USD100,000 or more of an issuer whose common equity securities have a public float value of USD25 million or more, the restricted period begins on the later of one business day before the pricing date or such time that a person becomes a distribution participant and ends on the completion of its participation in the distribution. For all other securities, the restricted period begins on the later of five business days before the pricing date or such time that a person becomes a distribution participant and ends on the completion of its participation in the distribution. In the case of convertible securities, the ADTV used to determine the restricted period is that of the convertible security itself and not the reference security.

Continuing Obligations

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies? What are the penalties for breaching the continuing obligations?

Continuing Obligations

Key areas. The key areas of continuing obligations for public companies are:

- Periodic reporting.
- Compliance with the Sarbanes-Oxley Act and the Dodd-Frank Act.
- Continued qualitative and quantitative listing requirements of the relevant exchange, including relating to corporate governance.
- Beneficial ownership reporting for acquirers of 5% or more of a company's equity securities.
- Rules relating to the conduct of tender offers and other securities-related transactions.

For US domestic issuers:

- Disclosure and timing requirements related to shareholder meetings.
- Share ownership and transaction reporting by the company's officers, directors, and 10% shareholders.

On 18 December 2025, the Holding Foreign Insiders Accountable Act (HFIAA) (enacted as part of the *National Defense Authorization Act for Fiscal Year 2026*) was signed into law, extending section 16(a) beneficial ownership reporting obligations

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to officers and directors of FPIs with equity securities registered under section 12 of the Exchange Act. The HFIAA became effective on 18 March 2026, requiring FPI officers and directors to file Forms 3, 4 and 5. However, the HFIAA does not extend section 16(b) short-swing profit disgorgement or section 16(c) short-sale prohibitions to FPI insiders, and does not apply to 10% beneficial owners of FPI securities. The SEC adopted final implementing rules on 27 February 2026. The SEC also issued an exemptive order on 5 March 2026 granting relief from section 16(a) to FPI officers and directors incorporated in qualifying jurisdictions (including Canada, Chile, the European Economic Area, the Republic of Korea, Switzerland, and the United Kingdom) that are subject to substantially similar reporting requirements under qualifying regulations.

Periodic reporting. A US company must file with the SEC:

- An annual report on *SEC Form 10-K* (Form 10-K) after the end of each fiscal year, with audited annual financial statements.
- Quarterly reports on *SEC Form 10-Q* (Form 10-Q) after the end of its first three fiscal quarters, with reviewed interim financial statements.
- Current reports on *SEC Form 8-K* (Form 8-K) when certain specified events occur.
- A proxy statement for any shareholders' meeting, including the annual meeting.

The reporting requirements are less onerous for an FPI. An FPI must:

- File an annual report on *SEC Form 20-F* (Form 20-F) within four months after the fiscal year end. The annual report on Form 20-F must also contain a summary of differences between the US and home jurisdiction's corporate governance requirements. An FPI is not required to file quarterly reports on Form 10-Q or current reports on Form 8-K. However, if an FPI is listed on the NYSE, it must submit semi-annual unaudited financial information on *SEC Form 6-K* (Form 6-K) no later than six months following the end of its second fiscal quarter.
- Include on Form 6-K any material information that it either:
  - makes public under its home jurisdiction's laws or stock exchange requirements; or
  - is required to distribute to its shareholders, such as bi-annual or quarterly reports.

On 4 June 2025, the SEC published a concept release soliciting public comment on the definition of foreign private issuer (*Release Nos. 33-11376; 34-103176*). The concept release was prompted by significant changes in the FPI population since the definition was last broadly reviewed in 2003, including a shift in the most common jurisdictions of incorporation from Canada and the United Kingdom to the Cayman Islands, and an increase in the proportion of FPIs whose securities trade almost exclusively in US markets (approximately 55% of FPIs in 2023). The SEC outlined six potential approaches to amending the FPI definition, including:

- Updating the existing eligibility criteria (such as lowering the 50% US resident ownership threshold).

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- Adding a foreign trading volume requirement.
- Adding a "major foreign exchange" listing requirement.
- Incorporating SEC assessment of foreign regulation.
- Establishing new mutual recognition systems.
- Adding an international cooperation arrangement requirement.

The comment period closed on 8 September 2025, and the SEC received approximately 70 comment letters. Any resulting changes could significantly affect non-US companies currently qualifying as FPIs, potentially subjecting them to the full domestic issuer reporting regime, including US GAAP, quarterly reporting, US proxy rules, *Regulation FD*, and section 16 reporting.

The Sarbanes-Oxley Act, the Dodd Frank Act, and related regulations impose numerous additional requirements on listed issuers, including:

- Certification of SEC periodic filings.
- Submission of reports on internal control over financial reporting.
- Independence of the issuer's audit and compensation committees.

Each annual and, in the case of a US issuer, quarterly report filed with the SEC must be accompanied by certifications signed by the company's principal executive and financial officers and cover, among other things:

- The completeness and accuracy of the disclosure.
- The fairness of the presentation of the issuer's financial condition and results of operations in its financial statements.
- The effectiveness of the issuer's disclosure controls and procedures, and internal control over financial reporting.

In addition, each annual report must include a management report and auditor's report on the company's internal control over financial reporting. Newly public companies are not required to file either report until their second annual report after their IPO. Smaller public companies and EGCs, whether domestic or foreign, are not required to provide the auditor's report on the company's internal control over financial reporting. The JOBS Act also provides relief from certain ongoing disclosure obligations for EGCs.

Other reporting requirements. Form 8#K is the form on which public companies report, on a current basis, the occurrence of significant corporate events. A significant corporate event is a transaction or occurrence of major significance. All US "reporting" companies are responsible for filing the requisite Form 8#K. Foreign issuers that report in the US use Form 6#K, which has different requirements. The type of information required to be disclosed on Form 8-K is generally considered to be

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"material". Information is "material" if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. Material information includes, but is not limited to:

- The entry of termination of a material agreement.
- The creation of a material financial obligation.
- The unregistered sale of equity securities.
- Any changes in accountants.
- Any amendments to the articles of incorporation or bye-laws.

Companies are required to make most Form 8-K disclosures within four business days of the triggering event and in some cases even earlier.

NYSE and Nasdaq corporate governance requirements. The NYSE and Nasdaq both have ongoing corporate governance requirements, such as director independence, the formation of certain board committees, and regular meetings of non-management directors. They also require annual management attestations of compliance with the corporate governance requirements. In many areas, the NYSE and Nasdaq permit FPIs to follow home jurisdiction governance practices, provided they disclose publicly the significant differences caused by following these practices.

There are no significant shareholder voting restrictions. US federal securities laws, including the Dodd-Frank Act, and the NYSE and Nasdaq corporate governance requirements for domestic issuers, encourage shareholder voting and involvement.

The continuing obligations for foreign companies are similar to those that apply to listed companies.

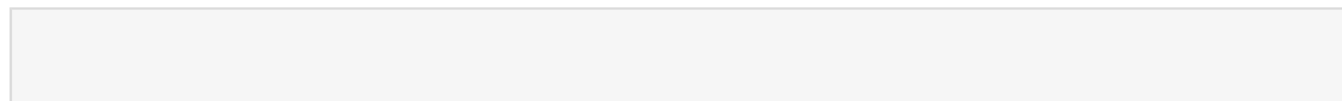
Penalties for Breaching Continuing Obligations

Failure to file required Exchange Act reports can result in the SEC bringing an enforcement action against the issuer seeking injunctive relief. In addition, any officer of the company who knowingly makes a false certification in connection with an Exchange Act report can potentially be subject to both:

- Monetary fines and criminal sanctions for violating sections 13(a) or 15(d) of the Exchange Act.
- SEC and private actions for violating section 10(b) or Rule 10b-5 of the Exchange Act.

Failure to comply with an exchange's continued listing requirements can result in a suspension of trading or de-listing.

Market Abuse and Insider Dealing



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22. What are the restrictions on market abuse and insider dealing?

Restrictions on Market Abuse/Insider Dealing

See *Question 7* for a discussion of liability for misleading statements.

An individual can be liable for insider trading if the individual buys or sells a security while in possession of material non-public information that was obtained in breach of a fiduciary duty or relationship of trust. There is extensive US judicial guidance on what constitutes insider trading and who may be liable, including traditional corporate insiders, such as directors or officers, as well as market traders and other people involved in the securities market.

Market manipulation occurs when an individual artificially affects the supply or demand for a security (for example, causing stock prices to rise or to fall dramatically). Market manipulation can involve techniques including:

- Spreading false or misleading information about a company.
- Engaging in a series of transactions to make a security appear more actively traded.
- Rigging quotes, prices, or trades to make it appear there is more or less demand for a security than is the case.

Insider trading is a constantly-evolving area of the law. Recent court decisions indicate that insider trading liability may be extended to situations where a person lawfully acquires material, non-public information from one company and subsequently uses the information to trade in the securities of a separate company to which the person does not owe a duty of trust and confidence. In 2024, the SEC prevailed in an action based upon this theory of "shadow trading" in which the Northern District of California found the defendant liable for insider trading after the defendant received material, non-public information regarding an acquisition of the company for which that person was a director, and subsequently used this information to purchase stock options of another company, whose shares the defendant predicted would increase based upon the proposed acquisition of their company.

Penalties for Market Abuse/Insider Dealing

There can be both criminal and civil penalties for insider trading and market manipulation, including:

- Prison sentences.
- Financial fines and penalties.
- Injunctions.
- Cease and desist orders.

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- Bars from participating in the securities industry in any capacity, including being a director or officer of any securities firm or SEC-registered issuer.
- Other civil remedies.

De-Listing

23. When can a company be de-listed?

De-Listing

Voluntary de-listing. A company can seek to de-list its shares from the NYSE or Nasdaq voluntarily because, among other reasons, it believes it cannot continue to satisfy a continuing listing requirement. However, the company may still be required to maintain its SEC registration if it meets the SEC's registration requirements.

De-listing by the exchange. The NYSE and Nasdaq can de-list an issuer that fails to comply with its continuing listing requirements, whether qualitative or quantitative, including minimum share price. There is a notice and hearing process, and the issuer has the opportunity to demonstrate its plan to regain compliance with the applicable requirement. If the NYSE or Nasdaq does not accept the issuer's plan or the company fails to regain compliance, the exchange makes appropriate SEC filings. This process can take months or even years, depending on the applicable requirement. A de-listed company may still be required to maintain its registration with the SEC if it meets the SEC's registration requirements.

On 24 July 2024, a new NYSE rule took effect that provides the NYSE with certain discretionary authority to de-list companies that undergo substantial changes in their primary business focus. This authority applies when a company transitions to a business area significantly different from its original focus at the time of listing. Under this rule, the NYSE conducts a qualitative review of companies that have recently undergone such substantial changes to determine if they would have been suitable for listing under their new business model. NYSE has acknowledged that this new authority will be used only in extraordinary circumstances, and any company seeking to undertake a change in primary business focus must provide prompt written notice to the NYSE.

In January 2025, the SEC approved separate rules proposed by the NYSE and Nasdaq that permit each exchange to accelerate the de-listing process for companies that fail to maintain a USD1 minimum share price. These amendments, which are now in effect, limit the ability of listed companies with a history of having a low stock price to use reverse stock splits as a means to remain qualified for listing. Failure to maintain such minimum share prices can now result in the immediate commencement of de-listing and suspension of trading on either exchange.

In addition, on 5 December 2025, the SEC approved a Nasdaq proposal to accelerate de-listing determinations and trading suspensions when a company's security has a closing bid price of USD0.10 or less for ten consecutive trading days. This modified "Low Price Requirement" became operative on 19 January 2026.

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In January 2026, Nasdaq implemented further amendments to its initial and continued listing standards, including:

- Raising the minimum market value of unrestricted publicly held shares to USD15 million for companies listing under the net income standard.
- Implementing an accelerated suspension and de-listing process for companies with a market value of listed securities below USD5 million.

A separate Nasdaq proposal regarding the accelerated suspension and de-listing for companies with a market value of listed securities below USD5 million was filed in January 2026 and remains pending. Nasdaq also proposed heightened listing standards for China-based companies (including a minimum of USD25 million in public offering proceeds for IPOs), though as of 18 December 2025, the SEC had not yet acted on that proposal and instead instituted further proceedings. In December 2025, Nasdaq also adopted a new rule granting the exchange limited discretion to deny initial listing to companies, even where the applicant meets all stated listing requirements, if, in Nasdaq's judgment, the company's securities could be susceptible to manipulative trading activity. The SEC confirmed the immediate effectiveness of this rule on 19 December 2025.

Statutory de-listing. The *Holding Foreign Companies Accountable Act* (HFCAA) requires that non-US companies which fail to meet a number of strict criteria will be barred from having their securities traded on US stock exchanges. In part, the HFCAA requires that if a reporting company uses an auditor located in a jurisdiction where the authorities in that jurisdiction are able to restrict the PCAOB's ability to inspect or investigate the audit firm, then certain disclosures must be made to investors and such issues must be remedied within a prescribed time frame, such that the reporting company changes their audit firm to one that PCAOB has the ability to inspect. The SEC maintains an active list of affected companies and updates it annually based on PCAOB determinations. Companies that fail to comply with the HFCAA's requirements are subject to trading halts and, if not cured, prohibition from US markets.

Suspensions

Suspension of registration. All companies registered with the SEC, whether US or foreign, can suspend their obligation to file SEC reports and other public company obligations if either:

- There are fewer than 300 record holders of the common equity or 1,200 record holders in the case of banks, bank holding companies, and savings and loan holding companies.
- The number of holders of the common equity falls below 500 and the company's total assets have been no more than USD10 million at the end of each of its last three fiscal years.

However, if the company ever exceeds these levels, the obligations are reinstated.

Termination of registration. An FPI can terminate (rather than merely suspend) its listing and de-register (Rule 12g3-2(b), Exchange Act) (because, for example, the US market for its shares is thinner than anticipated, or declines over time, such that the additional compliance expenses associated with US registration are not justified), if either:

- The US ADTV of the securities has been no greater than 5% of the worldwide ADTV for a recent 12-month period.

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- The securities are held by fewer than 300 persons worldwide or fewer than 300 persons resident in the US, and certain other conditions are met.

Private Securities Offerings

24. What are the main exemptions from the requirements for registration of the offering or publication or delivery of a prospectus (or other main offering document) for private securities offerings (both listed and non-listed)?

There are exemptions from the registration requirements of section 5 of the Securities Act, based on the type of security or the type of transaction. Any issuer can make a limited offer of securities (without registration) in a private placement to sophisticated or institutional investors, subject to a number of conditions (see Regulation D, 17 CFR § 230.501, Securities Act). A non-registered (exempt) offering does not require a statutory prospectus but is usually made using an offering memorandum that is often closely based on a statutory prospectus in form and content.

A non-listed private company has no requirements to file a prospectus or other offering documents with the SEC but it will prepare an offering memorandum for investors.

For further information on private placements/prospectus exempt offerings, see *Practice Note, Private Placements and Other Unregistered Offerings: Overview (US)* and *Private Placements and Prospectus Exempt Offerings Toolkit (International)*.

25. What is the process (if any) for a company completing a private securities offering?

A private placement is a sale of stock shares or bonds to pre-selected investors and institutions rather than on the open market. It is an alternative to an IPO for a company seeking to raise capital. Investors invited to participate in private placement programmes include wealthy individual investors, banks, and other financial institutions, mutual funds, insurance companies, and pension funds. One advantage of a private placement is its relatively few regulatory requirements (see *Question 5, Equity* for the process and filing requirements).

Global offerings that are not registered in the US with the SEC are typically structured to take advantage of a combination of exemptions. The portion of the transaction sold to investors outside the US will be designed to comply with the safe harbour for offshore transactions provided by Regulation S of the Securities Act. At the same time, the portion sold to US investors will be structured to comply with the safe harbour of Rule 144A of the Securities Act for resales to certain large US institutional investors (known as qualified institutional buyers (QIBs)), or (generally for smaller transactions) the private placement exemptions of section 4(a)(2) of the Securities Act or Regulation D of the Securities Act.

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Debt Capital Markets

Restrictions on Offering/Selling Debt Securities

26. What are the main restrictions on offering and selling debt securities in your jurisdiction?

Main Restrictions on Offering and Selling Debt Securities

Offerings of debt securities must be either registered with the SEC under section 5 of the Securities Act or qualify for an applicable exemption from registration. Exemptions from registration include those under:

- Section 4(a)(2) of the Securities Act (section 4(a)(2)).
- Regulation D of the Securities Act (Regulation D).
- Rule 144A of the Securities Act (Rule 144A).
- Regulation S of the Securities Act (Regulation S).
- Section 3(a)(2) of the Securities Act (section 3(a)(2)) (see *Question 28*).

Each exemption from registration has its own particular requirements with respect to the number and type of eligible investors, offering size, issuer eligibility, advertising and communication restrictions, and other conditions of exemption, which are discussed generally below. In addition, in the case of section 3(a)(2) offerings, registration of the offering with the *Office of the Comptroller of the Currency* (OCC) may be required unless an exemption from registration applies, which includes meeting the requirements of Rule 144A, Regulation S, or Regulation D.

If an offering of debt securities is registered with the SEC, a registration statement, which includes the prospectus for the offering, must be filed with, and reviewed by, the SEC (see *Question 28*). In addition, if the debt securities are being listed on an exchange (such as the NYSE or the Nasdaq), the offering must meet the applicable requirements of the relevant exchange (see *Question 8, Main Requirements*). The Intercontinental Exchange, Inc operates the NYSE, NYSE Arca, and NYSE American. The Nasdaq operates the Nasdaq Global Select Market, the Nasdaq Global Market, and the Nasdaq Capital Market.

Restrictions for Offers to the Public or Professional Investors

Investors in a section 4(a)(2) offering or a Regulation D offering are typically accredited investors (as defined in Rule 501 under the Securities Act) (see *Question 28*). Investors in a Rule 144A offering must be QIBs or large institutional investors that generally have at least USD100 million of securities under management (see *Question 28*). Investors in a Regulation S offering must be non-US persons and there can be no "directed selling efforts" in the US (see *Question 28*). Investors in a section 3(a)

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(2) offering are typically institutional accredited investors (as defined in Rule 501 under the Securities Act); however, there is no investor qualification requirement (see *Question 28*).

27. What other legislation or guidelines do issuers and underwriters of debt securities need to be aware of in your jurisdiction?

In addition to the Securities Act provisions described above, the Exchange Act, the Sarbanes-Oxley Act and the Investment Company Act are the primary US statutes regulating US public offerings, US public companies, and US investment funds. Additionally, debt securities that are SEC-registered must be issued under an indenture qualified under the Trust Indenture Act, as amended (15 U.S.C. § 77aaa to 15 U.S.C. § 77bbbb).

In the exercise of its delegated rulemaking authority, the SEC issues rules, regulations, schedules, and forms under the Securities Act, the Exchange Act, and the Trust Indenture Act. These cover a wide array of subjects, including:

- Corporate disclosure and financial statement requirements.
- Oversight of securities firms, broker-dealers, and investment advisers.
- The interpretation and enforcement of the federal securities laws.

The *SEC's Division of Corporation Finance* (CorpFin), in particular, provides interpretive guidance to reporting companies, including debt issuers, in the form of Compliance and Disclosure Interpretations, the Financial Reporting Manual, and no-action, interpretive, and exemptive letters. Underwriters and issuers of debt securities must also be familiar with, and comply with, the relevant rules of FINRA, including (among other things) rules regarding excessive or unfair compensation of underwriters, and dealing with conflicts of interest.

Structuring a Debt Securities Issue

28. Are different structures used for debt securities issues to the public (retail issues) and issues to professional investors (wholesale issues)?

Larger public companies routinely finance their operations through public offerings of debt securities, which may include senior or subordinated debt securities. These securities can be offered on a standalone basis or offered in syndicated takedowns from a continuous offering programme, such as a medium-term note programme or a bank note programme. Generally, only the largest and most frequent issuers find it economical to establish continuous issuance programmes. In addition:

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- Debt securities typically are offered and sold to institutional investors. However, some issuers offer their securities through retail note programmes and offer "baby bonds" or bonds having USD25 or USD1,000 denominations.
- Larger issuers, especially financial institutions, also offer structured debt securities, including securities with embedded derivatives, or that otherwise reference the performance of an underlying asset, which can include a currency, an index, an equity security, or a commodity.
- Non-US domiciled financial institutions also offer covered bonds, which are debt obligations that have recourse either to the issuer or to an affiliated group to which the issuer belongs, or both. Upon default, covered bond holders have recourse to a pool of collateral separate from the issuer's other assets (cover pool), which usually consists of high-quality assets such as residential mortgages or public debt.
- Smaller issuers or those whose debt securities are not investment grade rated may issue debt securities with more complex features, including secured debt or convertible debt. These securities may be offered in registered transactions or may be offered in exempt transactions to QIBs in Rule 144A qualifying transactions.

The two main ways of issuing debt securities are:

- A registered offering.
- An unregistered offering (such as a section 4(a)(2), Rule 144A, or section 3(a)(2) offering).

It is important to note that issuers very rarely register for the first time with the SEC in order to register debt securities. Typically, issuers registering debt securities are already reporting companies under the Exchange Act, with listed equity securities. However, this is not the case for:

- Foreign issuers registering the offer of Yankee bonds.
- Issuers relying on the section 3(a)(2) exemption.
- Certain high yield issuers that are voluntary filers under the Exchange Act.

Registered Debt Offerings

The methods of registration include:

- Registration on Form S-1. An issuer that does not currently file, or has only recently begun filing, Exchange Act reports must use Form S-1 (or Form F-1 for FPIs) to register issuances of its debt securities. The contents of the prospectus are essentially the same as for a registration statement on Form S-1 for an offering of equity securities, plus a description of the terms of the debt securities, the indenture and the trustee.

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- Shelf registration. An issuer may be eligible to use Form S-3 (or Form F-3 for an FPI) if it:
    - has a class of securities registered under the Exchange Act or is required to file Exchange Act reports;
    - has filed periodic reports under the Exchange Act for at least 12 months;
    - has at least a USD75 million worldwide common equity float held by non-affiliates;
    - has been timely in its periodic filings; and
    - has not failed to pay dividends or sinking fund instalments on preferred stock, or defaulted on instalments on indebtedness for borrowed money or on material leases, since the end of the last year covered by its audited financial statements.

  Form S-3 is a short-form registration statement. A specific offering of a class or series of debt securities is made by means of a prospectus supplement to the basic prospectus. The prospectus supplement includes specific information about the terms of the offering and the debt securities. Issuers often also use term sheets filed with the SEC as FWPs to describe the terms of the offered securities.

- Shelf registration for WKSIs. Issuers eligible to use Form S-3 and that meet various requirements are WKSIs and can use *SEC Form S-3ASR* (or *Form F-3ASR* for an FPI). An issuer is a WKSI if, within 60 days of the issuer's eligibility determination date, it either:
    - has a worldwide market value of its outstanding common equity held by non-affiliates of at least USD700 million; or
    - has issued in the last three years at least USD1 billion of non-convertible securities (other than common equity securities) in primary offerings for cash registered under the Securities Act.

  A shelf registration statement filed on Form S-3ASR is effective automatically and an issuer can offer securities immediately.

An issuer is also eligible to use Form S-3 (or Form F-3 for an FPI) to register non-convertible investment grade securities if it has a public float of at least USD75 million or if it satisfies any one of the following four criteria:

- The issuer has issued (as of a date within 60 days prior to the filing of the registration statement) at least USD1 billion in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act, over the prior three years.
- The issuer has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least USD750 million of non-convertible securities, other than common equity, issued in primary offerings for cash registered under the Securities Act.

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- The issuer is a wholly-owned subsidiary of a WKSI as defined in Rule 405 under the Securities Act.
- The issuer is a majority-owned operating partnership of a REIT that qualifies as a WKSI.

Unregistered Debt Offerings

Debt securities can also be issued in reliance on an exemption from registration as follows:

- Section 4(a)(2) offerings. The issuer can issue the securities directly to investors in a private placement under section 4(a)(2). Section 4(a)(2) provides a registration exemption for "transactions by an issuer not involving any public offering". While neither the Securities Act nor the SEC has defined the term "public offering", case law and SEC guidance have outlined a number of key factors that are relevant to a finding that a particular transaction is not a public offering for the purposes of section 4(a)(2). In *SEC v Ralston Purina (346 U.S. 119 (1953))*, the Supreme Court focused on whether the particular class of persons affected needed the protection of the Securities Act and stated that "an offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering'." Hence, if offerees were sophisticated investors who have knowledge and experience in business and financial matters to make an informed investment decision with respect to the securities, then that would be a key factor in finding that such transaction was not a public offering under section 4(a)(2). Aside from the characteristics of investors, other key factors to such a determination would include the limited number of offerees or investors involved in the transaction, the absence of general solicitation or advertising, and the investor's investment intent to buy securities for its own account, and not for resale or distribution. Most institutional debt private placements are made in reliance on section 4(a)(2). Securities sold under section 4(a)(2) are restricted securities that cannot be resold freely.
- Regulation D offerings. Regulation D provides three safe harbours with respect to non-public offerings (Rules 504, 506(b) and 506(c), Regulation D). Rule 504 allows an issuer to offer and sell up to USD10 million of securities in any 12-month period. The most popular safe harbour, Rule 506(b) of Regulation D, permits the sale of securities to an unlimited number of accredited investors and up to 35 non-accredited investors, provided that there is no general solicitation or advertising to sell the securities. Rule 506(c) of Regulation D, however, permits the use of general solicitation or advertising to sell the securities provided that offers and sales are made solely to accredited investors, and the issuer takes reasonable steps to verify that the purchasers are accredited investors. Rule 506 of Regulation D also contains disqualification provisions prohibiting the use of the exemption under any of these three safe harbours, by certain bad actors and felons, and these disqualification events apply to the issuer, persons related to the issuer, and anyone who will be paid (directly or indirectly) remuneration in connection with the offering (placement agents and others).
- Rule 144A offerings. Unlike section 4(a)(2) and Regulation D offerings which are private placement exemptions available to the issuer, Rule 144A and Regulation S offerings are resale safe harbours that are available to persons other than the issuer, such as broker-dealers or initial purchasers. Hence, the issuer can sell securities in a private placement under section 4(a)(2) with an intermediary, for subsequent resale under Rule 144A (Rule 144A offering). In a Rule 144A offering, securities can be offered and sold without registration to QIBs. Securities sold under Rule 144A are restricted securities that cannot be resold freely. Resales are limited to other QIBs and trades are generally made in the OTC market. Rule 144A also requires that the securities being offered are not of the same class as, or convertible into, securities listed on a national securities exchange.

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General solicitation and general advertising, and other forms of publicity in the US, are now permitted under Rule 144A provided the securities being offered are sold only to a QIB or to a purchaser that the seller and any person acting on the seller's behalf reasonably believes to be a QIB.

- Regulation S offerings. Offerings to US investors under section 4(a)(2) or Rule 144A are often part of larger global offerings that include sales outside the US made in reliance on Regulation S. Regulation S is a safe harbour for offers and sales in offshore transactions with no "directed selling efforts" in the US. General solicitation and general advertising in connection with a section 4(a)(2) or Rule 144A offering also will not be viewed as "directed selling efforts" in connection with a concurrent Regulation S offering.

- Section 3(a)(2) offerings. A US bank issuer can issue securities exempt from registration under section 3(a)(2). A foreign bank also can use the section 3(a)(2) exemption if the foreign bank has a US branch or agency (typically located in New York) that issues the securities directly or guarantees the securities issued by the foreign parent. Securities sold in section 3(a)(2) offerings are typically sold to institutional "accredited investors" and in high minimum denominations (typically USD250,000 or higher). Registration with the OCC may be required unless an exemption from registration applies, which may include meeting the requirements of Rule 144A, Regulation S, or Regulation D.

- Exchange offers. Issuers using Rule 144A may undertake, at the time of issuance, to register the securities with the SEC after the offering is completed, so that the securities become freely tradable. Registration is often accomplished by an exchange offer (called an A/B or Exxon Capital exchange), in which the securities sold under Rule 144A are exchanged for securities with the same terms but registered on Form S-4 (or Form F-4 in the case of an FPI). FPIs in particular may prefer Rule 144A offerings without a subsequent exchange offer (Rule 144A for life). If an A/B or Exxon Capital exchange is not used, an issuer may instead register the securities for resale by the security holders on Form S-3 (or Form F-3 in the case of an FPI) if the issuer satisfies the requirements for use of Form S-3 (or Form F-3 in the case of an FPI).

Restricted Debt Securities and Rule 144

Debt securities that are issued in offerings exempt from registration are restricted securities, which means that they can only be sold or transferred under an exemption from registration. However, under Rule 144 of the Securities Act, restricted securities may be freely sold or transferred if the debt security holder has satisfied the applicable holding period under Rule 144, as outlined below:

- Six months, if the holder is not an affiliate of the issuer and the issuer is a reporting company under the Exchange Act.

- One year, if the holder is not an affiliate of the issuer but the issuer is not a reporting company under the Exchange Act.

- One year, if the holder is an affiliate of the issuer (regardless of whether the issuer is a reporting company under the Exchange Act).

A selling debt security holder also may "tack" or include as part of their own holding period, the holding period of a prior holder unless the securities were purchased from an affiliate, in which case the holding period will start over.

In addition, restricted securities can be sold or transferred under the section 4(a)(1½) exemption and the exemption provided under section 4(a)(7) of the Securities Act. Section 4(a)(1½), although not specifically provided for in the Securities Act, has

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been recognised by the SEC and provides a hybrid exemption from registration for the private resale of restricted or control securities. Section 4(a)(7) became effective immediately after the *Fixing America's Surface Transportation Act* (FAST Act) was signed into law on 4 December 2015. Section 4(a)(7) provides a resale exemption for certain transactions involving unregistered resales and resembles the section 4(a)(1½) exemption for private resales of restricted securities, although it is more limited in scope.

29. Are trust structures used for issues of debt securities in your jurisdiction? If not, what are the main ways of structuring issues of debt securities in the debt capital markets/exchanges?

In the US, larger, well-seasoned investment grade or high-grade issuers generally offer straight senior or subordinated debt in registered public offerings. These securities can be fixed or floating rate obligations. In recent years, fixed-to-floating and auto-callable type structures have been popular. These issuers may also offer senior debt obligations with interest or principal payments (or both) that are based on the performance of a reference asset. These are generally referred to as structured notes. The reference asset may be an index (like the S&P 500), an equity security or a basket of equity securities, or a commodity or basket of commodities. Most of these are issued in registered public offerings. Companies whose debt is not investment-grade-rated may offer senior or subordinated debt in private offerings (section 4(a)(2), Regulation D, Rule 144A, or section 3(a)(2)) or registered public offerings. Usually, the debt securities will include some covenants. Most convertible notes are offered in Rule 144A offerings. High yield debt typically is offered in private placements or Rule 144A offerings, and the debt securities will contain numerous covenants. Historically, financial institutions and some utilities have offered hybrid securities using a trust structure, including trust preferred securities, REIT preferred securities, or certain structured mandatory convertibles. Given regulatory changes, trust preferred securities are no longer permitted for banks. In addition, issuances using a trust structure can only be made under an exemption from registration under the Investment Company Act. Finally, issuers may establish debt repackaging programmes using a trust vehicle, where the trust vehicle will hold corporate bonds of multiple issuers or will hold bonds and swaps. However, this has become less common as a result of risk retention requirements and the possible applicability of the Volcker Rule. The Volcker Rule, which was promulgated under the Dodd-Frank Act, applies to certain banking entities regardless of size and prohibits or limits proprietary trading and sponsoring or holding an ownership interest in a hedge fund or a private equity fund.

Listing Debt Securities and Admission to Trading

30. What are the main listing requirements for bonds and notes issued?

Main Requirements

US securities offerings, including offerings of debt securities, must be registered under the Securities Act, unless a valid exemption from registration is available (see *Question 28*). Registered offerings of debt securities may involve listing on an

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exchange, although the issuer may be required for at least some time to file periodic reports with the SEC. Investment grade debt securities typically are not listed.

To trade on a US exchange, a security must be both:

- Registered pursuant to, or exempt from registration under, the Securities Act.
- Accepted for listing on an exchange.

The NYSE has separate listing standards for listed companies and their affiliates and for non-listed or affiliated companies. Companies must meet specified financial criteria.

To view and customise comparison charts on securities exchanges initial listing standards (available to PL Dynamic subscribers), see Quick Compare Charts:

- *Securities Exchanges Initial Listing Standards - Operating History and Ownership Structure*.
- *Securities Exchanges Initial Listing Standards - Financial Performance*.
- *Securities Exchanges Initial Listing Standards – Liquidity*.

Minimum Size Requirements

An issuer can list debt securities (other than convertible debt) on the NYSE if they have an outstanding aggregate market value or principal amount of no less than USD5 million on the date that trading commences. Such trading will be suspended if the outstanding aggregate market value or principal amount of such debt securities that is publicly-held falls below USD1 million. An issuer can list debt securities (other than convertible debt) on the Nasdaq Global Market if they have a principal amount outstanding or market value of no less than USD5 million. To remain listed with the Nasdaq Global Market, the market value or principal amount of the non-convertible bonds outstanding must be at least USD400,000.

Trading Record and Accounts

For non-listed and affiliated companies, the debt securities must either:

- Have at least an S&P Corporation "B" rating (or equivalent rating by another nationally recognised securities rating organisation (NRSRO)).
- Be guaranteed by a listed company.

If not rated, then either:

- A company's senior issue must be rated investment grade.

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- A *pari passu* or junior issue of the company must have been given an S&P Corporation "B" rating (or equivalent).

For further resources on international accounting standards, see *Practice Note, International Financial Reporting Standards*.

Minimum/Maximum Denominations

There are limited minimum denomination requirements depending on the nature of the debt instrument. Certain structured debt instruments that are registered and listed can be required to have denominations of USD10. A customary denomination is USD1,000 and the offering may require a minimum purchase. Private offerings typically have both higher minimum denominations (for example, USD100,000 or USD250,000) and minimum purchase requirements (for example, USD1 million).

Procedure for a Foreign Company

The procedures for SEC registration and listing on an exchange are substantially the same for FPIs and US issuers, although the specific disclosure and corporate governance requirements differ and an FPI may be able to file its registration statement with the SEC initially on a confidential basis, either:

- As an EGC under the JOBS Act.
- Under the relevant Securities Act and Exchange Act rules for FPIs.

An FPI bases its decision whether to list debt securities on several factors, including:

- A comparison of the pricing levels in its home jurisdiction to the typical pricing levels in the US markets.
- Investor demand.

31. Are there different/additional listing requirements for specific types of debt securities?

Listing requirements differ slightly for convertible debt securities on the NYSE (that is, debt securities convertible into equity securities). For example, convertible debt securities may be listed on the NYSE only if both:

- The underlying equity securities are subject to real-time last sale reporting in the US.
- The convertible debt issue has an aggregate market value or principal amount of no less than USD10 million.

On Nasdaq, for the initial listing of a non-convertible bond, the following conditions must be satisfied:

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- The principal amount outstanding or market value must be at least USD5 million.
- The security must be characterised by one of the following conditions:
  - the issuer of the non-convertible bond must have one class of equity security that is listed on Nasdaq, NYSE American, or the NYSE;
  - an issuer of equity securities listed on Nasdaq, NYSE American, or the NYSE directly or indirectly owns a majority interest in, or is under common control with, the issuer of the non-convertible bond;
  - an issuer of equity securities listed on Nasdaq, NYSE American, or the NYSE has guaranteed the non-convertible bond;
  - an NRSRO has assigned a current rating to the non-convertible bond that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or
  - if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned an investment grade rating to an immediately senior issue, or a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.

Convertible debt securities may be listed on the Nasdaq Capital Market if:

- The convertible debt issue has an aggregate principal amount of at least USD10 million.
- The current last sale information is available in the US with respect to the underlying equity securities.
- There are at least three registered and active market makers for the convertible debt securities.
- One of the following applies:
  - the issuer of the convertible debt securities has an equity security that is listed on Nasdaq, NYSE American, or the NYSE;
  - an issuer whose equity securities are listed on Nasdaq, NYSE American, or the NYSE, directly or indirectly owns a majority interest in, or is under common control with, the issuer of the convertible debt securities, or has guaranteed the convertible debt securities;
  - an NRSRO has assigned a current rating to the convertible debt securities that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or

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- where no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned an investment grade rating to an immediately senior issue, or a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.

Continuing Obligations for Listed Debt Securities

32. What are the main areas of continuing obligations applicable to companies with listed debt securities and the legislation or rules that apply? Do they apply to overseas companies with listed debt securities? What are the penalties for breaching the continuing obligations?

Main Areas of Continuing Obligations

Continuing obligations vary depending on whether the issuer has:

- Securities registered under the Exchange Act.
- Listed its debt securities on the NYSE or Nasdaq.
- Offered debt securities under section 4(a)(2), Regulation D, Rule 144A, or section 3(a)(2) and is not otherwise a SEC reporting company.

Debt securities registered under the Exchange Act. The key areas of continuing obligations are substantially similar to those for companies with equity securities registered under the Exchange Act.

The key areas of continuing obligations for public companies are:

- Periodic reporting.
- Compliance with the Sarbanes-Oxley Act and the Dodd-Frank Act (although not all the provisions will be applicable for an issuer that has only issued debt securities in a registered public offering).
- Share ownership and transaction reporting by the company's officers, directors, and 10% shareholders (previously not applicable to FPIs, however, effective 18 March 2026, the HFIAA extended section 16(a) reporting obligations to officers and directors of FPIs, subject to limited exemptive relief for qualifying jurisdictions (see *Question 21*)).

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- Beneficial ownership reporting for acquirers of 5% or more of the company's equity securities (also applicable to FPIs).
- Continued qualitative and quantitative listing requirements of the relevant exchange, including relating to corporate governance (FPIs may rely on certain home country corporate governance practices).
- Disclosure and timing requirements related to shareholder meetings (not applicable to FPIs).
- Rules relating to the conduct of tender offers and other securities-related transactions.

Periodic reporting. A US company must file with the SEC:

- An annual report on Form 10-K after the end of each fiscal year, with audited annual financial statements.
- Quarterly reports on Form 10-Q after the end of its first three fiscal quarters, with reviewed interim financial statements.
- Current reports on Form 8-K when certain specified events occur.
- A proxy statement for any shareholders' meeting, including the annual meeting.

The reporting requirements are less onerous for an FPI. They must:

- File an annual report on *SEC Form 20-F* (Form 20-F) within four months of each fiscal year-end. The annual report on Form 20-F must also contain a summary of differences between US and home jurisdiction's corporate governance requirements. However, an FPI is not required to file quarterly reports on Form 10-Q or current reports on Form 8-K.
- Include on Form 6-K any material information that it either:
  - makes public under its home jurisdiction’s laws or stock exchange requirements; or
  - is required to distribute to its shareholders, such as bi-annual or quarterly reports.

The Sarbanes-Oxley Act and related regulations impose numerous additional requirements on listed issuers, including:

- The certification of SEC periodic filings.
- The submission of reports on internal controls over financial reporting.
- The independence of the issuer's audit committee.

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Each annual and, in the case of a US issuer, quarterly report filed with the SEC must be accompanied by certifications signed by the company's principal executive and financial officers and cover, among other things:

- The completeness and accuracy of the disclosure.
- The fairness of the presentation of the issuer's financial condition and results of operations in its financial statements.
- The effectiveness of the issuer's disclosure controls and procedures, and internal control over financial reporting.

In addition, each annual report must include a management report and auditor's report on the company's internal control over financial reporting. Newly public companies are not required to file either report until their second annual report after their IPO. Smaller public companies and EGCs, whether domestic or foreign, are not required to provide the auditor's report. The JOBS Act also provides relief from certain ongoing disclosure obligations for EGCs.

After it has filed its first annual report with the SEC, the debt issuer can cease to file periodic reports under the Exchange Act if it meets applicable de-registration requirements.

NYSE requirements. An issuer that has listed its debt securities on the NYSE must also have registered those securities under the Exchange Act. Issuers that have only debt securities listed on the NYSE are not subject to most of NYSE's corporate governance standards (other than audit committee requirements and certifications to the NYSE).

The NYSE's quantitative continued listing requirements allow the exchange to de-list or suspend the trading of bonds if any of the following apply:

- The total market value or principal amount of publicly held bonds falls below USD1 million.
- The issuer is no longer able to meet its obligations on the listed debt securities.

Debt securities are not eligible for procedures that would allow the issuer time to conform to the exchange's continued listing requirements. In addition, in several circumstances (such as failure to comply with continued listing requirements), the NYSE can take discretionary enforcement action, including suspending trading and de-listing proceedings against a listed company.

Rule 144A ongoing information requirements. An issuer that is not a reporting company and is not exempt from reporting under Rule 12g3-2(b) of the Exchange Act (which permits an FPI to terminate registration if its US ADTV falls below a certain level or it has fewer than 300 US shareholders) must provide reasonably current information to security holders and prospective investors under Rule 144A, including:

- A brief description of its business, products, and offered services.
- Its most recent balance sheet.
- Profit and loss, and retained earnings, statements.
- Financial statements for that portion of the two preceding fiscal years during which the issuer has been in operation.

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To facilitate the delivery of this information, indentures may contain covenants that require an issuer to become a voluntary filer or to prepare reports for bondholders as if it were subject to the Exchange Act.

Debt security holders' rights are contained in the operative debt documents, primarily the indenture.

Suspension of registration. All companies registered with the SEC, whether US or foreign, can suspend their obligation to file SEC reports and other public company obligations if either:

- There are fewer than 300 record holders of the common equity or 1,200 record holders in the case of banks, bank holding companies (BHCs), and savings and loan holding companies (SLHCs).
- The common equity is held by less than 500 non-accredited record holders or 2,000 record holders, and the company's total assets have been no more than USD10 million at the end of each of its last three fiscal years.

However, if the company ever exceeds these levels, the obligations are reinstated.

Termination of registration. An FPI can terminate (rather than merely suspend) its listing and de-register under Rule 12g3-2(b) of the Exchange Act (because, for example, the US market for its shares is thinner than anticipated, or declines over time, such that the additional compliance expenses associated with US registration are not justified), if either:

- The US ADTV of the securities has been no greater than 5% of the worldwide ADTV for a recent 12-month period.
- The securities are held by fewer than 300 persons worldwide or fewer than 300 persons resident in the US and certain other conditions are met.

Voluntary filers. In some markets, particularly the high yield market, issuers that would otherwise be able to de-register under the Exchange Act are required by debt covenants to continue to make periodic filings as if they were still subject to the Exchange Act (although they may provide more limited information). These issuers are referred to as "voluntary filers".

Indenture qualification. Debt securities that are SEC-registered must be issued under an indenture qualified under the Trust Indenture Act. However, debt securities issued in unregistered offerings (section 4(a)(2), Regulation D, Rule 144A, and section 3(a)(2)) do not have to be issued under an indenture qualified under the Trust Indenture Act.

Qualification includes appointing and registering the indenture trustee with the SEC. A qualified indenture contains mandatory provisions that apply automatically, including provisions related to the duties of the trustee. The registration statement, which will describe key provision of the indenture, must also include a *SEC Form T-1* prepared by the trustee, which sets out information enabling the SEC to determine whether the trustee is eligible to act under the standards of the Trust Indenture Act. If the terms of the debt securities are not known at the time of the filing of the registration statement, the indenture that is filed pre-effectively may contain a generic, non-specific description of the debt securities, with details provided in a subsequent supplemental indenture at the time a series is offered. In the case of a shelf registration statement on Form S-3 (or Form F-3 for an FPI), section 305(b)(2) of the Trust Indenture Act permits the trustee to be designated on a delayed basis if the identity of the trustee is not known when the issuer files the registration statement.

Application to Overseas Companies with Listed Debt Securities

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Domestic and foreign issuers have the same obligations. The key issue is whether the issuer is subject to reporting under the Exchange Act.

Penalties for Breach of Continuing Obligations

If the debt securities are registered under the Exchange Act and trade on an exchange, failure to file required Exchange Act reports can result in the SEC bringing an enforcement action against the issuer seeking injunctive relief. In addition, any officer of the company who knowingly makes a false certification in connection with an Exchange Act report can potentially be subject to both:

- Monetary fines and criminal sanctions for violating sections 13(a) or 15(d) of the Exchange Act.
- SEC and private actions for violating section 10(b) of the Exchange Act and Rule 10b-5 under the Exchange Act.

Failure to comply with an exchange's continued listing requirements can result in a suspension of trading or de-listing.

Advisers and Documents to Issue/List Debt Securities

33. Outline the role of advisers used and main documents produced when issuing and listing debt securities.

Advisers

Underwriters. The lead underwriters:

- Offer financial advice to the issuer, including valuation advice.
- Manage the marketing of the securities to prospective investors.

A broader syndicate of underwriters usually assists with marketing and distribution. Underwriters typically provide aftermarket support by repurchasing the debt securities in the secondary market to stabilise the price after the offering. Underwriters also seek to maintain a long-term relationship with the issuer so as to continue to underwrite future offerings.

Lawyers. The issuer's lawyers draft the registration statement and manage the legal aspects of the offering. The underwriters' lawyers participate in drafting the registration statement and lead the due diligence process. As part of the due diligence process, lawyers for the underwriters and the issuer usually prepare letters stating that, based on specific inquiries (and subject to exclusions for financial and other information provided by experts), they are unaware of anything that may indicate that the prospectus contains any material misstatement or omission. For companies in highly regulated industries or with non-US operations, the issuer and underwriters may retain lawyers that specialise in these matters.

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The issuer's lawyers also will review the issuer's SEC filings on an ongoing basis. The lawyers will then be prepared when a subsequent offering is proposed.

Lawyers for the trustee (equivalent to a fiscal/paying agent) are also involved. The trustee's counsel negotiates provisions of the indenture relating to the trustee and represents the trustee's interests. The main documents are also substantially the same with the addition of an indenture or other instrument for the debt securities being offered.

Independent registered public accounting firm. The registration statement includes annual financial statements, which must be audited by an independent public accounting firm registered with the PCAOB. The public accounting firm:

- Must consent to the use of its audit opinion in the registration statement.
- Reviews any unaudited interim financial statements included in the registration statement.
- Reviews the financial information in the registration statement as part of the due diligence process.
- Issues a "comfort" letter at the pricing of the offering and a "bring-down comfort" letter at the closing of the offering, each addressed to the underwriters and the issuer's board of directors, relating to:
  - financial statements; and
  - other financial information included in the registration statement.

The public accounting firm will continue to audit and review the issuer's financial statements included in the issuer's SEC reports and will have the same responsibilities for any financial statements filed in or incorporated by reference in registration statements for subsequent offerings.

Others. An issuer may also retain outside investor-relations firms and other professionals. For subsequent offerings, these advisers are already in place.

Main Documents

As a general matter, the documentation for unregistered offerings is very similar to the documentation for registered offerings because although no registration statement is involved, issuers and underwriters will still be subject to sections 12 and 15 of the Securities Act and section 10(b) and Rule 10b-5 of the Exchange Act. However, the documentation for unregistered offerings (section 4(a)(2), Regulation D, Rule 144A, and section 3(a)(2)) differs slightly from registered offerings in a few respects:

- Rather than using a registration statement containing a prospectus, a private placement memorandum, offering circular, or offering memorandum is used, which contains the same information as a registration statement, including a description of the issuer's business and financial statements, and typically incorporates by reference the issuer's Exchange Act reports or reports filed by the issuer under its home country laws (if the issuer is not a reporting company under the Exchange Act).

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- The investment banks underwriting unregistered offerings sign a purchase agreement with the issuer, rather than an underwriting agreement.
- Issuers and underwriters often also use term sheets to describe the terms of the offered securities, but these term sheets are not filed with the SEC as FWPs.

Timetable: Debt Securities Issue

34. What is a typical timetable for issuing and listing debt securities?

A US debt offering can take from between a few days to a few months to complete, depending on the structure of the offering, whether the issuer is already public, and the underwriters' ability to conduct due diligence and obtain a comfort letter. In addition, unregistered offerings typically are conducted on a more accelerated time frame, since a registration statement does not need to be filed with the SEC and the SEC review of non-automatic shelf registration statements can be lengthy.

Clearing and Settlement of Debt Securities

35. How are debt securities cleared and settled and what currency are debt securities typically issued in? Are there special considerations for holding, clearing and settling debt securities issued in foreign currencies?

Clearing and Settlement

Debt securities issued in the US are, more frequently than not, denominated in US dollars. However, debt securities can be denominated in any currency. For any debt security that is denominated in a foreign currency (currency other than US dollars), special care should be taken to discuss payment and settlement issues with the trustee or fiscal and paying agent and with the *Depository Trust Company* (DTC). The DTC will not handle payments to security holders in any currency other than US dollars. However, the trustee/fiscal agent and DTC can make arrangements for payments in foreign currency to be made through *Euroclear Bank SA/NV*, as operator of the Euroclear System, or *Clearstream*. Debt securities also are identified by individual Committee on Uniform Securities Identification Procedures (CUSIP) numbers to facilitate the clearing and settlement process, and CUSIP numbers are typically obtained by the trustee/fiscal agent. In addition, debt securities issued in a section 4(a)(2) offering are not DTC-eligible.

Trade Reporting Secondary Market Transactions

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OTC secondary market transactions in eligible fixed income securities must be reported to FINRA through *FINRA's Trade Reporting and Compliance Engine* (TRACE). TRACE disseminates real-time price information for the OTC bond market, thus providing transparency to the corporate and agency bond markets. Reporting is required for registered securities (except for securities issued under a non-shelf registration statement), and if the securities are unregistered and the trade does not qualify as a "distribution" under Regulation M of the Exchange Act (that is, no special selling efforts, small transaction size, handful of purchasers), then the trade generally must be reported. The reporting requirements for various types of transaction participants are as follows:

- In transactions between two market makers, only the member on the sell side must report.
- In transactions between a market maker and a non-market maker, only the market maker must report.
- In transactions between two non-market makers, only the member on the sell side must report.
- In transactions between a member and a customer, the member must report.
- In transactions between two members, the "executing party" must report.

In addition, FINRA requires the public dissemination through TRACE of information regarding Rule 144A offerings of corporate bonds. The information consists of investment/non-investment grade status and real time market data.

On 26 February 2025, the SEC granted the NYSE an exemption under section 36 of the Exchange Act (the "2025 Exemption Order"), expanding the scope of debt securities eligible for trading on the NYSE Bond marketplace (NYSE Bonds). The 2006 exemption had permitted debt securities to trade on NYSE Bonds only if the issuer (or its parent, in the case of a wholly-owned subsidiary) had a class of equity securities listed on the NYSE. The 2025 Exemption Order broadened this requirement to allow trading of debt securities where the issuer (or parent) has a class of common or preferred equity securities listed on any national securities exchange, subject to conditions including daily monitoring of equity de-listings.

On 16 March 2026, the SEC proposed amendments to Rule 15c2-11, which sets out information gathering and review requirements for broker-dealers that publish quotations in the OTC market. The proposed amendments would limit the rule's scope to equity securities only, by replacing the term "security" with "equity security" as defined in Exchange Act Rule 3a11-1. Although Rule 15c2-11 has historically been understood to apply only to OTC equity markets, SEC staff signaled after its 2020 amendments to the rule that it also applied to fixed-income securities, creating uncertainty and compliance burdens for broker-dealers quoting debt securities. The SEC subsequently granted permanent exemptive relief from Rule 15c2-11 for Rule 144A fixed-income securities in October 2023 and the staff issued no-action relief for additional categories of fixed-income securities in 2024. If adopted, the proposed amendments would codify the exclusion of all non-equity securities from the rule's scope, providing a more durable solution than the current patchwork of exemptive and no-action relief. Comments on the proposed amendments were due 18 May 2026.

Stabilisation

The rules governing stabilisation contained in Regulation M of the Exchange Act are complex. It is generally unlawful for any person to stabilise, effect any syndicate covering transaction, or impose a penalty bid in connection with the offering of a security, unless certain conditions are met. Stabilising activities are permitted only to prevent or slow a decline in the market price of the security. The key conditions for stabilisation relate to:

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- Notice.
- Pricing parameters.
- Timing.
- Priority for independent bids.

Rule 144A securities, investment grade non-convertible securities, and investment grade asset-backed securities were previously exempted from Regulation M. In June 2023, the SEC adopted final rules amending Regulation M to remove and replace its references to credit ratings with alternative measures of creditworthiness, and impose related recordkeeping duties on broker-dealers. The amendments removed the exemption for investment grade non-convertible securities and investment grade asset-backed securities under Rules 101 and 102 of Regulation M of the Exchange Act and replaced these exceptions with a standard based on an issuer's probability of default. The final rules exclude the securities of issuers for which the probability of default is 0.055% or less, estimated as of the sixth business day immediately preceding the determination of the offering price and over a 12-calendar-month horizon thereafter. These final rules took effect in August 2023.

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