

Market Trends 2023/2024: Lock-Up Agreements

A Practical Guidance® Practice Note by Anna T. Pinedo and Ana Estrada, Mayer Brown LLP



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This practice note discusses lock-up agreements between underwriters or placement agents, on one hand, and issuers, their directors, officers, and control persons, on the other hand, in connection with offerings of securities. It covers the following topics: the length of the lock-up period, lock-up parties, lock-up agreement terms and carve-outs, issuer lock-up agreements, releases, termination, and considerations relating to IPO lock-ups in the context of pre-IPO private offerings. Lock-up periods are most commonly 180 days, although in some cases companies will shorten it or create different lock-up periods for different types of securityholders. Common terms include a prohibition against any disposition of the issuer's securities, securities convertible into issuer securities, or rights; swap and similar arrangements; hedging transactions; and transactions requiring the lock-up party to register their securities. Several exceptions, including gifts and transfers to trusts, modify these terms. Less common carve-outs tend to address particular types of securityholders, such as broker-dealers and investment advisors, transactions pursuant to a court or regulatory agency order, business combination transactions, or Rule 10b5-1 plans. Issuers have carve-outs related to conducting the offering. Releases are granted by the lead book runner or joint book runners and must be preceded by a press release.

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

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

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

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