



FORUM FOR US SECURITIES
LAWYERS IN LONDON

International Capital Markets Glossary 2023

In partnership with



Introduction

Dear all,

Welcome to the third edition of the *International Capital Markets Glossary* for 2023, prepared by the **Forum for US Securities Lawyers in London ('Forum')** with support from our partners at **Datasite**.

The Forum is a trade association representing over 1,500 members including US-qualified lawyers practicing at law firms and financial institutions in the London capital markets, as well as market participants including securities exchanges, settlement systems, and registrars. Founded in 2006, the Forum is an independent, self-funded organization dedicated to addressing issues surrounding the application of and compliance with US securities laws in the London and international capital markets.

This Glossary is the product of many years of hard work, with contributions from various lawyers and market participants. Based on feedback from law firms and market participants, we saw a gap in the market and decided to create the Glossary, which is intended to act as an essential reference tool for every lawyer, client and market participant, especially those at more junior levels.

This Glossary is available in a limited-edition hard copy, an interactive PDF, or on our website – so it will be easily accessible no matter where you go!

We would like to thank Connie Milonakis, Despoina Arslanidi, Mark Chalmers, Jonathan Leonhart, Jennifer Poon, Hilary Winter, and Edward Bibko for their hard work and contributions to this and the previous version of the Glossary.

We always welcome ideas for new projects for the Forum and welcome any comments, suggestions or additions to the Glossary. This Glossary is intended to be a living document which will be modified on an ongoing basis. Kindly send any suggestions to info@tffuslil.com.

Best regards,

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About Datasite

Datasite provides secure software solutions for managing the full spectrum of financial transactions — including M&A, restructuring & administration, and capital raising. Our intuitive platform offers ironclad security enabling file sharing and collaboration within and across organizations.

More than a virtual data room (VDR), Datasite supports advisors and their clients across the entire deal lifecycle with secure collaborative software that shortens timelines for buy-side and sell-side teams from deal sourcing and deal preparation to post-merger integration (PMI) while meeting regulatory compliance — including GDPR and CCPA requirements.

As the premiere virtual data room for M&A due diligence globally, Datasite is consistently recognized for breakthrough technologies like our AI/ML-enabled capabilities and automated redaction tools. Beyond due diligence, Datasite provides transaction and document management solutions for investment banks, corporate development, private equity, and law firms across industries.



3(c)(7) Section 3(c)(7) of the **Investment Company Act** which provides an exemption from registration for **Investment Companies** if all prospective investors are **Qualified Purchasers (QPs)** within the meaning of the Investment Company Act.

'33 Act US Securities Act of 1933, as amended. A federal law passed by the US Congress in the aftermath of the 1929 stock market crash, governing and prohibiting the offer or sale of securities (aside from certain exempt securities or transactions) in the **Primary Market** unless the securities have been registered with the **SEC**. It is based on the belief that all investors should be provided with full and accurate disclosure of information at the time of making investment decisions, which is sometimes called "sunlight" (or sunshine) theory of regulation. Also referred to as the Securities Act.

'34 Act US Securities Exchange Act of 1934, as amended. A federal law passed by the US Congress which established the **SEC** and governs the trading of securities in the **Secondary Market** and includes periodic disclosure requirements, antifraud provisions, and the regulation of **Broker-Dealers, Tender Offers** and US securities exchanges. Also referred to as the Exchange Act.

10b-5 Letter A disclosure letter from issuer's counsel, and often also underwriters' counsel, addressed to the underwriters confirming the undertaking of **Due Diligence** procedures regarding the preparation of an offering document. The letter states that, based on counsel's Due Diligence procedures, there is no reason to believe such offering document contains any untrue statements of **material** facts or omits to state any Material facts that are necessary in order to make the statements in the offering document, in the light of the circumstances under which they were made, not misleading. This letter forms the foundation for the underwriters' **Due Diligence Defense**.

Technically, this document is not an "opinion" and is referred to as a "disclosure letter."

A 10b-5 Letter is also referred to as a Negative Assurance Letter.

10b-5 Representation A representation by the issuer in an **Underwriting Agreement** confirming that there is no untrue statement of a **Material** fact and no omission to state a Material fact that is necessary in order to make the statements in the offering document, in the light of the circumstances under which they were made, not misleading.

135-Day Rule Accounting guidance under **SAS 72** that permits **Negative Assurance** to be provided by an accounting firm in its **Comfort Letter** in connection with an offering. This

type of comfort must be delivered no more than 135 days from the end of the most recent period for which the accounting firm has performed its audit or review.

144A for Life Offering A **Rule 144A Offering** in which the issuer is not required to become a **Reporting Company** under the **Exchange Act** and where such offering does not provide investors with **Registration Rights**.

144A Offering A **Private Placement** of securities where the securities are sold only to **QIBs** pursuant to the exemption provisions of **Rule 144A**.



A/B Exchange Offer An offer by an issuer to exchange previously issued **Restricted Securities** (i.e., securities issued in a **Private Placement**) for new registered securities, which are ordinarily on the same terms as the old securities. The effect of the offer is to allow the issuer to provide securities on an accelerated timetable without registration and then, at a later date, to provide holders with registered and freely tradable securities. A/B Exchange Offers were authorized in the **No-Action Letter** Exxon Capital Holding Corp, 1988 SEC No – Act LEXIS 682.

Also referred to as an **Exxon Capital Exchange Offer**.

ABL See **Asset-Based Lending**.

ABS See **Asset-Backed Security**.

Accelerated Bookbuild An offering of shares over a short time period and generally used in conjunction with a **Placing** or **Private Placement**. An Accelerated Bookbuild is often used when a company is in immediate need of financing and debt financing is not an option (this can be the case when a company is looking to make an offer to acquire another company). Sometimes the term "Accelerated Bookbuilds" is used interchangeably with "**Block Trades**," but Block Trades are generally offerings conducted by selling shareholders.

Accelerated Filer As defined in **Rule 12b-2** and generally including a **Public Company** that: (i) has a **Market Capitalization** between US\$75 million and US\$700 million at the end of its second fiscal quarter; (ii) has been subject to certain reporting requirements under the **Exchange Act** for at least 12 months;

(iii) has filed at least one **Annual Report** under the Exchange Act and (iv) is not eligible to be a Smaller Reporting Company because it does not meet the revenues requirement (which includes the initial determination of annual revenues of less than \$100 million for the most recently completed fiscal year).

Accelerated Filers are required to file their Annual Reports (**Form 10-K**) and **Quarterly Reports (Form 10-Q)** under the Exchange Act and their **Section 404** attestation reports under the **Sarbanes-Oxley Act** within deadlines that are shorter than those applicable to **Non-Accelerated Filers**, although longer than those applicable to **Large Accelerated Filers**.

The **SEC** divides **Reporting Company** into three categories:

Non-Accelerated Filers, Accelerated Filers and **Large Accelerated Filers**.

See also **Non-Accelerated Filer** and **Large Accelerated Filer**.

Acceleration Request A form of written request to the **SEC** filed by a **Registrant** requesting that its **Registration Statement** be effective at a particular date and time (at least two days after the date of the request). The aim of the request is to "accelerate" the effective time of the **Registration Statement** (which is normally at least 20 days after the date of filing in the absence of such acceleration).

Accounting Circle-Up See **Circle-Up**.

Accounting Principles Board The predecessor of the **Financial Accounting Standards Board (FASB)**, the former authoritative US accounting body that issued pronouncements on accounting principles known as "APB opinions." Also referred to as "APB."

Note that the UK Auditing Practices Board is also referred to as the APB and is unrelated to the Accounting Principles Board.

Accredited Institutional Investor See **Institutional Accredited Investor**.

Accredited Investor As defined in **Rule 501(a)** of **Regulation D**. Accredited Investors include several categories of entities and individuals who are financially sophisticated enough or have a close enough relationship with the issuer to have a reduced need for the protections provided by the **Securities Act** and therefore may be offered securities pursuant to certain **Private Placement** exemptions provided in Regulation D.

An individual qualifying as an Accredited Investor must have a net worth of at least US\$1 million (not including the value of their primary residence, individually or with their spouse or partner) or have had an income of at least US\$200,000 each year for the last two years (US\$300,000 with their spouse or partner) and have the expectation of making the same amount in the current year or hold certain investment-related professional certifications or be a knowledgeable employee (as defined in Rule 3c-5 under the **Investment Company Act**) of a private fund.

Major categories of other Accredited Investors include:

- (1) any director, **Executive Officer**, or general partner of the issuer;
- (2) any bank, savings and loan association, employee benefit plan, registered investment adviser, registered broker or dealer and insurance company;
- (3) any **Investment Company** registered under the **Investment Company Act**;
- (4) any entity owning "investments," as that term is defined in Rule 2a51-1(b) under the Investment Company Act, in excess of \$5 million that is not formed for the specific purpose of acquiring the securities being offered; and
- (5) certain family offices and their family clients as defined under the **Investment Advisers Act**.

Accreted Value An accounting term referring to the present value at any given point in time, including principal and interest accrued, of a bond or other investment.

Acquisition Agreement An agreement governing the merger or acquisition of two or more companies.

Actively Traded Securities Securities issued by a company with a **Public Float of Common Stock** of at least US\$150 million with an **Average Daily Trading Volume (ADTV)** of at least US\$1 million.

Adjusted EBITDA An accounting term referring to EBITDA, excluding the effects of generally nonrecurring items of revenue/gain or expense/loss.

See also **EBITDA**.

Administrative Agent The financial institution that acts as the agent for a **Syndicate** of lenders in administering the loan

facility with the borrower under a loan agreement. Payments and communications between the borrower and the lenders are made through the Administrative Agent during the life of the loan agreement.

Also referred to as a **Facility Agent**.

Admission to Trading Admission of an issuer's securities to trading on an EEA Regulated Market or a UK Regulated Market.

ADRs See **American Depositary Receipts**.

ADSs See **American Depositary Shares**.

ADTV See **Average Daily Trading Volume**.

Affiliate Defined in Rule 405 of the **Securities Act** as a person or entity who controls, is controlled by, or is under common control with, an issuer. Whereas foreign securities laws often provide strict guidelines for determining Affiliate status, the **Securities Act** requires such determination to be made on a case-by-case basis according to the specific facts and circumstances.

The **SEC** has stated that, generally, Affiliates of a **Registrant** would include **Executive Officers**, directors, and shareholders who hold 10% or more of the total shares, as well as their Affiliates. Affiliates generally have some control over the company and therefore are deemed to have access to **Insider Information**; hence, they are often subject to trading restrictions on securities of the issuer due to potential **Insider Trading** concerns. In determining whether someone is acting as an underwriter, the **Securities Act** takes into account purchases from an Affiliate of the issuer.

Affiliate Transactions Covenant A **Negative Covenant** found primarily in debt agreements that restricts transactions between the borrower and its **Affiliates** so that transactions are at arm's length. Transactions prohibited by such clauses include payments of large management fees to **Sponsors**, selling assets to shareholders for less than their **Fair Market Value** or overpaying shareholders/employees by way of excessive dividends/salaries.

Affirmative Covenant A promise or contract that actively requires a party to do something that typically is found in agreements relating to standard actions such as the payment of fees, repayment of principal or compliance with regulations.

AFME See **Association of Financial Markets in Europe (AFME)**.

Aftermarket See **Secondary Market**.

Agency Fee A fee paid to an **Administrative Agent** for administering a **Credit Facility**.

See also **Administrative Agent**.

Agent In equity capital markets transactions, an Agent for the issuer may be acting as **Depository** (holding securities deposited by the issuer), **Paying Agent** (distributing dividends to shareholders) or **Transfer Agent** (tracking ownership and managing transfers in ownership of physical certificates). In reporting and compliance, an Agent for the issuer may be acting as **Proxy Agent** (sending out **Proxy** materials), or **Mailing Agent** (mailing the company's quarterly, annual and other reports).

In debt capital markets transactions, an Agent for the issuer may be acting as **Administrative Agent** (managing payments between borrower and a **Syndicate** of lenders), **Collateral Agent** or **Security Agent** (holding collateral for a loan on behalf of a **Syndicate** of lenders), **Documentation Agent** (negotiating the loan agreements), **Syndication Agent** (lender with no or nominal duties), **Paying Agent** (distributing payments to bondholders) or **Registrar** (tracking ownership and managing transfers in ownership).

See also **Depository**, **Paying Agent**, **Transfer Agent**, **Proxy Agent**, **Mailing Agent**, **Administrative Agent**, **Collateral Agent**, **Security Agent**, **Documentation Agent**, **Syndication Agent** and **Registrar**.

AGM See **Annual General Meeting (AGM)**.

Agreement Among Underwriters (AAU) or Agreement Among Managers (AAM) An agreement, prepared by the underwriters' counsel, governing the relationship between members of the underwriting **Syndicate** on a securities transaction. Among other things, it appoints and mandates the **Lead Manager**, defines each member's proportionate liability and authorizes the Lead Manager to allocate units to the relevant underwriter.

Also known as a **Syndicate Agreement**.

AICPA See **American Institute of Certified Public Accountants**.

AIM The **London Stock Exchange's** global market for smaller and growing companies. AIM is not a **UK Regulated Market** and AIM issuers are subject to rules that are less stringent than the **Main Market**.

Formerly known as the Alternative Investment Market.

All (or Substantially All) A term used in various contexts in **Capital Markets** with no concrete definition. The concept has steadily evolved through various decisions and rulings.

The **Internal Revenue Service** defines “Substantially All” of a company as at least 90% of the **Fair Market Value** of all of a company’s assets less liabilities and at least 70% of the Fair Market Value of a company’s assets disregarding liabilities.

All-Hands Meeting A meeting at the start of an offering involving all transaction parties (i.e., the issuer and its counsel, the underwriters and their counsel and the issuer’s independent accountants) at which the parties outline the major issues and transaction timetable in broad terms and agree to a general approach to transaction management.

Also referred to as an All-Parties Meeting, Kick-Off Meeting or Organizational Meeting.

All-Holders Rule An SEC Tender Offer rule (aimed to protect existing securities holders in the context of a third-party acquisition) set out in **Rule 13e-4** of the **Exchange Act**. It states that unless an issuer receives a determination from the **SEC** to the contrary, no issuers may make a Tender Offer unless it is “open to all holders of the class of securities subject to the Tender Offer.” In addition, as set forth in Rule 14d-10 of the **Exchange Act**, the consideration paid to any one security holder must be the highest consideration paid to any other security holder.

All-Parties Meeting See **All-Hands Meeting**.

Allotment In the United States, the portion of a new securities issue that is assigned to each member of a **Syndicate** to underwrite and then distribute to their investor clients (which in the United Kingdom would be termed an allocation).

In the United Kingdom, the issuance of new shares.

Amendment A change to one or more provisions in an agreement.

American Depositary Receipts (ADRs) Negotiable certificates issued as equity securities in the US, representing an ownership interest denominated in US dollars in a pool of equity securities issued by a **Foreign Private Issuer** and denominated in a foreign currency. ADR holders retain almost all of the same rights as shareholders of the underlying securities, although dividend payments and share price are in US dollars. ADR owners

have the right to obtain the foreign stock the ADR represents, but US investors usually find it more convenient to own the ADR. The underlying securities are referred to as American Depositary Shares or ADSs, and are held by a **Depository**. Essentially, ADRs allow shares of a **Foreign Private Issuer** to trade in the US in US dollars. The price of an ADR corresponds to the price of the foreign stock in its home market, adjusted to the ratio of the ADRs to foreign company shares. Depending on the type of Depository facility chosen by the Foreign Private Issuer, the ADRs may or may not require registration with the **SEC**.

Compare with **Global Depositary Receipts (GDRs)**, which are certificates denominated in a foreign currency and representing interests in the securities of a **Foreign Private Issuer**.

See also **Depository Receipts**.

American Depositary Shares (ADSs) Individual securities issued by a **Depository** on behalf of a **Foreign Private Issuer** which are represented by American Depositary Receipts.

See also **American Depositary Receipts**.

American Institute of Certified Public Accountants (AICPA) The national professional association for certified public accountants (CPAs) in the US that issues accounting pronouncements.

AMEX The American Stock Exchange. In October 2008, AMEX was acquired by NYSE Euronext and integrated into the Alternext European small-cap exchange and renamed the NYSE Alternext US.

Amortization The allocation of repayment amounts to different time periods for loans and other forms of debt finance, where the payments include principal, interest and/or other finance charges.

Amortization Schedule A table listing the periodic payments on an **Amortized Loan** and generally contained within a loan document.

Amortized Loan Unlike loans where payments of interest to the principal are dealt with separately, an **Amortized Loan** is one in which the debt is repaid in scheduled periodic installments (which include interest payments and repayments of the principal) according to the **Amortization Schedule**.

Amortizing See **Amortized Loan**.

Analyst Certification A certification provided by analysts

pursuant to **Regulation AC**. Under Regulation AC, brokers, dealers and certain associated persons are required to certify the truthfulness of the views they express in **Research Reports** and public appearances and to disclose whether they have received any compensation related to the specific recommendations or views expressed in those reports and appearances.

Analyst Report See **Research Report**.

Anchor Investor A qualified and prominent investor who is one of the first investors in an offering and provides subsequent investors a degree of confidence. An Anchor Investor’s investment stake is sizable.

See also **Cornerstone Investor**. Unlike Cornerstone Investors, Anchor Investors are not subject to a **Lockup**.

Ancillary Documents Documents that are ancillary (secondary or supporting/supportive) to another agreement.

Angel Investor An investor (typically an individual) providing capital for a business start-up in return for convertible debt, convertible preferred securities or straight equity in that company.

Annual General Meeting (AGM) A meeting of shareholders of a company, typically held some months following the end of each **Fiscal Year**, at which management discusses the results of the previous year and the outlook for future years and at which directors are elected and other recurring matters are submitted to shareholders for a vote. Annual meetings are generally preceded by the distribution of the company’s **Annual Report** and **Proxy Statement**.

Annual Report An Annual Report is a comprehensive report on a company’s activities throughout the preceding **Fiscal Year** and includes financial accounts and a report from the directors on operational and financial results. The **SEC** regulates the content of an Annual Report.

In the UK, an Annual Report is a report on a limited company’s activities throughout the preceding financial year and must include a directors’ report, **Profit and Loss Statement**, **Balance Sheet** and **Auditor’s Report**. The content is regulated principally by legislation and, for **Main Market** companies, the **Listing Rules**, the **Disclosure and Transparency Rules** and the **UK Corporate Governance Code**. UK companies with shares listed on the Main Market must also include a report on directors’ remuneration.

See also **Form 10-K**, **Form 20-F** and **Form 40-F**.

Anti-Bribery Legislation See **Foreign Corrupt Practices Act (FCPA)** and **Bribery Act**.

Anti-Dilution A provision that protects investors from a reduction in their proportionate ownership interest in a company due to the issuance of additional securities. This type of provision is particularly common with convertible preferred stock, which is often used in the venture capital industry.

Anti-Layering Covenant A **Covenant** that in the context of **Senior Debt** and **Subordinated Debt** is given to the subordinated creditor (analogously in the context of loan notes given to the investors) and prohibits the issuer from “layering” in any debt that ranks between the Senior Debt and the Subordinated Debt.

Such a provision is uncommon in the United Kingdom but a similar outcome is reached through the provisions of the **Intercreditor Agreement**, the **Credit Agreement**, and various statutory security registration requirements.

APB See **Accounting Principles Board**.

Note that the UK Auditing Practices Board is also referred to as the APB but is unrelated to the Accounting Principles Board.

Applicable Margin The percentage rate above **LIBOR** (or equivalent) charged by a lender.

This term is related to **Interest Rate**.

Applicable Time A specific date and time defined in an **Underwriting Agreement** that details the date and time when the **Pricing** terms of an offering are first distributed to prospective investors (i.e., a date and time after Pricing but prior to the initial sale of securities by the underwriters). Under US securities laws, liability attaches to the underwriters at the Applicable Time, also referred to as the Time of Sale.

Arbitrage The practice of taking advantage of a difference in the price of the same asset between two or more markets, for example, through the simultaneous purchase of that asset in one market and a sale in another.

Arrangement Fee The fee paid to the **Arranger** for arranging and underwriting a **Credit Facility**.

Arranger The financial institution that facilitates the **Syndication** of a **Credit Facility**. The Arranger's duties include assessing the borrower's credit, the appointment of the lenders' lead counsel, the **Syndication** of the loans and the negotiation

of the loan documentation. In the context of a bond issue, the **Lead Manager** plays a similar role.

Articles of Association A document setting out the internal governance rules for a company. In the United States these are often termed **Bylaws**.

Asia Securities Industry & Financial Markets Association (ASIFMA) A member of the **Global Financial Markets Association (GFMA)** alliance comprising the **Association of Financial Markets in Europe (AFME)**, the **Asia Securities Industry & Financial Markets Association (ASIFMA)**, and the **Securities Industry and Financial Markets Association (SIFMA)**. It is an independent, regional trade association comprising financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Their mission is to harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia.

ASIFMA See **Asia Securities Industry & Financial Markets Association (ASIFMA)**.

Asset Sale Covenant In an **Indenture**, the **Covenant** that governs the sale of assets. Assets may be sold by the company; however, it must get **Fair Market Value** and mostly cash. The proceeds must then be used to repay **Senior Debt**, invest in long-term assets for the business or make an offer to repurchase bonds at **Par**.

In a **Credit Agreement**, the Asset Sale Covenant is a strict restriction on the borrower's ability to sell assets. See also **Asset Sale Prepayment**.

Asset Sale Prepayment See **Asset Sale Sweep**.

Asset Sale Sweep In a **Credit Agreement**, this provision refers to a specific type of **Mandatory Prepayment** triggered by the disposal of certain assets where such disposal is not in the ordinary course of business.

See also **Equity Sweep**.

Asset-Backed Security A security whose value and income payments are derived from and collateralized by a specified pool of underlying assets. Pooling the assets into financial instruments allows such securities to be securitized.

See also **Securitization**.

Asset-Based Lending (ABL) A debt transaction where a borrower's assets, such as inventory and accounts receivable, are used as collateral for the borrower's debt obligations. In general, lenders will lend up to a specific percentage of the value of the secured asset(s) and borrowers will use such loans to satisfy short-term cash requirements. **ABL** is typically used by borrowers who are considered less creditworthy. A Large **Blue Chip Company** rarely uses this form of financing.

Assignment The transfer of rights held by one party, the assignor, to another party, the assignee.

In **Credit Agreements** or **Bridge Loan** arrangements, an Assignment refers to the transfer of rights and obligations from one lender to another.

In the United Kingdom, as a general rule, the burden of a contract (i.e., obligations) may not be assigned: a **Novation** is required.

See also **Novation**.

Association of Financial Markets in Europe (AFME) A member of the **Global Financial Markets Association (GFMA)** alliance comprising the Association of Financial Markets in Europe (AFME), the **Asia Securities Industry & Financial Markets Association (ASIFMA)**, and the **Securities Industry and Financial Markets Association (SIFMA)**. Formed in 2009 from the merger of the London Investment Banking Association and the European arm of the Securities Industry and Financial Markets Association, it represents banks and other significant capital market players focusing on a wide range of market, business and prudential issues and offering a pan-European perspective.

Auditor Arrangement Letter A letter between an auditor, the issuer and the underwriters that sets out the scope of the auditor's engagement with respect to the **Comfort Letter** for a Regulation S Offering. In addition, the letter may relate to the procedures undertaken by the auditors with respect to the **Regulation S** portion of an offering and other work outside the United States and specifies that the letter does not apply to or affect the Comfort Letter with respect to the Rule 144A Offering or other work in the United States.

Also referred to as an Auditor **Engagement Letter**.

Auditor Engagement Letter See Auditor Arrangement Letter.

Auditor's Report A company's External Auditor's assessment of the validity and accuracy of the company's financial information and conformity with accepted accounting

practices. Auditors' reports are issued on completion of an audit related to a company's **Financial Statement(s)**.

Automatic Shelf Registration A less onerous regulatory regime for a **Well-Known Seasoned Issuer** under Rule 415 of the **Securities Act** in relation to the registration and issuance of new securities. Critically, it dispenses with any **SEC** review. This allows a single registration document to be filed for the issuance of multiple classes of securities. Issuers file for registration (effective from filing) using a **Form S-3 Registration Statement** or **Form F-3 Registration Statement** for **Foreign Private Issuers**.

Form S-3 Registration Statement or **Form F-3 Registration Statement** issuers may use shelf registration to register securities that will be offered on an immediate, continuous or even a delayed basis. The process is particularly useful for issuing certain more complex securities, such as those used in a business combination, mortgage-backed securities or closed-end fund securities.

See also **Shelf Registration**.

Available Amounts Basket An additional type of **Basket** that is used in a **Credit Agreement** or **Indenture** to ensure a degree of fiscal prudence on the part of the borrower or issuer and to further lessen the lender's or bondholders' risk. The Basket works to limit the amount available (usually with reference to consolidated net income) that a borrower can use for purposes other than repaying interest or principal on the debt, such as **Capital Expenditure (CAPEX)** and paying dividends. Often this amount is an aggregate of the various payments and/or distributions permitted under the **Credit Agreement** or **Indenture**.

Average Daily Trading Volume (ADTV) The average amount of individual securities traded in a day during a specified period. Trading activity reflects the **Liquidity** of a security and a higher ADTV correlates with a more liquid security..

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Backstop An agreement to purchase the unsubscribed portion of offered securities at an agreed upon price. This is often contained in an Underwriting Agreement.

Balance Sheet A statement that details the financial position of a company at a particular date by showing a summary of its assets, liabilities and shareholders' equity.

The value of the total assets should equal the sum of the total liabilities and shareholders' equity, and the difference between the assets and liabilities reflects the company's net worth. Balance Sheets are usually prepared monthly, **Quarterly** and annually.

Balloon Payment The final payment of an **Amortized Loan** that is significantly larger than earlier installment payments.

Bankruptcy Bankruptcy occurs when a debtor is legally declared to be unable to pay off creditors. In the United States, this is a federal court process under the **Bankruptcy Code**.

Once declared bankrupt, a debtor is protected by the state from creditors. The debtor's assets are then valued and used to repay a portion of the outstanding debt.

Bankruptcy Code US Bankruptcy Code of 1978, as amended (codified as Title 11 of the US Code), which establishes federal bankruptcy laws, including liquidations (**Chapter 7**), reorganizations (**Chapter 11**) and cross-border insolvency (**Chapter 15**).

Bankruptcy Rules US Federal Rules of Bankruptcy Procedure, which govern federal bankruptcy procedures.

In the UK, bankruptcy is a court process by which the assets of an insolvent individual are realized and distributed amongst creditors. Part IX of the Insolvency Act 1986 governs bankruptcy procedures. The equivalent process for an insolvent company is liquidation (or winding-up).

Base Prospectus In the United States, a Prospectus filed with a **Shelf Registration Statement**. To action a **Shelf Takedown**, a **Prospectus Supplement** is filed (typically on a **Form S-3 Registration Statement** or a **Form F-3 Registration Statement**) with the Base Prospectus describing the terms of the Shelf Takedown issuance. The Base Prospectus is effective each time securities are issued under the **Shelf Registration** (i.e., on each Shelf Takedown).

In a program offering in the United Kingdom or **European Union (EU)**, a Base Prospectus is filed with the **FCA** or the relevant **EU Member State's** securities authority, and is later updated for a **Drawdown** of the securities.

Base Rate A **Floating Rate** used by a lender to calculate the **Interest Rate** payable by the borrower under a **Credit Agreement**. Typically, a borrower will pay interest equal to the Base Rate plus an agreed upon **Applicable Margin**.

See also **Applicable Margin**, **EURIBOR**, **HIBOR**, **LIBOR** and **SIBOR**.

Base Rate Loans A **Floating Rate** loan that bears interest based on an agreed **Base Rate**.

Basis Point (BPS) A unit of measure that reflects the percentage change in the value of a financial instrument. One Basis Point is equal to 1/100th of a percentage point.

Basket A threshold amount specified in an agreement.

In the context of traded securities or currencies, a group of securities, **Derivatives** or currencies that are grouped together for trading. The value of the Basket can be a simple or weighted aggregate of the securities or currencies in the group.

In the context of a **Credit Agreement** (and related security documents) and an **Indenture**, a **Carve-Out** in any **Negative Covenant** expressed as a fixed amount. For example: "The borrower may not issue additional debt, except for unsecured debt not to exceed US\$15 million in aggregate."

Bear Hug Offer An offer by a company to buy another company at a price per share above the **Fair Market Value** of the shares. Typically, a company makes a Bear Hug Offer where the alternative would be to make a **Hostile Takeover** offer when it believes the **Target's** management would otherwise decline the offer. Because management have a fiduciary responsibility to act in the best interest of shareholders, a Bear Hug Offer is essentially an offer management cannot refuse to consider, at least not without exposing itself to a lawsuit. Potential acquirers tend to make Bear Hug Offers publicly so the Target's shareholders are aware of the offer.

Bearer Bond A negotiable instrument whereby title passes by delivery of the physical bond certificate, which is proof of ownership. See, in contrast, **Book-Entry**.

Beneficial Owner Any person or entity who, directly or indirectly, has voting, investment, or sale power over a security, although legal ownership of the security may be registered in the name of a nominee. Beneficial Owners are sometimes said to be holding shares in "street name," Beneficial Ownership generally applies to securities that a person has the right to acquire, if the right is exercisable within the next 60 days.

See also **Schedule 13D** and **Section 16**.

Best Efforts Underwriting An offering in which the underwriters act as the issuer's agent and only agree to use

their best efforts to sell securities to the public. In contrast to a **Firm Commitment Underwriting**, the underwriters neither purchase any of the securities nor commit to sell a certain number of securities.

Bible A transaction's final executed documents that are compiled in hard and/or electronic form in one package for ease of reference.

Also referred to as a **Transaction Bible** or **Closing Set**.

Bidder A party making an offer.

Big Boy Letter A letter, typically issued in a private sale of securities, in which the buyer acknowledges that the seller possesses **Material** information about the issuer. The buyer also represents that it is a sophisticated investor knowingly entering into the transaction. A Big Boy Letter is intended to prevent the buyer from suing the seller for the non-disclosure of Material information.

The legality of Big Boy Letters in the United States is currently uncertain. A major cause of concern is the practice of buying securities subject to a Big Boy Letter and then reselling the securities to a third party without disclosing the existence of the Big Boy Letter. This practice is the subject of ongoing litigation and debate with regard to **Insider Trading**, but it is worth noting that the **SEC** has stated that a Big Boy Letter will not necessarily protect a seller against any SEC enforcement for breach of Insider Trading rules.

See also **Investor Representation Letter**.

Black Pools See **Dark Pools**.

Blackbox A form of algorithmic trading that uses computer programs for entering trading orders with the computer algorithm deciding on aspects of the order, such as the timing, price or quantity of the order, or, in many cases, initiating the order without human intervention.

Blackout Period In the United States, a period during which certain employees of a company are not allowed to buy or sell that company's securities, including Option or other securities issued pursuant to Option or retirement plans. Known as a **Close Period** in the United Kingdom.

Section 306(a) of the **Sarbanes-Oxley Act** prohibits any director or **Executive Officer** of a **Public Company** from purchasing, selling, or otherwise acquiring or transferring any security of the company during a pension plan Blackout Period that temporarily

prevents plan participants from engaging in such transactions. A pension plan Blackout Period usually occurs when major changes are being made to a pension plan. The purpose of the **SEC** rules is to prevent **Insider Trading** that could otherwise occur during the period when changes are being made.

See also **Rule 10b5-1 Trading Plan**.

In relation to **IPOs**, a period before the IPO or for a while afterwards whereby analysts connected to the underwriter or sponsoring bank will not publish research on the issuer.

Blanket Letter of Representations (BLOR) A form letter signed by an issuer and addressed to the **Depository Trust Company, The (DTC)** in which the issuer represents that it has complied with DTC's operational requirements. A Blanket Letter of Representations is required by the DTC in order for it to accept the issuer's securities as eligible for DTC deposit. Such letter relates to programs and future issuances by the issuer.

See also **DTC Letter of Representations (LOR)**.

Block Trade The sale of a large block of existing shares executed by a **Selling Shareholders** in the **Secondary Market**. Typically these transactions are launched, executed and priced on a fast-track basis, sometimes within a 24-hour period. Block Trades are often done by an **Accelerated Bookbuild**.

Blood Letter A letter from the underwriters (or initial purchasers in the context of a **144A Offering**) to the issuer, confirming that certain information included in the offering document is the same as that provided to them, and in which they agree to indemnify the issuer for losses relating to any misstatements or omissions arising out of the information contained in the offering document. This is intended to provide protection for the issuer against any errors made by the underwriters because liability for the content of the offering document is, generally, that of the issuer. However, in practice, the information covered by a Blood Letter is very limited.

Blue Chip Company A well-recognized, well-established and financially sound company. Blue Chip Companies tend to sell high-quality, widely accepted securities. They are known to operate profitably even in adverse economic conditions, which helps to contribute to their stable and reliable growth.

Blue Sky Laws US state securities laws that regulate the offering and sale of securities to protect in-state investors from fraud. Most states' Blue Sky Laws provide private causes of action for private investors who have suffered loss due to securities fraud.

Specific provisions of Blue Sky Laws vary among states, but almost all require the registration of securities offerings and sales in certain circumstances, as well as the registration of stockbrokers and brokerage firms. Most states also require issuers to consent to in-state service of process. Each state's Blue Sky Laws are administered by its respective regulatory agency, which reviews selling documents for accuracy and completeness.

New York's Blue Sky Laws are among the oldest and are unusual in that they require the registration of the issuer rather than the subject transaction.

The National Securities Markets Improvement Act of 1996 (NSMIA) pre-empts state registration and review of seven classes of securities offerings, although it preserves the states' right to investigate and prosecute fraud. All **Rule 506** offerings are pre-empted from the requirement of state registration. States can still require an issuer to file a **Form D** with the state regulatory agency. The applicability of NSMIA in **Section 4(a)(2)** offerings and **Rule 144A Offering** may be limited. In addition, NSMIA only pre-empts registration requirements, and not state laws, with respect to the registration of stockbrokers and brokerage firms.

Board of Directors (BoD) A body of elected or appointed directors who oversee the activities of a company.

BoD See **Board of Directors (BoD)**.

Bond A type of **Debt Instrument** that represents a fixed principal amount of money and either a **Fixed Rate** or **Floating Rate**, used to raise capital by taking on debt rather than equity. Once issued, the issuer owes the bondholders a debt and, depending on the terms of the bond, is obliged to pay interest (referred to as a **Coupon**) at regular intervals and/or to repay the principal, also known as face value or par value of the bond, at a later date (the **Maturity Date**).

The credit quality of the issuer and duration of the bond are the most significant factors in determining a bond's **Interest Rate**.

In the US, bonds are almost always issued pursuant to an **Indenture**.

Also known as a **Debenture** or **Note**.

Book-Entry A system of tracking ownership of securities where no physical certificate is issued to individual investors and internal settlement takes place without the movement of the underlying certificates and cash. A custodian holds one or more global certificates and records individual securities and cash movements.

Book Value The value of an asset on the **Balance Sheet**, typically equal to the original cost of the asset minus accumulated **Depreciation** or **Amortization**, although sometimes a company may, as a one-off, revalue (upwards or downwards) an asset.

Bookbuilding The process, undertaken by the underwriters or **Bookrunner** of a securities offering, of determining the demand and thereby the price at which the securities will be sold.

Bookrunner The main underwriter or **Lead Manager** who maintains the books of securities offered and sold.

In the context of a securities offering, this is the lead financial institution that runs the book of buy orders that leads to sales of the securities.

In the context of a syndicated loan, it is the **Arranger** who allocates specific portions of the **Credit Facility** to each lender.

See also **Lead Manager**.

Bought Deal Where one or more underwriters assume the risk of a transaction by buying an entire issue of securities (as opposed to only buying any unsubscribed securities) with the intent of selling it on to investors.

Also known as a **Guaranteed Deal** or **Fixed Price Deal**.

Box A shorthand reference to the summary or overview section of an offering document that is surrounded by a border on all sides.

Break-Up Fee A common provision in an **Acquisition Agreement** that requires the seller to compensate the buyer if the seller withdraws from the transaction and/or sells to another party. Usually set between 1 and 3% of the offer price, a Break-Up Fee is intended to compensate the buyer for the time and expense incurred if the sale does not go through.

Bribery Act The UK Bribery Act 2010 which establishes the criminal offences of paying a bribe and receiving a bribe and the corporate criminal offence of failure to prevent a bribe by associated persons. Special provisions relate to foreign public officials and payments made or received outside the United Kingdom, which may be within the jurisdiction of the Bribery Act.

Until the Bribery Act came into force, international anti-corruption enforcement was largely dominated by the **Foreign Corrupt Practices Act (FCPA)**. Similar to the FCPA, the Bribery Act has extra-territorial jurisdiction. Compared to the FCPA, the Bribery Act is generally broader in scope. For example, the Bribery Act

covers bribery at a private level, whereas the FCPA does not. The FCPA only covers active bribery, whereas the Bribery Act prohibits both active and passive bribery (i.e., the taking of a bribe). The FCPA creates an exemption for facilitation payments, whereas the Bribery Act makes no such exemption.

Bridge Facility A **Credit Facility** providing **Bridge Loans**.

Bridge Loans A short-term loan (usually up to one year) with a high **Interest Rate**, drawn pending the arrangement of larger/long-term financing or until longer-term financing can be acquired.

Bring-Down Certificate of Good Standing In the context of an acquisition, a certificate signed by an **Executive Officer** of a company stating that all representations and warranties set forth in the relevant agreement are true and valid from the date of signing until the **Closing** of a deal. The purpose of the certificate is to ensure that any liability that arises between the date of signing and closing remains with the warrantor.

Bring-Down Comfort Letter A second **Comfort Letter** confirming that the **Comfort Letter** delivered at an earlier point in the transaction (e.g., on signing of the **Underwriting Agreement**) remains true and valid as of the date of the second **Comfort Letter** (e.g., on the **Closing** of a deal) or the closing of an **Over-Allotment Option**.

Bring-Down Due Diligence Final **Due Diligence** conducted immediately before **Closing**, usually by way of a conference call among all working group members, consisting of questions directed to the company by the underwriters and legal advisers. The purpose of Bring-Down Due Diligence is to confirm **Material** facts and to determine if any **Material** changes have occurred that should be reflected via updated disclosure.

Broker-Dealer A person or firm in the business of buying and selling securities for themselves or on behalf of others and, depending on the transaction, operating as both a broker and a dealer.

All US Broker-Dealers must register with the US regulator of Broker-Dealers, **FINRA**, and the state in which they do business, and are subject to the Broker-Dealer rules under the **Exchange Act**.

Broker-Dealers are broadly defined under Section 3(a)(4)(A) of the **Exchange Act** which defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others.”

See also **Chaperone Agreement** and **Placing Agreement**.

Broker Non-Votes Proxy received from brokers holding shares on behalf of a **Beneficial Owner**, indicating the broker is not voting on a particular proposal because the broker has not received voting instructions from the Beneficial Owner and does not have discretionary voting power with respect to the proposal.

Bullet Bond See **Non-Callable Bonds**.

Bullet Maturity When the entire principal of a bond or loan is due and payable on the **Maturity Date**.

Bulletin Board The OTC regulated electronic trading service for securities, also known as the **Pink Sheets**.

See also **Pink Sheets**.

Business MAC In the context of **Credit Agreements**, a clause that gives the lender certain rights (typically the right to terminate a **Credit Facility**) if there is a **Material Adverse Change (MAC)** in the business of the borrower.

Buy-Back The purchase by an issuer of its own securities in the open market or pursuant to a **Tender Offer** or private agreement.

Bylaws A corporate document setting out the internal governance rules for a corporation as adopted by its **Board of Directors (BoD)**. In the United States, state law typically governs the content and scope of Bylaws.

Outside the United States, Bylaws are often known as **Articles of Association**.



C&DIs See **Compliance and Disclosure Interpretations (C&DIs)**.

CAGR See **Compound Annual Growth Rate (CAGR)**.

Call Option A financial contract through which a holder has the right (but not the obligation) to force an entity to sell to the Call Option holder a specific quantity of an asset (e.g., securities, commodities, etc.) at a specific time and price. For example, an issuer may, by the exercise of a Call Option, require bondholders to redeem their bonds prior to **Maturity**. This is the opposite of a **Put Option**.

Call Premium The difference between the price at which a security may be called prior to **Maturity** and the **Par** value of the security.

Call Protection An investor protection provision in relation to an issue of callable bonds that prohibits an issuer from calling back a bond for a certain amount of time after its issue, thereby reducing the risk associated with holding such bonds.

Call Spread Overlay A **Hedging** transaction in which an issuer purchases a **Call Option** that parallels the Call Option embedded in **Convertible Bonds**, where the issuer offers **Warrants** for the same number of underlying shares at a higher **Strike Price**. The net effect is an increase in the **Conversion Premium** of the Convertible Bonds to the Strike Price of the Warrant.

Callable Security The generic term for a security that the issuer reserves the right to redeem at a specified price. More commonly seen as a feature of bonds as opposed to ordinary shares.

Cap A contractually determined upper limit of a party's obligation or liability.

See also **Capitalization Table**.

CAPEX See **Capital Expenditure (CAPEX)**.

Capital Duty The tax on the issue of certain securities, applicable in certain jurisdictions (in contrast to **Stamp Tax**, which applies on a transfer of a security).

See also **Stamp Tax**.

Capital Expenditure (CAPEX) The expenses associated with acquiring physical assets (such as equipment or the purchase or restoration of property) that have long-term value. By accounting conventions and rules, Capital Expenditures are amortized over their useful life. Provisions in relation to CAPEX are generally seen in **Credit Agreements** where a lender seeks to control the amount and purpose of any CAPEX.

Capital Markets The global and/or regional markets for the purchase and sale of **Debt Securities** and **Equity Securities**, which allow corporate, sovereign and supranational issuers to raise long-term finance (as opposed to short-term borrowings) to fund their activities.

The term "equity capital markets" refers to the issuing and trading of Equity Securities, such as shares. The term "debt capital markets" refers to the issuing and trading of Debt Securities, such as bonds. The initial issuance of a security

occurs in a **Primary Market** with subsequent trading occurring on a **Secondary Market** or **Aftermarket**.

Capital Stock The **Common Stock** and **Preferred Stock** or securities that a company is authorized to issue by virtue of its **Charter**.

Capital Structure The distribution of a company's capital between equity (including, but not limited to, shares in issue, retained earnings and share premium reserves) and debt (referred to as the company's **Gearing** or leverage). A simple Capital Structure can often be expressed as a ratio (long-term or short-term) of debt to equity if hybrid securities have not become part of the composition. For example, a company may have a debt to equity ratio of 3:1, meaning that for every US\$1 of equity in the company there exists US\$3 of debt.

Capitalization Table A simplified version of a **Balance Sheet**, often included in a **Prospectus** (or similar document), that provides investors with information regarding the issuer's **Capital Structure**. It is primarily designed for **Retail Investors**. In the **European Union (EU)** this is covered by the **EU Prospectus Regulation** and in the United Kingdom by the **UK Prospectus Regulation**, and is referred to as a Table of Capitalization and Indebtedness.

Capped Call A **Hedging** transaction in which an issuer purchases a **Call Option** that parallels the **Call Option** embedded in **Convertible Bonds**, subject to a cap on the maximum share price of the shares covered by the Call Option.

Carve-Out A general term that means that a certain item, provision or concept is to be excluded or carved out.

Cash Equivalent A **Balance Sheet** category for highly liquid investments that can be turned into cash almost immediately. Common examples of Cash Equivalents include bank accounts, bankers' drafts and sovereign bonds with a strong **Credit Rating**.

Cash Flow Statement A mandatory part of a company's **Financial Statement(s)**, recording the flow of cash and Cash Equivalents into and out of a company. A Cash Flow Statement enables investors to understand the day-to-day cash operations of a company and to calculate how efficiently capital is being utilized. A Cash Flow Statement is distinct from an **Income Statement**.

Catalist A sponsor-supervised listing platform launched by the **Singapore Exchange Limited** in November 2009 as an alternative to a Main Board listing.

See also **The Singapore Exchange Securities Trading Limited**.

Category 1 Issuer See **Regulation S**.

Category 2 Issuer See **Regulation S**.

Category 3 Issuer See **Regulation S**.

CCC/CIK Codes The electronic identification codes used on the **EDGAR** system. The CIK (or central index key) code is a unique public identifier given to each entity that submits filings on the EDGAR system. The CCC (or CIK confirmation code) is used in combination with an entity's CIK code to file documents on the EDGAR system.

CD&A See **Compensation Discussion and Analysis (CD&A)**.

CDO See **Collateralized Debt Obligations (CDOs)**.

Central Securities Depository (CSD) A specialist financial organization holding securities such as shares either in certificated or uncertificated (dematerialized) form so that ownership can be easily transferred through a book entry rather than the transfer of physical certificates. **DTC**, **CREST**, **Clearstream** and **Euroclear** are CSDs.

CEO Acronym for Chief Executive Officer, the highest-ranking executive in a company who is responsible for making major strategic decisions and managing the company's overall operations and business plan.

CEO/CFO Certifications A written statement signed by the **CEO** and **CFO** of a publicly traded company that attests to their control over and acceptance of responsibility for **Internal Controls** relating to financial reporting. The CEO/CFO Certifications are required under the **Sarbanes-Oxley Act** and are a means of holding executives accountable for fraudulent **Financial Statement(s)**. Such certifications are required to be attached as exhibits to certain **SEC** filings.

Certificate of Good Standing In the United States, a certificate issued by the Secretary of State of the company's state of incorporation. It certifies that a company has complied with its corporate obligations such as filing requirements and the payment of tax.

A Certificate of Good Standing is frequently required prior to the **Closing** of transactions and banks often require a Certificate of Good Standing when providing finance to a company.

Certificates of Good Standing are not available in certain jurisdictions outside the United States.

Certificated Security A physical certificate representing a security, as opposed to a certificate held in electronic form in a **Clearing System**.

CESR The Committee of European Securities Regulators. CESR is an independent committee of regulators established by the European Commission to improve cooperation among securities regulators, to advise and assist the European Commission, and to implement community legislation in individual **EU Member States**. The **European Securities and Markets Authority (ESMA)** replaced CESR on January 1, 2011.

CFO Acronym for Chief Financial Officer, the senior **Executive Officer** responsible for managing a company's finances and associated activities.

CFTC See **Commodities Futures Trading Commission (CFTC)**.

Change of Control Where control of an entity shifts from one entity or person to another. Control is often measured by equity ownership, changes in the composition of the **Board of Directors (BoD)** and changes in the general partners (in the case of partnerships).

Various agreements make use of this concept, typically triggering certain rights of the unaffected party when there is a Change of Control. These rights range from the right to terminate the agreement to the right to demand prepayment (in the context of a **Credit Agreement**).

Change of Control Put A **Put Right** exercisable on a **Change of Control**.

Chaperone Agreement An agreement under the **Broker-Dealer** rules of the **Exchange Act** that enables a non-US Broker-Dealer to undertake certain activities in the US markets through an affiliation with a US-registered Broker-Dealer, without itself having to register under the Exchange Act.

See also **Broker-Dealer** and **Placement Agent**.

Chapter 7 Part of Title 11 of the **Bankruptcy Code**. Chapter 7 sets out the process by which a US entity is either forced to file, or voluntarily files, for **Bankruptcy**. Upon filing a petition in the bankruptcy court, a **Trustee** is appointed to liquidate the company and distribute its assets to its creditors in order of their **Priority**. This is the most common form of **Bankruptcy** in the United States.

Chapter 11 Part of Title 11 of the **Bankruptcy Code**. Unlike **Chapter 7**, which is used to liquidate a business and distribute

assets, a Chapter 11 bankruptcy filing is used to fundamentally restructure an entity to allow it continue trading in order to repay its debt.

The Chapter 11 process involves the indebted entity presenting a restructuring plan to the court and a creditors' committee who have to approve the plan. If the plan is approved, the court will appoint the entity as **Trustee** of its assets as a debtor in possession, and impose upon the Trustee various reporting requirements. Additionally, the court has the power to stay litigation commenced against the entity and to allow it to raise new finance by giving first **Priority** over its assets. If the court concludes that the risk of mismanagement, gross negligence or fraud is present, it may appoint an outside Trustee to manage the entity's affairs instead.

Chapter 15 Part of Title 11 of the **Bankruptcy Code**. Chapter 15 promotes cooperation between jurisdictions in cross-border insolvencies. Upon filing a petition in the US courts, a foreign entity with US debts has the same protections afforded to it as would be the case in a **Bankruptcy** under **Chapter 11**.

Charter A legal document filed with a US state by a company's founders setting out the company's name, head office location, date of founding and other details about the nature of its business. Upon the Charter's approval, a US company becomes a legal entity incorporated in the state where the Charter was filed and approved. The laws of the state of incorporation govern the contents and form of the Charter.

Chris-Craft *Chris-Craft Industries, Inc. v. Piper Aircraft Corp.*, 480 F.2d 341 (2nd Cir. 1973), cert. denied, 414 U.S. 910 (1973). One of the leading cases considering the **Due Diligence Defense** under **Section 11**. The US Court of Appeals for the Second Circuit discussed the **Due Diligence** obligation of underwriters and the importance of independent verification of information provided by the issuer. Specifically, the court stated that the underwriter "had an obligation to reach a careful, independent judgment based on facts known to it as to the accuracy of the registration statement" and that "if it was aware of facts that strongly suggested, even though they did not conclusively show, that the registration materials were deceptive, it was duty-bound to make a reasonable further investigation."

Circle-Up The process in which an underwriter's counsel identifies to auditors the financial figures they wish the auditors to provide comfort on, as well as the **Level of Comfort** for each figure. This entails circling and identifying ("ticking") financial information in the offering document with a letter or symbol that corresponds to certain Levels of Comfort in the accountant's **Comfort Letter**. Generally, the Circle-Up will cover all financial

information that can be sourced from the company's accounts and may include some operational information.

See also **Tick and Tie**.

Class In the context of securities, classes of shares stratify packages of rights, including any combination of voting rights, rights to dividend payments and economic entitlements in the case of a wind-up.

In the context of debt transactions, lenders hold a particular Class or **Tranche** under a **Credit Agreement**. For example, a group of lenders providing **Senior Debt** are referred to as the "senior class" and mezzanine lenders as the "mezzanine class."

Class 1 Circular A circular prepared by an issuer subject to the **Listing Rules** issued to its shareholders containing prescribed information about a **Class 1 Transaction**.

Class 1 Transaction A transaction entered into by an issuer subject to the **Listing Rules**, the size of which results in any of the **Class Tests** breaching a 25% threshold. The issuer must (i) notify a regulatory information service of information prescribed by the Listing Rules as soon as possible after the terms of the transaction are agreed; (ii) issue a **Class 1 Circular**; and (iii) obtain shareholder consent before entering into such a transaction.

Class 2 Transaction A transaction entered into by an issuer subject to the **Listing Rules**, the size of which results in any of the **Class Tests** achieving a value of 5% or above but less than 25%. The issuer must notify a regulatory information service of information prescribed by the Listing Rules as soon as possible after the terms of the transaction are agreed.

Class Tests Tests used to determine the size of a transaction compared to the size of the issuer as a whole, for the purposes of how a given transaction will be classified with respect to the **Listing Rules**. The four Class Tests set out in the Listing Rules are: (1) the gross assets test, (2) the profits test, (3) the consideration test, and (4) the gross capital test.

See also **Class 1 Transaction** and **Class 2 Transaction**.

Class Voting A voting arrangement where different classes of lenders vote separately in relation to a strictly constructed **Credit Agreement**. Class Voting provisions are included where it is determined that a particular class of lenders may have a greater interest with regard to a particular matter than the other classes. These provisions are generally limited to specific matters rather than extended to every issue requiring consent from the creditors.

Classified Board A corporate board structure where only a portion of the **Board of Directors (BoD)** is elected each year, and usually used to discourage **Takeover Bids**.

Also referred to as a Staggered Board.

Clawback A provision by which any conferred property or right must be returned on the occurrence of a defined event. Often found in relation to employee incentive shares where employees may be required to return dividends received or the shares themselves if certain performance targets are not met or if such employee leaves the employment of the share-granting employer.

Equity Clawback provisions permit an issuer to redeem a certain proportion of their securities with the proceeds from the issuance or sale of its equity securities.

Cleansing Release A disclosure release used by a public company where it has provided **Material Non-Public Information** to investors or potential investors in connection with a private or exempt offering. The recipients of this Material Non-Public Information will typically require the issuer to disclose such information within a day or less of **Pricing** to avoid any **Insider Trading** implications. The investors are therefore “cleansed” of the Material Non-Public Information.

The issuer may also be required to file a **Form 8-K** in order to satisfy its obligations under **Regulation D**. In a **Rule 144A Offering**, an issuer may decide to disclose the Material Non-Public Information before or simultaneously with the commencement of the offering.

The duty to disclose may be negotiated with investors as part of their **Confidentiality Agreement** or may be deemed by counsel to arise automatically.

Cleansing Statement See **Cleansing Release**.

Clear Market Provision A provision in an **Underwriting Agreement** where the issuer agrees not to issue new securities for an agreed period during the offering period and following the **Closing** of the transaction to protect the underwriters from having to compete for investors with the issuer as well as to avoid the risk of **Integration**.

In the context of syndicated loans, a contractual provision in the **Commitment Letters** that makes it a **Condition Precedent (CP)** to making loans that the borrower and its subsidiaries not incur any other debt or issue any securities for a specified period of time that would compete with the **Syndication** of the loans.

Clearing System A system established to facilitate and monitor financial settlement of securities transactions, for example, the transfer of ownership of securities.

See also **Clearstream**, **Depository Trust Company, The (DTC)**, **Euroclear** and **Euroclear UK**.

Clearstream Clearstream Banking, *société anonyme*, an electronic **Clearing System** that settles and holds international securities and one of the primary Clearing Systems in Europe.

Close Period See **Blackout Period**.

Closing The completion of a deal.

In the context of a securities offering, this occurs when all remaining documents are executed and the securities and funds are exchanged between the parties.

In a **Credit Agreement**, it is the point at which the borrower has satisfied the conditions contingent (*i.e.*, the **Condition Precedent (CP)**) on completing the arrangement and the funds can be transferred.

In certain jurisdictions, including the United Kingdom, the word “completion” is often used.

Closing Condition A condition in a contract that must be satisfied before the **Closing** of the transaction can occur.

Also referred to as **Condition Precedent (CP)**.

Closing Date The date on which the **Closing** occurs.

Closing Fee The fee a lender earns upon the **Closing** of a **Credit Agreement**. It is generally calculated as a percentage of the principal amount of the lender’s loan and is generally paid out of the funds drawn down.

Closing List See **Closing Memorandum**.

Closing Memorandum A memorandum outlining the actions to be taken prior to and at the **Closing** of a transaction, including documents to be signed and filings to be made. The Closing Memorandum usually contains the forms of the closing certificates and letters to be delivered at or in advance of closing.

In the United States, this is also known as a **Closing List**.

Closing Set See **Bible**.

Club Deal Where a group of funds make a collective investment. Club Deals allow funds to take individually smaller risk positions while taking advantage of the club’s collective financial resources.

Also referred to as a Syndicated Investment.

Co-Manager In the context of an underwritten offering of securities, one of several underwriters, but not the **Lead Manager**. Co-Managers have less responsibility for the management of an offering than the **Lead Manager** (a role that carries greater prestige) and are included in the **Syndicate** due to their ability to place the securities.

CoCo Securities Shorthand for **Contingent Convertible Securities (CoCo Securities)**.

Collar An equity Option strategy designed to limit losses in a volatile market. To construct a Collar, an investor who owns a particular share can go long on an **Out-of-the-Money Put Option** and sell an **Out-of-the-Money Call Option**. The investor therefore recoups the expenditure on the protective Put Option by selling the Call Option.

Also known as a Hedge Wrapper.

Collateral Agent In debt transactions, an agent that holds the collateral on behalf of a **Syndicate** of lenders, where such collateral is security for performance of the borrower’s obligations under a loan agreement. The borrower grants a security interest in the collateral to the Collateral Agent on behalf of the lenders, and the Collateral Agent takes all necessary administrative and enforcement actions with respect to the collateral on behalf of the lenders.

Also referred to as a Security Agent.

Collateralized Debt Obligations (CDOs) A type of **Asset-Backed Security** where an issuer issues bonds that have been broken into **Tranches** of **Senior Debt** and **Subordinated Debt** that are secured by debt obligations (such as bonds, fund interests, loans, or other obligations) purchased by the issuer with the proceeds of the bonds.

Combined Code The Combined Code on Corporate Governance published by the UK Financial Reporting Council (FRC) to promote good corporate governance practices. The Combined Code required UK listed companies to report on and explain the extent of their compliance or non-compliance with the Combined Code. This code was superseded by the **UK Corporate Governance Code**.

Comfort Letter In the context of an offering of securities, a letter produced by an issuer's **External Auditors** to verify financial information contained in the offering document. It will also typically provide that there have been no **Material** changes to **Financial Statement(s)** and **Financial Reports** since their provision for inclusion in the offering document. In an **SEC**-registered offering or a **Regulation S Offering**, the Comfort Letter is delivered to the underwriters as part of their **Due Diligence**. In a **Rule 144A Offering**, the Comfort Letter is delivered to the initial purchasers and helps establish a **Due Diligence Defense**. The Comfort Letter is delivered on the signing of the Underwriting Agreement.

In the context of a **Credit Agreement**, a letter provided by a parent company in relation to the borrowings of a subsidiary. The Comfort Letter is not intended to be binding and is, in fact, typically provided where the parent company is unwilling to provide a **Guarantee**.

Commercial Letter of Credit A form of **Letter of Credit** designed to facilitate payments between parties in the usual course of trade. Commercial Letters of Credit are generally provided by the bank of the party due to make a payment and effectively substitute the credit risk of the bank for the credit risk of that party, thereby providing comfort to the party due to receive the payment. In the context of global trade, for example, a bank would undertake to pay for an export shipment on behalf of an importer so long as the exporter provides the necessary documents (i.e., clean bill of lading, certificate of insurance, etc.) within a specified period.

See also **Standby Letter of Credit**.

Commercial Paper (CP) An unsecured debt obligation with a **Maturity** of less than one year issued by banks and companies to investors typically to meet short-term cash flow needs. A Commercial Paper instrument tends to be discounted and is a low-risk investment with a lower Interest Rate to prevailing market **Interest Rates**.

Commission, the See **SEC**.

Commitment Fee The fee that a lender charges a borrower, pursuant to the terms of a **Credit Agreement**, for money that will be borrowed in the future (undrawn amounts) on a specified date. In consideration for the fee, the lender commits to extending credit on that future date. It is designed to compensate the lender for the amount of capital it is required to hold by its financial regulator.

Commitment Letter A letter specifying the terms on

which a lender will provide loans to a borrower, which is often accompanied by a **Term Sheet**. There are different types of Commitment Letters, depending on the type of debt transaction. The Commitment Letter (together with a signed acceptance and any appendices) may form the documentation for the loan or further agreements may be entered into on the basis of a Commitment Letter.

In the context of an acquisition financing, a Commitment Letter may provide for a combination of long- and short-term loans (the latter of which have the option to be drawn).

Commitment Papers Collectively, the **Commitment Letter**, **Fee Letter**, and (if applicable) **Engagement Letter**.

Committee of European Securities Regulators
See **CESR**.

Commodities Futures Trading Commission (CFTC)

An independent agency in the United States that regulates **Futures Contracts** and **Options** markets. The Commodity Exchange Act requires certain firms and individuals to be registered with the CFTC.

Commodity Products, other than purely financial products such as shares or bonds, (e.g., raw materials or agricultural products) that are considered interchangeable with other commodities of the same type, and are typically traded through **Futures Contracts**. Prices of commodities are determined by market transactions rather than any actual qualitative difference.

The primary regulatory authority for commodities in the United States is the **Commodities Futures Trading Commission (CFTC)**.

Common Code In Europe, the nine-digit security identification code issued by **Euroclear** and **Clearstream** that is unique to each security.

Common Depository A bank that holds the **Global Note** on behalf of the **Clearing Systems**. The Common Depository ensures payments due under the securities are made and manages transfers of any interests in such securities.

Common Shares See **Common Stock**.

Common Stock A security that represents an ownership interest in a corporation and comes with a package of rights, generally including rights to dividends, economic rights on a dissolution, and/or voting rights at shareholders' meetings, or any combination thereof. Owners of Common Stock generally have the lowest **Priority** in the event of **Bankruptcy** and must

wait for creditors and preferred shareholders to be paid before any portion of their investment can be returned.

Also known as **Common Shares**.

Companies House The registry for companies incorporated in England and Wales.

Company MAC A contractual clause defining when a **Material Adverse Change (MAC)** has occurred in relation to a company. Company MAC clauses are commonly seen in commercial contracts and may give rise to a variety of rights to the counterparty, most typically termination.

In the context of an acquisition, this type of clause typically allows a purchaser to abandon a transaction, without penalty, if the **Target** suffers from a Company MAC between signing and **Closing**.

In the context of a **Credit Agreement**, a Company MAC will be used in a variety of contexts so as to allow the lender to call a default where the borrower's financial performance (or external events) makes the loan too risky.

Compensation Discussion and Analysis (CD&A)

Disclosure made pursuant to Item 402 of Regulation S-K in **SEC** filings of Domestic Issuers. The CD&A is a section in most major filing documents, such as **Form 10-K** or **Proxy Statements**. It is effectively a review by the issuer's management team of the issuer's compensation policies and practices, including a comparative analysis of executive compensation paid over recent and historical financial periods.

Competent Person's Report In the **European Union (EU)** and the United Kingdom, the Competent Person's Report refers to a report prepared by a duly qualified specialist on an issuer's assets that is published as part of the Prospectus. Typically a Competent Person's Report is required for mineral, oil and gas companies and real estate companies.

See also **Expert**.

Completion See **Closing**.

Compliance and Disclosure Interpretations (C&DIs)

The SEC's published interpretations of the **Securities Act** and the Exchange Act, including the rules and regulations adopted under these acts.

Compound Annual Growth Rate (CAGR) A year-over-year measurement of growth in the value of an investment. It is

useful for comparing the growth of different investments because it reduces the effect of volatility and provides an annualized measure of growth (although actual growth may not have been reflected in the calculated CAGR value in any given year of the period for which CAGR is calculated).

The formula for calculating CAGR is
 $((\text{Current Value}/\text{Base Value})^{1/\text{Number of Years}}) - 1$.

Condition Precedent (CP) A condition that must be satisfied before the remainder (or specific parts) of an agreement comes into effect. This term is widely used in corporate documents, **Capital Markets** instruments and **Credit Agreements**.

Also referred to as a **Closing Condition**.

Confidential Filing An **Emerging Growth Company (EGC)**'s confidential submission to the **SEC** of a draft **Registration Statement** for confidential, non-public review by the SEC staff prior to public filing, as permitted under Section 6(e) of the **Securities Act**. The initial confidential submission and all amendments must be publically filed no later than 21 days before the date on which the issuer conducts a **Roadshow**. Since July 10, 2017, any issuer may submit a registration statement in connection with an **IPO**, an initial registration statement for the listing of a class of securities under Section 12(b) of the Exchange Act and a registration statement for a follow-on offering within one year after the effective date of an **IPO** or initial Section 12(b) registration statement for nonpublic review.

Under a separate, long-standing policy, the **SEC** staff provides for confidential review of draft **Registration Statements** for a **Foreign Private Issuer** that is : (i) a foreign government registering its debt securities; (ii) a Foreign Private Issuer that is listed or is concurrently listing its securities on a non-US securities exchange; (iii) a Foreign Private Issuer that is being privatized by a foreign government; or (iv) a Foreign Private Issuer that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction. A Foreign Private Issuer may elect to proceed under the draft Registration Statement submission procedures available to all issuers, the procedures available to Emerging Growth Companies (if the issuer qualifies) or the pre-JOBS Act procedures applicable to these certain Foreign Private Issuers. Under the pre-JOBS Act procedures, an eligible Foreign Private Issuer can engage in multiple rounds of nonpublic SEC review and, unlike Emerging Growth Companies, may wait to file publicly until the commencement of the roadshow.

Confidential Information Memorandum In the context of a **Private Placement**, the issuer's or **Target's** disclosure document provided to potential investors.

In the context of a syndicated loan, the marketing document prepared by the **Arranger** for prospective lenders.

Confidential Treatment Application (or Confidential Treatment Request (CTR)) A formal written request filed by an issuer with the **SEC** to obtain confidential treatment for materials that are filed or delivered to the SEC, i.e., seeking permission to withhold sensitive information from public view. Rule 406 of the **Securities Act** and Rule 24b-2 of the **Exchange Act** provide the requirements to obtain confidential treatment of a document filed with the SEC. Under limited circumstances (i.e., trade secrets or **Pricing** terms that competitors of the issuer could use to their advantage), the SEC will grant this request and treat the information confidentially.

The **Financial Conduct Authority (FCA)** similarly accepts requests for confidential treatment of sensitive information.

Confidentiality Agreement An agreement whereby persons possessing sensitive information about a company agree to keep it confidential, subject to certain exceptions.

Also known as a **Non-Disclosure Agreement**.

Confidentiality Provisions Provisions in the **Commitment Letter** that prohibit the disclosure of the **Commitment Papers** and other confidential information provided by one party to another; often found in the context of the **Due Diligence** investigation conducted for a planned asset or stock purchase.

Consent Fee In a **Consent Solicitation**, the fee that bondholders may receive in exchange for consenting. Bondholders will receive a Consent Fee only if the Consent Solicitation is successful.

See also **Consent Solicitation**.

Consent Solicitation The solicitation from the interested parties of consent to a particular change (or changes).

In the corporate governance context, when a company seeks consent from its shareholders or other stakeholders to take an action; for example, this may occur during a **Proxy** dispute.

In debt transactions, when an issuer seeks consent from bondholders to a change of the terms and conditions set out in an **Indenture**. Bondholders consenting to the proposed change

may also receive a **Consent Fee**.

Consolidated Financial Statements Financial statements that reflect the overall financial position of a parent company and its subsidiaries.

Consolidating Describing the presentation of financial information so that it more accurately reflects different aspects of a group structure. This is commonly seen in the **Financial Statement(s)** of issuers who have issued bonds (or other debt securities) that have been guaranteed by other members of the issuer's group. The **SEC** has allowed this practice pursuant to Rule 3-10 of **Regulation S-X**.

Contingent Conversion Convertible Bonds that are convertible by the holder only if certain triggers are met.

Contingent Conversion Trigger The mechanism in **Contingent Convertible Securities (CoCo Securities)**, which is the main provision of such securities, and which provide that such securities can only be converted to **Common Stock** at a pre-established **Conversion Price** if the price of the stock exceeds or trades at a defined price over a certain length of time.

Contingent Convertible Securities (CoCo Securities) Similar to a **Strike Price** in a **Convertible Bond** Contingent Convertible Securities have a trigger event that must be reached before the securities automatically convert.

Contingent Interest Interest on a bond that becomes payable once certain conditions are met.

Contractual Subordination Subordination provisions that are imposed by contract.

See also **Intercreditor Agreement**.

Conversion Fee A fee paid on the date that **Bridge Loans** are converted into **Term Loans**.

Also known as a Rollover Fee.

Conversion Premium The difference in price of a convertible security and the current market value of the **Common Stock** into which it could potentially be converted.

Conversion Price The price at which a convertible security can be exchanged into **Common Stock**, which is normally specified when the security is issued. Also referred to as a Conversion Ratio or Conversion Rate.

Conversion Rate See **Conversion Price**.

Conversion Ratio See **Conversion Price**.

Conversion Value The value of a convertible security if immediately converted into stock.

Convertible Bond A bond that can be converted into another security (usually **Common Stock** of the issuer), generally only at or after a certain time as specified by the issuer.

See also **Exchangeable Notes**.

Cooling-Off Period The period of time between the filing of a new issue's **Prospectus** with the **SEC** and the actual **Public Offering** of the securities. The time period is usually 20 days and may also be called the **Waiting Period** or the **Quiet Period**.

Cornerstone Investor An investor who pays the **IPO** price but receives a predetermined amount of shares and is subject to a **Lockup** period. Cornerstone Investors commit to buying an IPO at the offer price, ahead of its market launch.

See also **Anchor Investor**.

Corporates This term is commonly used to describe corporations.

Counterparty In any transaction, a party is the Counterparty of the other party and vice versa.

Countersign Deadline Date The date by which the borrower must countersign a **Commitment Letter** so that the **Commitment Papers** take effect, otherwise they will terminate.

Coupon The interest payment made under a bond to its holders. The term is also used interchangeably with **Interest Rate**.

Covenant A promise in an agreement that is binding on the party providing the Covenant. An **Affirmative Covenant** places an obligation on the giver to do something, a **Negative Covenant** places an obligation on the giver to refrain from doing something and a **Maintenance Covenant** places an obligation on the giver to maintain something.

In the context of debt offerings and debt finance, the issuer or borrower, breaching its Covenants might trigger the materialization of certain rights for the bondholders or lenders, such as entitlement to full repayment on demand.

Covenant-Lite Loan facilities made available to borrowers and that contain fewer restrictions than are ordinarily required with respect to payment terms, collateral, and level of income. Also used to describe **Indentures** that do not contain many restrictions.

Covered Bonds A bond backed by a pool of assets, such as mortgage loans. Unlike **Collateralized Debt Obligations (CDOs)**, the pool of assets remains on an issuer's **Balance Sheet**. Upon **Default** under the bond, investors have recourse to both the pool of assets and the issuer.

Covered Call Where a security holder issues a **Call Option** with respect to the securities it holds.

CP Can be either **Commercial Paper (CP)** or **Condition Precedent (CP)**.

Credit Agreement A loan financing agreement between one or more lenders and a borrower. The Credit Agreement outlines the rules and regulations governing the loan, including the terms, liabilities and obligations of the parties, repayment procedures, interest and fees. A **Credit Facility** also contains representations and warranties of all parties.

Credit Default Swap An agreement generally based on **International Swaps and Derivatives Association (ISDA)** form documentation entered into between two parties, which provides that one party agrees to pay the other party if certain credit events (such as payment default, insolvency or restructuring) occur.

Credit Facility A type of loan made in the corporate finance context. Specific types of Credit Facilities include committed facilities, **Letter of Credit**, **Revolving Facility** and **Term Loans**.

Credit Rating A rating of the creditworthiness of an issuer and/or a security, generally provided by **Ratings Agencies**. As a general rule, securities/issuers with higher ratings represent lower risk and vice versa, and, in the case of securities, this is generally reflected in the price of the securities and/or **Coupon** payable in respect of them.

CREST The settlement system for UK, Channel Islands and Irish securities. CREST is owned and operated by **Euroclear UK** and is the **Central Securities Depository (CSD)** that settles the great majority of trades on the **London Stock Exchange**. CREST operates an electronic securities settlement system allowing securities to be traded without physical exchange of the certificates. This allows for potential tax advantages and the ability to settle many international securities. CREST is also referred to as **Euroclear UK**.

CREST Shareholder A shareholder who holds securities electronically through **CREST**.

Cross-Acceleration Common clause in an **Indenture** and investment-grade **Credit Agreement**. A Cross-Acceleration provision operates by defaulting an issuer/borrower under one agreement when such issuer/borrower defaults under another agreement and the bondholders/lender(s) accelerates repayment. In contrast to Cross-Acceleration, a **Cross-Default** clause in one agreement causes an automatic event of default under that agreement when the issuer/borrower defaults under another agreement, even if the bondholders/lender(s) under the latter agreement do not accelerate repayment.

Cross-Border Tender Offer Rules The rules that govern Cross-Border Tender Offers. Cross-Border Tender Offers involve a broad solicitation in two or more jurisdictions to purchase a substantial percentage of a company's securities during a limited tender offer period.

In the United States, Tender Offers are subject to Sections 14(d) (in some cases) and 14(e) of the **Exchange Act** and the applicable rules of Regulation 14D and Regulation 14E. The scope and applicability of Cross-Border Tender Offers Rules, and the availability of exemptions thereunder, for Tender Offers principally depends on the percentage of the company's securities held by US residents, whether or not the Tender Offer is for registered equity securities, and whether the company is a **Foreign Private Issuer**. Section 14(e) and Regulation 14E apply to Tender Offers for any security made, directly or indirectly, using US jurisdictional means. Section 14(d) and Regulation 14D apply to Tender Offers for any class of SEC-registered equity securities (regardless of whether the company is a Foreign Private Issuer) if the purchaser would, after completion of the Tender Offer, directly or indirectly, beneficially own more than 5% of such securities. Tier I and Tier II exemptions are available to a purchaser only where the company is a Foreign Private Issuer.

Cross-Default A provision in an **Indenture** or a loan agreement that puts the issuer or borrower, respectively, in default if another obligation is defaulted on.

See also **Cross-Acceleration**.

Cross-Receipt A letter signed at the **Closing** of an issue of securities, where an issuer confirms receipt of the net proceeds of the offering and the underwriters confirm receipt of the securities.

Crowdfunding A method of raising capital, particularly popular among technology and start-up companies, whereby

relatively small amounts of money are raised through electronic means (i.e., via the web or social media) from a large number of investors with each usually investing relatively small amounts.

In the United States, Crowdfunding is regulated by the **SEC** via the Jumpstart Our Business Startups Act 2012 (commonly known as the **JOBS Act**). In the United Kingdom, the **Financial Conduct Authority (FCA)** has released statements and recommendations on Crowdfunding. In October 2013, the FCA published a Consultation Paper entitled "The FCA's Regulatory Approach to Crowdfunding (and Similar Activities)," which sets forth regulatory considerations, as well as proposals relating to loan-based Crowdfunding and investment-based Crowdfunding.

CSD See **Central Securities Depository (CSD)**.

CTR See **Confidential Treatment Application (or Confidential Treatment Request (CTR))**.

Currency Swap An **Over-the-Counter** Derivative agreement that involves the exchange of one currency for another at a specified rate. Currency Swaps are mainly used to hedge against exchange rate fluctuations when a loan is in a currency other than the legal tender of the borrower's jurisdiction. Currency Swaps can also be used to take advantage of the cheapest borrowing rates, regardless of currency.

Current Report See **Form 8-K** and **Form 6-K**.

CUSIP A nine-character number assigned by the Committee on Uniform Security Identification Procedures to securities offered in the United States and which clear through a US-based **Clearing System**. It is an identifier used to determine the issuer and type of security, and it facilitates settlement.

Custodian A financial institution that holds securities in safekeeping on behalf of an issuer.

See also **Depository**. In addition to the Custodian services of a Depository, a Depository also provides clearing and settlement services to the financial markets.

Custody Agreements In the context of an **IPO**, the agreement stemming from when sellers (shareholders) place their shares with a **Custodian** and provide powers of attorney to allow the Custodian to deal with the shares as part of the offering process. This ensures that there is certainty of delivery at the **Closing** and makes it easier for the underwriters to deal with the shares because there is only one point of contact. An early Custody Agreement assures the underwriter that there is a better chance that the **Selling Shareholders** will not back out

later in the process. Because a Custody Agreement means that the underwriter must only deal with the Custodian at Closing, it is especially helpful to the underwriter when there are a number of individuals who are the Selling Shareholders.

Cutback See **Underwriter's Cutback**.



D&O Acronym for directors and officers of a company.

D&O Insurance Indemnity insurance that is payable to the directors or to the company itself for losses and/or legal expenses should the insured company/person suffer a loss because of a legal action for wrongful acts/damages brought against the insured/company or person.

D&O Questionnaire A questionnaire sent to directors and officers as part of the **Due Diligence** process for a **Public Offering**, a **Private Placement** or in preparation for filing an **Annual Report** (on **Form 10-K**, **Form 20-F** or **Form 40-F**) or **Proxy Statement** in order to obtain information for disclosure purposes. Such information includes securities ownership, executive compensation, directorships in other companies, and disclosure of any securities law violations, convictions for fraud, or other events that are **Material** to the fitness of the director or officer to serve on the **Board of Directors (BoD)** or as an executive.

Dark Liquidity See **Dark Pools**.

Dark Pools A type of trading platform that allows large blocks of securities to be traded without the prices being revealed publicly until after the trades are complete. Neither the size nor price of the trade(s) nor the identity of securities or the purchasers are revealed until completion, which avoids market manipulation although this disadvantages some market participants executing trades on limited information. Dark Pools reduce market transparency but provide the possibility of price improvement and reduced transaction costs by crossing orders at the midpoint of the quoted best bid and offer prices, thereby saving on both the bid-offer spread and on exchange fees.

There are three major types of Dark Pool platforms: (i) independent companies that offer Dark Pool trading as a differentiated basis for trading; (ii) broker-owned Dark Pools where a broker's clients interact anonymously; and (iii) public exchanges with their own Dark Pool platforms for clients to trade

anonymously within an exchange "infrastructure." Turquoise and Chi-X are the two major Dark Pool public exchanges.

Also referred to as **Dark Liquidity** or **Black Pools**.

DCF See **Discounted Cash Flow**.

DD See **Due Diligence**.

Dead Cat Bounce A temporary recovery from a prolonged decline in the market or share price, followed by a continued downward trend. The Dead Cat Bounce is a price pattern used by technical analysts, usually identified in hindsight.

Deal Toy A customized trophy or other item given to members of the working group to commemorate the closing of a transaction. Also referred to as a Tombstone.

Debenture A long-term (typically 10 years or more) unsecured **Debt Instrument** that is issued pursuant to an **Indenture**.

Debt Instrument A legal obligation that enables the issuing party to raise funds by promising to repay the instrument in accordance with the terms of the contract. Debt Instruments include **Bonds**, **Debentures**, leases, mortgages and **Notes**.

Debt Offering An offering in which **Bonds** or **Notes** are issued.

Debt Prepayment See **Debt Sweep**.

Debt Ratio A generic term for the financial ratio that expresses a company's debt as a proportion of a measure, such as debt compared to equity, debt compared to **EBITDA** or debt compared to assets.

As a means of illustrating the level of **Gearing** or leverage in a company, the Debt Ratio is a factor often used in determining the risk level of a particular investment.

Debt Security A security representing an issuer's debt and is a promise by the issuer to pay back borrowed money plus interest. Examples include **Bonds**, **Debentures**, and **Notes**.

Debt Sweep A type of **Mandatory Prepayment** in a **Credit Agreement**. It requires that the loan be prepaid with the proceeds of particular debt issuances. Although there will be a **Carve-Out** of this in favor of the borrower, it is likely to be limited and heavily negotiated.

Deemed Dividend If a non-US subsidiary of a US company is providing security, share pledges, or a guarantee for its US

parent's borrowings, the US parent company may be deemed to have received a dividend from the non-US subsidiary, which may trigger US tax liabilities. There are certain exceptions, and regulations finalized in 2019 generally broadened the ability of non-US subsidiaries to provide credit support to their U.S. parent companies without adverse US tax consequences, but care must still be taken when structuring such borrowings to ensure that a US tax liability is not triggered as a result of a deemed dividend.

Deemed Representations Certain representations with respect to securities law matters included in general disclaimers of an offering document, where the recipient of such offering document is deemed to have made such representations to the issuer and underwriters.

Default In the context of a **Credit Agreement** or **Indenture**, a borrower's or issuer's failure to meet its legal obligations under the agreement, for example, and most commonly, the repayment of principal and interest when those amounts are due. Other defaults include breach of the **Financial Covenant** for **Company MAC**. A Default matures into an **Event of Default** when a specified grace period passes or the borrower /issuer gives notice that they are unable to meet their contractual obligations.

See also **Event of Default**.

Default Interest Usually a higher rate of interest that accrues on amounts due in accordance with a **Credit Agreement** after the occurrence of an **Event of Default**.

Defeasance When a borrower makes a loan or bond void by setting aside cash or bonds sufficient to satisfy the debt owed to the lender. Usually, there are restrictions on what may be used to void a loan or bond in this manner. For example, in a securitized commercial mortgage, the only bonds deemed suitable for Defeasance are US Treasury bonds.

Definitive Security A certificate representing an interest in shares or **Notes** held in physical form by the holder.

Delisting See **Going Private Transaction**.

Demand Registration Rights A type of **Registration Rights** that provides an investor holding an issuer's **Restricted Securities** the right, at a certain time or under certain circumstances, to demand that the issuer register the investor's shares with the **SEC**, thus making the stock public and freely tradable.

See also **Piggyback Registration Rights**.

Demand Right See **Demand Registration Rights**.

Dematerialize When definitive securities held in physical form are converted to **Book-Entry** securities held in electronic form.

Depository Receipts (DRs) A derivative-type instrument, issued by a depository bank (in its capacity as bare trustee/agent), which represents economic and beneficial ownership in the equity of an underlying issuer.

Legal ownership of the underlying shares vests in the depository bank who holds the underlying shares in custody via a designated local **Custodian** in the domestic market. Beneficial ownership in Depository Receipts is conveyed through the depository bank to the holders of the Depository Receipts.

The most common types of Depository Receipts programs are: (i) **American Depository Receipts (ADRs)** programs which give companies outside the United States access to the US capital markets; and (ii) **Global Depository Receipts (GDRs)** programs which provide exposure to the global markets outside the issuer's home market.

Depository A company or bank that holds securities and/or funds and enables exchanges of those securities and funds. It provides clearing and settlement services, and records **Book-Entry** changes of ownership of securities. Commonly used to hold depository shares and other securities on the back of which depository receipts are issued and traded. Also known as a depository institution.

Depository Trust Company, The (DTC) The Depository Trust Company, an **SEC**-registered securities depository and a subsidiary of The Depository Trust & Clearing Corporation (DTCC), which is one of the world's largest **Clearing Systems**. The DTC acts as a Clearing System for securities transfers, stores the physical security certificates on behalf of **Custodian** banks, brokers, and dealers, and maintains an electronic bookkeeping system for trading purposes.

Depreciation The allocation of the total value of a tangible asset across the expected life of the asset by attributing portions of such value to different time periods. Depreciation is a cost allocation method, not a valuation method.

Deregistration See **Going Private Transaction**.

Derivatives A security, the price of which is dependent upon or derived from one or more underlying assets.

Description of Notes A summary of the provisions of the **Indenture** included in the offering document on a bond issue.

Designated Offshore Securities Market Defined in Rule 902 of the **Securities Act**, and includes the **Eurobonds** market (administered by the International Bond Dealers) as regulated by the **London Stock Exchange** as well as other named foreign securities exchanges.

Direct Registration System, The (DRS) Established by the **Depository Trust Company, The (DTC)**, a method of recording entitlement securities in book-entry form which enables a **Transfer Agent** to maintain those securities electronically in records of the issuer on behalf of the relevant security holder without the need for a physical share or stock certificate to be issued. The DRS method of recording is commonly used in the United States and securities held in DRS have all the traditional rights and privileges of securities held in certificated form.

Directed Selling Efforts Defined in Rule 902 of the **Securities Act**, which includes any activity undertaken for the purpose of, or that reasonably could be expected to have the effect of, conditioning the US market for an offering of securities made in reliance upon **Regulation S**.

Directed Share Program A program, generally administered by the **Lead Manager**, in the context of an **IPO** (or, less commonly, **Secondary Offering**) whereby a certain portion of the securities offered are reserved by the Lead Manager for purchase by the issuer's employees, directors and other connected persons (i.e., purchases by those who otherwise may not have been permitted to participate in the **SEC**-registered offering).

Disclosure and Transparency Rules Published by the **Financial Conduct Authority (FCA)** and contained in the **FCA Handbook**. The FCA, pursuant to the Disclosure and Transparency Rules, monitors market disclosures by issuers and others and enforces regulatory compliance.

Disclosure Letter In a cross-border offering where a substantial portion of the **Due Diligence** has been conducted by local lawyers, a Disclosure Letter or 10b-5 "look-alike" letter may be required to be delivered by the local law firm, which covers substantially similar items as a **10b-5 Letter**. This should not be confused with the UK usage of "disclosure letter" being a letter provided by the seller to the buyer on mergers and acquisition transactions setting out exemptions to the warranties.

Discount Notes Short-term debt securities (usually maturing in under a year from issuance) issued at a discount to **Par**.

Discount Notes do not pay interest; instead, the investor receives Par value upon **Maturity**. The difference between the purchase price and expected return on Maturity is the **Yield**.

Discounted Cash Flow A valuation method that is used to evaluate the potential of an investment opportunity. Discounted Cash Flow analysis uses future cash flow projections and discounts them (often using the weighted average cost of capital) to arrive at present value. If the value arrived at through the analysis is higher than the current price of the investment, it may be a good opportunity.

Distribution Compliance Period With respect to securities sold in reliance upon **Regulation S** (category 2 or 3), the period of time during which a number of restrictions are imposed on issuers, distributors, **Affiliates**, and agents in order to prevent securities from being traded to US citizens or on US markets following their issue.

This compliance period applies to securities sold under Regulation S; however, some limited exemptions may be available. The category, either 2 or 3, of Regulation S into which the issuer falls and whether they issue debt or equity will determine the extent of the restrictions and length of the period.

Dividend A payment made to shareholders out of a company's available profits. Corporate laws, as well as the company's **Charter**, govern the circumstances under which a company may pay dividends. Unscheduled dividend payments are known as special dividends or extra dividends.

DJIA See **Dow Jones Industrial Average**.

Documentation Agent A bank that acts on behalf of a group of lenders in appointing the lead counsel and negotiating the loan documentation under a syndicated loan agreement.

Dodd-Frank Act US Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, a financial regulatory reform act adopted following the global financial crisis of 2008. Among other things, the Act changes regulations regarding capital investment by banks and insurance companies, the regulation of hedge funds, the definition of accredited investors and the disclosure requirements regarding executive compensation and corporate governance practices.

Domestic Issuer Pursuant to the **Securities Act**, an issuer domiciled in the United States or a foreign issuer that has too many US holders of its securities to satisfy the test to be deemed a **Foreign Private Issuer**. The **Securities Act** defines a Domestic Issuer as an issuer that is not a foreign government or a Foreign Private Issuer.

See also **Foreign Private Issuer**.

Dow Jones Industrial Average An index involving the price-weighted average of 30 significant stocks traded on the **NYSE** and **NASDAQ**.

Drafting Session A meeting or session involving the issuer, the underwriter(s) and their respective counsel, whereby all parties meet and draft various components of the offering document. A Drafting Session is typically seen as being more efficient than allowing all parties to review or revise the offering document independently. A key component of the Drafting Session is the questioning of management and negotiation between the parties on how best to disclose various issues. At the Drafting Session, management is typically required to verify disclosure contained in an offering document. The Drafting Session forms a key component of the **Due Diligence** exercise, particularly in the issuance of a **10b-5 Letter**.

Drag-Along Rights In the context of a share sale, provisions that allow a majority of shareholders (usually 75% or higher) who wish to accept an offer to purchase their shares to force the remaining shareholders to accept the offer at the same price and on the same terms and conditions.

See also **Tag-Along Rights**.

Drawdown The issue of a series of securities under a securities program (as opposed to a stand-alone issuance) up to the established program limit.

Drop Dead Date The date on which a transaction will automatically terminate if it does not close. Also referred to as the **Long Stop Date**.

DRs See **Depository Receipts (DRs)**.

DRS See **Direct Registration System, The (DRS)**.

DTC See **Depository Trust Company, The (DTC)**.

DTC Letter of Representations (LOR) A letter of agreement between an issuer and the **Depository Trust Company, The (DTC)** (DTC), containing various representations made to DTC by the issuer. This letter is in a standard form prescribed by DTC and is necessary before the issuer's securities can be deposited with DTC. An issuer can provide a **Blanket Letter of Representations (BLOR)** with respect to programs and future issuances or an **Issuer Letter of Representations (ILOR)** for a particular issuance.

See also **Blanket Letter of Representations (BLOR)** and **Issuer Letter of Representations (ILOR)**.

Dual Currency Bond The issue of securities denominated in one currency, but where interest and/or principal is repayable in another currency.

Dual Listing The listing of a company's securities on more than one exchange, generally for the purpose of adding liquidity to the shares. Dual Listing also allows investors greater choice in where they can trade their shares.

Shares may be listed on the exchanges of different countries. While Dual Listing is not a widely used technique, it may improve the spread between the bid and ask prices for a share, helping the investor obtain a better price for their shares.

Due-Bill An assignment or other instrument employed for the purpose of evidencing the transfer of title to any dividend, interest or rights pertaining to securities contracted for, or evidencing the obligation of a seller to deliver such dividend, interest or rights to a subsequent owner. These are typically represented in the **Depository Trust Company, The (DTC)**.

Due Diligence (DD) An investigation into a company, the purpose of which varies depending on the context in which it is carried out.

In the context of a securities offering, the issuer's advisers (specifically, issuer's counsel and accountants) carry out Due Diligence to allow the underwriters to benefit from the **Due Diligence Defense** from liability stemming from **Section 11** and **Section 12 of the Securities Act** and to determine the disclosure in the offering document, as well as to comply with any anti-money-laundering, **Know Your Client (KYC)**, and other regulatory requirements.

In the context of large loan transactions, Due Diligence is mainly carried out by the various financial advisers to ensure a transaction is commercially viable.

In the context of an asset or stock purchase, Due Diligence is carried out by the purchaser to evaluate the purchase price, determine what disclosures should be in the transaction documents, and to negotiate appropriate contractual protections for known actual or potential liabilities.

Due Diligence Condition A Condition Precedent (CP) in the **Commitment Letter** that states that the commitment is subject to the **Arranger's** completion of **Due Diligence**.

Due Diligence Defense A defense to liability in a civil action based on securities laws where the defendant can show that it met a prescribed standard of care in preparing the disclosure(s) distributed to investors. Where a non-Expert makes a false statement or omission, the defendant will have to prove that after reasonable investigation there were reasonable grounds to believe that the statements in the offering document were true and no **Material** facts were omitted. Where a false statement or omission is made by an **Expert** (e.g., derived from audited **Financial Statement(s)**), the defendant will have to prove that there were no reasonable grounds to believe that the Expert's statements in the offering document contained misstatements or omissions of Material facts.

This defense is available to all participants in an offering, except the issuer, which is strictly liable for disclosure. It is the underwriters' primary defense against securities offerings lawsuits. In an **SEC**-registered offering, it is an affirmative defense against **Section 11** and **Section 12 of the Securities Act** liability. In a **Private Placement**, it is an affirmative defense to liability under **Rule 10b-5** and **Section 10(b)** of the **Exchange Act**. In establishing its Due Diligence Defense an underwriter will rely on their own Due Diligence and counsel's **10b-5 Letter** and the **Comfort Letter**.

See also **10b-5 Letter**.

Due Diligence Session See **Management Due Diligence Session**.

Dutch Auction A public offering auction structure in which the price of the offering is set after taking in all bids and determining the highest price at which the total offering can be sold. Investors place a bid for the amount they are willing to buy in terms of quantity and price. The United States Department of the Treasury, through the Federal Reserve Bank of New York, raises funds for the US Government using a Dutch Auction.

Also refers to an auction in which the price on an item is lowered until it gets a bid. The first bid made is the winning bid and results in a sale, assuming the price is above the reserve price (i.e., the seller's minimum acceptable price).

See also **Modified Dutch Auction**.



E-Proxy When **Proxy** materials (including the **Proxy Statement**, a **Proxy Card**, the **Annual Report**, and any other soliciting materials) are made available to shareholders via a publicly accessible website.

Earnings Release A press release issued by a company at the end of a financial period (e.g., **Quarterly** or half-yearly), which includes management's discussion of the company's financial performance and results during the relevant financial period, as well as interim **Financial Statement(s)**.

EBIT Acronym for Earnings Before Interest and Taxes, which is a measurement of a company's profitability. EBIT may include some profits or losses that are excluded from operating profit. Also referred to as "PBIT" or "profits before interest and taxes."

See also **EBITDA**.

EBITDA Acronym for Earnings Before Interest, Taxes, **Depreciation**, and Amortization. A performance statistic used in the majority of debt offerings to show the actual profit made by a company in a given period and to assess a company's ability to service debt. Financing charges (interest) and tax are unrelated to the performance of the business, and **Depreciation** and **Amortization** are accounting concepts only, not real costs incurred by a business.

EBITDA to Fixed Charges Ratio The ratio that measures a company's ability to either take on additional debt or pay off existing debt. Calculated as **EBITDA** divided by **Fixed Charges**.

EDGAR Acronym for the SEC's Electronic Data Gathering, Analysis and Retrieval System that is used to file and review documents submitted in electronic form to the **SEC**.

EDGARize To electronically convert a document into the proper format for transmission to the SEC's EDGAR system, using certain assigned codes.

EEA See **European Economic Area (EEA)**.

EEA Exchange Regulated Market A trading market that is not an **EEA Regulated Market** and is therefore not subject to the **EU Prospectus Regulation** and certain other EU directives that impose disclosure requirements and ongoing reporting

requirements. For example, the Euro MTF in Luxembourg, and **GEM** in Ireland.

See also **UK Exchange Regulated Market**.

EEA Regulated Market A market for a variety of securities in a state in the **European Economic Area (EEA)** that complies with the relevant criteria of the recast Markets in Financial Instruments Directive (MiFID II) promulgated by the **European Union (EU)**. Typically, the primary market in a European Economic Area (EEA) state will be an EEA Regulated Market

Effective Subordination Where **Junior Debt** is repaid before **Senior Debt**. This situation mainly arises where a bond (the contractually Junior Debt) matures before the repayment date of a loan (the contractually Senior Debt).

EGC See **Emerging Growth Company (EGC)**.

Einhorn On January 12, 2013, the **Financial Services Authority (FSA)** levied a fine on David Einhorn and his hedge fund, **Greenlight Capital, Inc.**, for approximately US\$11.6 million for trading on **Insider Information**. The case highlighted certain differences between the laws of **Insider Trading** in the United States and the United Kingdom.

EITF Acronym for the Emerging Issues Task Force, which, through the identification, discussion, and resolution of financial accounting issues, assists the **Financial Accounting Standards Board (FASB)** in the implementation of new rules.

Eligibility Letter A letter submitted to the **Financial Conduct Authority (FCA)** by new applicants for a listing of shares on the **Main Market**. It provides for the identification and resolution of any eligibility requirements. This letter should be submitted before the new applicant's **Prospectus** is submitted.

Emerging Growth Company (EGC) A category of issuer under **SEC** rules, as introduced by the **JOBS Act**. An EGC is a domestic or foreign company with annual gross revenues of less than US\$1,235,000,000 (initially \$1 billion, but adjusted for inflation in September 2022) and that has not had a US IPO prior to December 8, 2011.

The **JOBS Act** has granted EGCs certain accommodations, such as reduced financial disclosure.

See **JOBS Act**.

Employee Retirement Income Security Act (ERISA) US Employee Retirement Income Security Act of 1974,

which established legal guidelines for private pension plan administration and investment practices, including regulations relating to plan funding, participation, vesting, termination, disclosure, federal tax treatment, and fiduciary responsibility of plan administrators.

In the context of capital markets transactions, **ERISA** can impact: (i) transaction documentation regarding issuers giving assurances to underwriters that they are exempt from the ERISA regime, as well as (ii) transactions being structured to exclude ERISA investors in order to avoid issuers becoming subject to the ERISA regime.

EMTN Program See **Euro Medium-Term Note Program (EMTN Program)**.

Engagement Letter In the context of an issuance, a letter that describes the arrangement between parties, such as the Engagement Letter between the underwriters or the initial purchasers and the issuer, to sell the issuer's securities.

In the context of debt finance, an Engagement Letter is part of the **Commitment Papers**, and is signed along with the **Commitment Letter** and **Fee Letter**.

Most transactions will also involve an Engagement Letter between the issuer and the accountants setting out the scope of the accountants' review of financial information as part of the transaction. See **Auditor Arrangement Letter**.

Entire Fairness Test A test designed to determine whether a director has breached his or her fiduciary duty of loyalty to a company. It examines the elements of a transaction to which the director was party. The test considers more than the commercial rationale of the transaction, and requires the examiner to look at the timing of the transaction, as well as how the transaction was initiated, structured, negotiated, and disclosed to the **Board of Directors (BoD)**, in addition to a review of economic and financial considerations.

Equity Carve-Out An IPO mandated and managed by the parent company of a proportion of a subsidiary's shares. In an Equity Carve-Out, the parent company remains the majority shareholder, with the minority stake held in public hands. In general, an Equity Carve-Out is a precursor to a full spin-off of a subsidiary. Because the **Holding Company** retains majority control, purchasing shares in the subsidiary may be less appealing to investors as they are less able to influence management.

Equity Commitment Letter An agreement, between an investor and the newly formed acquisition vehicle, in which the investor commits to an equity contribution in the vehicle by the **Closing** of the transaction.

See also **Commitment Letter**.

Equity Cure A provision in **Credit Agreements** that allows the shareholders of a borrower to provide cash to the borrower in exchange for equity in the borrower company so that the borrower can avoid breaching the **Financial Covenants** in a Credit Agreement. Lenders are hesitant to agree to an Equity Cure provision because its exercise is potentially a sign of the borrower's poor financial health, and it may delay the lender's recovery of the debt if the borrower were to breach the Financial Covenants.

Equity Kicker A feature, like an exercisable **Warrant**, added to **Debt Instruments** or **Credit Facilities** that allows a lender to participate in the equity of the borrower, usually only on the occurrence of certain events.

Equity-Linked Securities either convertible into, or with **Warrants** to purchase, shares of the issuer or another company.

Equity Prepayment See **Equity Sweep**.

Equity Security A security that denotes and measures ownership in the equity of an entity. Investors share in the profits of the entity in which they have equity shares through dividends and the potential to realize a gain on the sale of the securities themselves. Additionally, equity holders have a right to a share of an entity's property on returns of capital and on **Bankruptcy**, once all creditors have been paid. The term also includes any security that is convertible into such a security or carrying any **Warrant** or right to subscribe to or purchase such a security or any such Warrant or right. An equity security is defined in Section 3(a)(11) of the **Exchange Act**.

Equity Sweep A form of **Mandatory Prepayment**. A provision in a **Credit Agreement** that requires loans to be prepaid with the proceeds of equity issuances, by either the borrower or a **Guarantor**, depending on the terms of the Credit Agreement. Equity Sweeps in the form of proceeds of equity issuances by a subsidiary of the borrower or Guarantor are referred to as **Asset Sale Sweeps**.

ERISA See **Employee Retirement Income Security Act (ERISA)**.

Escrow The holding of cash or assets of a transaction that are to be used for a specific purpose until the **Closing** of the

transaction or the occurrence of a specified future event. An independent third party who holds such cash or assets in Escrow is called an escrow agent.

ESMA The European Securities and Markets Authority. ESMA replaced the **Committee of European Securities Regulators (CESR)** on January 1, 2011, with the continued aim of increasing transparency and integrity within the securities markets and **Ratings Agencies**, improving cooperation among securities regulators, and implementing community legislation in individual **EU Member States**.

ETF See **Exchange-Traded Fund (ETF)**.

eToys A well-known 2005 case *EBC I, Inc. v. Goldman Sachs & Co.*, in which the official committee of unsecured creditors of the bankrupt internet retailer eToys, Inc. brought a suit against Goldman Sachs, the **Managing Underwriter** of the eToys IPO in 1999. The court ruled that, in some circumstances, the **Lead Manager** in a **Firm Commitment Underwriting** might owe fiduciary duties to the issuer. As a result of the case, **Commitment Letters** and **Underwriting Agreements** usually include provisions excluding any fiduciary duties.

Exchange Regulated Market For the EEA, see **EEA Exchange Regulated Market**. For the UK, see **UK Exchange Regulated Market**.

EU MAR See **EU Market Abuse Regulation (EU MAR)**.

EU Market Abuse Regulation (EU MAR) Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, including which aims to increase market integrity and investor protection and enhance the attractiveness of securities markets for capital raising. The EU Market Abuse Regulation (EU MAR) came into effect on July 3, 2016. It contains prohibitions for insider dealing, market manipulation, unlawful disclosure of inside information and provisions to prevent and detect these.

See also **UK Market Abuse Regulation (UK MAR)**.

EU Member State States that are party to treaties of the **European Union (EU)**.

EU Prospectus Regulation Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, which regulates offers and sales of securities to investors in the **EU Member States**, and aims to harmonize prospectus disclosure

requirements across all **European Economic Area (EEA)** member states.

See also **UK Prospectus Regulation**.

EURIBOR The Euro Interbank Offer Rate, the daily **Reference Rate** at which banks can borrow unsecured funds from other banks in the EU **Money Market**.

See also **HIBOR**, **LIBOR** and **SIBOR**.

Euro Interbank Offer Rate See **EURIBOR**.

Euro Medium-Term Note Program (EMTN Program)

Medium-term debt securities issued pursuant to a program where such securities can be issued quickly based on brief supplements to a set of master program documents, up to the issuing limits under the program. EMTN Programs are typically established as **Regulation S Offerings**, with no offerings made in the United States.

Eurobonds Any bond issued and traded in countries other than the country in which the currency of the bond is denominated. This means that the bond exists outside the jurisdiction of the central bank that issues the currency in which the bond is denominated. For example, a US dollar denominated bond that is issued by a German company in Spain would be a Eurobond as it is denominated in US dollars but issued outside the United States. It must be noted that this term has no connection to the euro and the prefix is simply used to refer generally to a deposit outside the jurisdiction of that currency's domestic central bank.

Euroclear Euroclear Bank S.A./N.V. An electronic **Clearing System** that settles and holds international securities, and is one of the primary Clearing Systems in Europe.

Euroclear UK Euroclear UK & International, which owns and operates **CREST**. Euroclear UK is often referred to as **CREST**.

Eurodollar US dollar denominated deposits at overseas banks or overseas branches of US banks. Eurodollars are not subject to the usual US banking regulations. Originally, Eurodollars were held almost exclusively in Europe; hence the name. Since the Eurodollar market is relatively free of regulation, banks in the Eurodollar market can operate on narrower margins than banks in the United States.

Euronext With outlets in Amsterdam, Brussels, Lisbon, London and Paris, one of the world's largest stock exchanges in terms of both trading volume and value of shares traded.

European Economic Area (EEA) Comprises three member states of the European Free Trade Association (EFTA), (Iceland, Liechtenstein and Norway) and the 27 member states of the **European Union (EU)**. It was established on January 1, 1994 following an agreement with the European Community (which became the European Union (EU)) and it allows its member states to participate in the EU's Internal Market without being members of the EU.

European Union (EU) An economic and political union of 27 Member States including Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

Event of Default An action or circumstance that allows a lender (or bondholder) to demand full repayment of an outstanding balance sooner than it was originally due. Circumstances that may trigger an Event of Default include nonpayment, late payments or the breach of **Covenants**. Depending on the nature of the **Default**, the terms of the **Debt Instrument** may permit the debtor or issuer an opportunity to cure the Default but if such Default is not cured, it matures into an Event of Default.

See also **Default**.

Evergreen A contract provision that automatically renews the length of an agreement or provision after the expiration of a predetermined period of time, unless notice of termination is provided by a party before the expiration of that period.

Exchange Act US Securities Exchange Act of 1934, as amended. A federal law passed by the US Congress that established the **SEC** and governs the trading of securities in the **Secondary Market**, including periodic disclosure requirements, antifraud provisions, and the regulation of **Broker-Dealers**, **Tender Offers**, and US securities exchanges. Also referred to as the **'34 Act** and the Securities Exchange Act.

Exchange Notes A senior, unsecured, unsubordinated debt security issued by an underwriting bank and whose returns are typically linked to the performance of a market benchmark, less investor fees. **Bridge Loans**, when converted to **Term Loans** (on **Maturity** – generally within a year of granting), often carry the right to be converted into Exchange Notes (in some cases the conversion from Bridge Loan to Exchange Notes is automatic). Exchange Notes tend to be **High Yield Bonds** benefiting from, among other rights, **Call Protection** and **Registration Rights**.

Exchange Offer An offer of securities (sometimes together with cash) by a company in return for other securities. For example, a company may offer to give shares of a certain company if the shareholders will return shares of another company. An Exchange Offer of stocks is common following a merger or acquisition.

See also **Stock-For-Stock Transaction** and **Liability Management**.

Exchange-Traded Fund (ETF) SEC-registered investment funds trading on a stock market and in which investors can buy shares in order to gain exposure to the underlying assets that the ETF has been set up to track. Common ETFs include those that hold stocks that correspond to certain indices such as the Fortune 500 or the **FTSE 100**.

Exchangeable Notes A **Debt Security** that the holder may exchange for the stock of an entity that is not the same entity as the issuer of the note. The number of shares the holder receives and the price of those shares are determined when the exchangeable note is issued. The main difference between a **Convertible Bond** and an Exchangeable Note is that on conversion of a Convertible Bond the investor receives the shares of the issuer.

Execution Version The final agreed version of a document ready for execution that, when executed, becomes the legally binding definitive agreement.

Executive Officer Defined in Rule 405 of the **Securities Act** and Rule 3b-7 of the **Exchange Act** to include a company's president, any vice president in charge of a principal business unit, division, or function, and any other officer who performs a policy-making function. Executive Officers of subsidiaries may be deemed Executive Officers of the parent company if they perform policy-making functions for the parent company. A **Reporting Company** is required to make certain disclosures regarding the experience, activities, and compensation of its Executive Officers.

Exemption The legal basis upon which securities do not need to be registered with the **SEC** under the **Securities Act**.

See also **Regulation D**, **Rule 144A** and **Section 4(a)(2)**.

Exhibit 5.1 Opinion A US state law opinion of the issuer's counsel as to the due authorization and valid issuance of securities registered with the **SEC**, which is filed as Exhibit 5.1 under **Regulation S-K**.

Expert A professional on whose expertise other people can rely for the accuracy of facts presented.

Expertized Refers to information in an offering document prepared by an **Expert** (e.g., the audited **Financial Statement(s)** that are prepared by the auditors; mineral reserves and resources reports that are prepared by qualified mining experts). The Expertizing of a section of an offering document protects directors, underwriters, and others from liability for misstatements in that section unless they had reasonable grounds to believe the statement to be false, under **Section 11**.

See also **Section 11**.

External Auditors An audit professional who performs, in accordance with specific laws or rules, an audit on the **Financial Statement(s)** of a company and who is independent of the entity being audited.

Exxon Capital Exchange Offer See **A/B Exchange Offer**.



F-Cubed See **Morrison v. National Australia Bank**.

Facility Agent See **Administrative Agent**.

Facility Agreement See **Credit Agreement**.

Fair Market Value The price of an asset or real property as determined through an arm's-length voluntary transaction between a buyer and seller in a free market. The concept is often used in **Indentures** and **Credit Agreements** to prohibit a borrower from disposing of an asset at under-value or buying an asset at over-value.

Fair Value Accounting An accounting term. A value measurement approach where assets and liabilities are remeasured periodically to reflect changes in their value, with the resulting change impacting on either net income or other comprehensive income for the period. In general, this approach generates a **Balance Sheet** that better reflects the current value of assets and liabilities, although there is greater volatility in periodic reported performance caused by changes in fair value. As applied to quoted securities, such as stocks, bonds, and commodities, Fair Value Accounting is also referred to as Mark-to-Market Accounting.

See also **Periodic Reports**.

Fallen Angel See bond that was once **Investment Grade** but has since been reduced to **High Yield Bonds** status.

FASB See **Financial Accounting Standards Board (FASB)**.

FAST Act See **Fixing America's Surface Transportation Act (FAST Act)**.

FATCA See **Foreign Account Tax Compliance Act (FATCA)**.

FCA See **Financial Conduct Authority (FCA)**.

FCA Handbook Sets out the rules and guidance of the **Financial Conduct Authority (FCA)** made under powers given to the FCA by the Financial Services and Markets Act 2000.

FCPA See **Foreign Corrupt Practices Act (FCPA)**.

Federal Register The official daily (except holidays) journal of the federal government of the United States that contains most routine publications and public notices of US government agencies. The Federal Register is the main source of publication for the US government agencies of: proposed new rules and regulations; final rules; changes to existing rules; and notices of meeting and adjudicatory proceedings. The final rules adopted by a US federal agency and published in the Federal Register are reorganized by subject matter and codified in the Code of Federal Regulations (CFR), which is updated annually.

Federal Statute A law passed by the United States federal government, as compared to a law passed by a US state government. Federal Statutes are compiled and codified in the Code of Laws of the United States of America.

Fed Reference Number A wire transfer identification number provided by the US Federal Reserve System.

Fee Credit A provision in a **Fee Letter** that credits back some of the funding fee against the **Placement Fee** under certain circumstances (e.g., a **High Yield Offering** after **Bridge Loans** are funded).

Fee Credit Letter A letter describing the terms for a Fee Credit. Some banks use a Fee Credit Letter, while other banks include the Fee Credit terms in the **Engagement Letter** or **Fee Letter**.

Fee Letter A letter detailing the fees due to **Agents** and lenders for the initial underwriting, subsequent financing, and

Administrative Agent fees of an offering. A Fee Letter is part of the **Commitment Papers** package.

Final See **Final Prospectus**.

Final Prospectus The final version of a **Prospectus**, which has been updated since the **Preliminary Prospectus** to include the number of securities issued and the **Pricing** terms.

Final Terms In the United Kingdom, a **Term Sheet** prepared for each **Drawdown** of securities under a program, and which contains the commercial terms of a particular securities issue (e.g., for bonds, the **Interest Rate**, **Maturity Date**, and terms of any **Put Options** or **Call Options**).

Financial Accounting Standards Board (FASB) An independent US private-sector organization, consisting of seven accounting professionals, that establishes financial accounting and reporting standards, including **GAAP**, for nongovernmental entities. The **SEC** officially recognizes FASB standards as authoritative.

The predecessor of the FASB was the **Accounting Principles Board**.

Financial Conduct Authority (FCA) The successor to the UK **Financial Services Authority (FSA)** which regulates the United Kingdom's financial and securities markets. The Financial Conduct Authority (FCA) also has primary market functions pursuant to which it: (i) makes and amends the Listing Rules and the **Disclosure and Transparency Rules**; (ii) monitors issuers and their shareholders and directors for compliance with those rules; and (iii) approves prospectuses. The Financial Conduct Authority (FCA) was previously referred to as the UK Listing Authority (UKLA) when performing these primary market functions.

Financial Covenant Another name for a **Maintenance Covenant** or a debt **Covenant** contained in **Credit Agreements** or **Indentures**. An agreement between a borrowing company/ issuer and its creditors/bondholders dictating the company's operating limits. Such Covenants are always a condition of borrowing/issuing bonds, and can be amended if the debt is restructured (usually as a result of a breach of Covenant).

Financial Data Schedule A summary of an issuer's **Financial Statement(s)**, which is filed only by **Domestic Issuers** via **EDGAR**.

Financial Industry Regulatory Authority (FINRA) Created in July 2007 by the merger of the National Association of Securities Dealers, Inc. (NASD) and the member regulation,

enforcement, and arbitration functions of the **NYSE**. **FINRA** is responsible for regulating business between brokers, dealers, and the investing public.

FINRA was formerly known as the **National Association of Securities Dealers, Inc. (NASD)**.

Financial Reports See **Financial Statement(s)**.

Financial Services Authority (FSA) Predecessor to the **Financial Conduct Authority (FCA)**.

Financial Statement(s) Often referred to as “financials,” these statements are designed to give the reader an understanding of a company’s financial position and include **Income Statements**, **Balance Sheets**, and Cash Flow Statements.

In the United Kingdom, Financial Statements are often referred to as the Annual Report and Accounts, **Financial Reports** or **Short Form Reports**.

Financing Statement A document filed by a creditor to perfect the creditor’s interest in security granted to the creditor by a borrower. Also known as a **UCC-1 Financing Statement**, a Financing Statement need only contain: the debtor’s name and address; the creditor’s name and address; and a description of the collateral. A Financing Statement is unrelated to a Financing Statement.

See also **Uniform Commercial Code**.

FINRA See **Financial Industry Regulatory Authority (FINRA)**.

Firm Commitment Offering See **Firm Commitment Underwriting**.

Firm Commitment Underwriting A guarantee by an underwriter or an initial purchaser to purchase all of the securities being offered by a company at an agreed-upon price with the securities to then be sold to the public and/or **Institutional Investors**. The underwriter assumes the risk that it may not be able to resell all of the securities to the public and, in such circumstances, is forced to keep them for their own account. For the issuer, this is the safest but most expensive type of initial sale of securities.

Also known as a **Bought Deal** or a **Firm Commitment Offering**.

Fiscal Agent A bank appointed by the issuer and any **Guarantor** to carry out payments and other administrative duties in relation to the securities issued.

Fiscal Year The financial year of a company. The 12-month period used as an accounting period to measure assets, liabilities, and other financial indicators.

Fitch Fitch Ratings, a subsidiary of Fimalac SA, is a leading **Ratings Agencies** that assesses the creditworthiness of companies on a scale from AAA to D. Fitch determines **Credit Ratings** by analyzing information known to them, including publicly available information and/or non-public documents and information provided by an issuer or other parties.

See also **Ratings Agencies**.

Fixed Charge Coverage Ratio See **EBITDA to Fixed Charges Ratio**.

Fixed Charges In the context of an **EBITDA to Fixed Charges Ratio**, Fixed Charges are interest expenses. These are defined in a **Credit Agreement** or **Indenture** as the total of consolidated interest expenses plus certain dividends on **Preferred Stock**.

Fixed-Income Security A **Debt Security** with **Fixed Rates**, for example, a bond, that offers real return rates received at regular intervals at generally predictable levels.

Fixed Price Deal See **Bought Deal**.

Fixed Rate An **Interest Rate** that is specified on the issuance of a **Debt Security** and is locked for the life of the security. Compare with **Floating Rate**.

Fixing America’s Surface Transportation Act (FAST Act) Signed into law on December 4, 2015, legislation primarily directed at improving transportation in the United States. The FAST Act contains a number of ancillary provisions, including certain changes to securities laws. Many of these changes are to provisions of the **JOBS Act**, which facilitate smaller companies’ ability to access capital markets.

Flex See **Market Flex** and **Structure Flex**.

Flipping The practice of purchasing shares in an offering at the offering price and then reselling those same shares very quickly after the start of public trading to realize an immediate profit. Although some Flipping is desirable to ensure **Liquidity** after an offering, excessive Flipping may negatively affect the **Secondary Market**. Accordingly, underwriters may impose a penalty on brokers to discourage this practice.

Float An **IPO** of a company (i.e., floating its shares on a stock exchange).

Floating Rate An **Interest Rate** that changes in relation to a market rate, such as **SOFR**, **LIBOR** or a **Prime Rate**. Adjustments to the Interest Rate are normally made periodically and are tied to a money-market index. Compare with **Fixed Rate**.

Flowback For securities offered pursuant to **Regulation S** to non-US persons outside of the United States, the risk that such foreign investors will sell such securities to US persons or otherwise into the United States. The **Safe Harbor** provisions of Regulation S are intended to reduce the risk of Flowback.

FMV See **Fair Market Value**.

FOIA Request In the United States, a request for disclosure of federal government materials or materials that have been provided to the federal government, but which are not usually public.

See also **Confidential Treatment Application (or Confidential Treatment Request (CTR))** and **Freedom of Information Act (FOIA)**.

Follow-On Offering Any offering of **Common Stock** that occurs after a company’s **IPO**.

See **Secondary Offering**.

Football Field The back page of an offering document that lists the name and contact details of the issuer and its advisors to the Offering (e.g., the underwriters, **Agents**, legal advisers to the issuer, legal advisers to the underwriters and issuer’s **External Auditors**).

Forbearance An arrangement between a defaulting borrower and the lender whereby the lender agrees not to exercise certain rights to accelerate the debt while the borrower tries, for example, to improve performance or seek alternate sources of funding to make up for overdue payments.

Force Majeure A commonly used term to describe events outside the control of the parties to an agreement (e.g., suspension of all trading on a stock market, natural disaster, outbreak of war). Such events are generally included as **Event of Default**.

Foreign Account Tax Compliance Act (FATCA) Provisions of US tax law commonly known as FATCA are intended to address tax evasion by US persons with offshore investments or accounts. The rules generally require that non-U.S. “financial institutions” (a term broadly defined that includes financial intermediaries) and certain other non-U.S.

entities comply with due diligence and reporting requirements (generally relating to ownership by US persons of interests in, or accounts with, those entities). Failure to comply may result in US withholding on income that these non-compliant entities receive. Intergovernmental agreements (IGAs) between the US and various jurisdictions may modify these requirements. FATCA withholding currently applies to US source income. Withholding by financial institutions on “foreign passthru payments” may apply in the future.

Foreign Corrupt Practices Act (FCPA) US Foreign Corrupt Practices Act (FCPA) of 1977, which prohibits bribery and corruption by the making of payments to foreign officials for the purpose of obtaining or retaining business. FCPA applies, broadly speaking, to US companies and individuals, companies that are listed on a US exchange, employees and agents of US businesses, and foreign nationals and businesses that engage in specific prohibited acts while in the territory of the United States (but in certain circumstances may apply to conduct with no US territorial connection).

Foreign Private Issuer As defined in Rule 3b-4 under the **Exchange Act** using a two-stage negative test. Any entity or corporation organized outside the United States, other than a foreign government, is considered a Foreign Private Issuer, unless:

- (a) more than 50 per cent of its voting securities are, directly or indirectly through voting trust certificates or depositary receipts, owned by US residents; and
- (b) one of the following is true:
 - (i) a majority of its executive officers or directors are US citizens or residents;
 - (ii) more than 50 per cent of its assets are located in the United States; or
 - (iii) its business is administered principally in the United States.

In determining the percentage of shares held by US residents, a Foreign Private Issuer must “look through” brokers, dealers, and nominees and examine the accounts of **Beneficial Owners** who are resident in the United States.

Foreign Private Issuers use specific forms (for example, **Form 6-K**, **Form 20-F**, or **Form 40-F**) when filing with the **SEC**.

See also **Domestic Issuer**.

Foreign Private Issuer Guide Known colloquially as the Foreign Private Issuer Guide, this publication, entitled “Accessing the US Capital Markets – A Brief Overview for Foreign Private Issuers” was published in February 2013 by the Division of Corporation Finance at the **SEC**.

This guide is intended to provide a general overview of the relevant laws and regulations governing the US securities markets with which foreign companies wishing to access the US capital markets should be familiar. The guide provides considerations for foreign companies, especially foreign private issuers, who would like to raise funds or issue securities into the United States.

The guide can be found at: <http://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#I>

Form 6-K An **SEC** form required to be submitted by **Foreign Private Issuers** of securities subject to the **Exchange Act**. The form provides US investors with access to the same information as investors, security regulators, and stock exchanges in the Foreign Private Issuer’s home market.

Because there are no other material and detailed reporting obligations required by Foreign Private Issuers, other than furnishing an **Annual Report** on **Form 20-F**, the requirement to file Form 6-K demands a certain level of disclosure from the Foreign Private Issuer.

Form 8-K An **SEC** form that **Domestic Issuers** subject to the **Exchange Act** must file to report **Material** developments. Significant changes in a public company (*e.g.*, any significant acquisition, a change of auditors, the appointment of a new **Named Executive Officers**, a **Change of Control**, or **Bankruptcy**) are notified via Form 8-K. Also known as a **Current Report**.

Form 10-K An **Annual Report** filed with the **SEC** and required under the **Exchange Act** in which publicly traded companies that are **Domestic Issuers** provide a comprehensive overview of a company’s business and financial information.

Form 10-Q A **Quarterly Report** filed with the **SEC** and required under the **Exchange Act** filed by **Domestic Issuers** disclosing financial information (*e.g.*, Quarterly Financial Statement(s), **MD&A**).

Form 20-F An **Annual Report** filed with the **SEC** and required under the **Exchange Act** filed by **Foreign Private Issuers**. Form 20-F is used to disclose extensive business and financial information about the company, as well for other purposes, in

particular, for a Foreign Private Issuer to register its securities with the **SEC** for the first time. It is also used as a guideline for what disclosure to include in an offering document for a **Private Placement** to US investors. Generally, the requirements for a Form 20-F are less onerous than for a **Form 10-K**. An Annual Report on Form 20-F must be filed within four months of year-end.

See also **Form 6-K**.

Form 40-F A report filed with the **SEC** and required under the **Exchange Act** filed by Canadian issuers that offer securities to US investors. After the initial filing, Form 40-F is also used by Canadian issuers to provide their **Annual Report**.

Form Check A counsel’s review of a draft **SEC** form (*e.g.*, a **Form 10-K**) to make sure that it has been completed correctly and complies with all applicable **Exchange Act** rules and regulations.

Form D An **SEC** form used to file notice of an exempt offering of securities under **Regulation D** of the **Securities Act** and certain other exemptions. Private Placement offerings based on a claim of exemption under Rule 504, 505, 506(b) and 506(c) of Regulation D, Section 4(5) of the Securities Act and exemptions under Section 3(c) of the **Investment Company Act** must file the Form D. State **Blue Sky Laws** may also require Form D filings.

Form D contains basic information about the sale, such as the name and address of each person who has, or will be, compensated to solicit buyers for the offering, the total dollar amount of their purchases, and the number of accredited and non-accredited investors.

Form F-1 Registration Statement The long-form **SEC Registration Statement** used by **Foreign Private Issuers** (most commonly when selling securities in a **Public Offering** in the United States for the first time) to register their securities with the **SEC** as required by the **Securities Act**.

Form F-3 Registration Statement The short-form **SEC Registration Statement** used by **Foreign Private Issuers** that have a global **Market Capitalization** greater than US\$75 million and that have reported under the **Exchange Act** for at least one year. It is used by eligible Foreign Private Issuers to register offerings of non-convertible **Investment Grade** securities, as well as other specified transactions.

Form S-1 Registration Statement An **SEC** long-form **Registration Statement** used for an **IPO** of a **Domestic Issuer** (excluding IPOs by small business issuers), or by Domestic Issuers not eligible for short-form registrations, such as **Form S-3 Registration Statements**.

Form S-3 Registration Statement An SEC short-form **Registration Statement** used by **Selling Shareholders of Domestic Issuers** that have been **Public Companies** for more than one year, or by Domestic Issuers that are Public Companies that meet certain tests.

Form S-4 Registration Statement An SEC **Registration Statement** used by an issuer in a merger, consolidation, or other business combination, or for the exchange of securities.

Form S-8 Registration Statement An SEC **Registration Statement** used by an issuer for securities issued to employees, directors, or certain consultants under compensation arrangements.

Form T-1 An SEC form detailing a corporate entity's eligibility and qualification to act as a **Trustee** (in the context of debt offerings) under the **Trust Indenture Act (TIA)**.

Forms 3, 4, 5 Forms filed by a company's officers, directors, and any **Beneficial Owners** of more than 10% of a class of a company's equity securities (corporate insiders) to report their shareholdings to the SEC. The initial filing by an insider is on Form 3, when the issuer is registering securities for the first time under **Section 12 of the Exchange Act**. Changes of ownership are reported on Form 4. Form 5 must be filed to report transactions that should have been noted in Form 4 or were eligible for deferred reporting. Strict time limits apply to the filing of these forms.

See also **Section 16** and **Section 16 Reports**.

Forum for US Securities Lawyers in London (the "Forum") A trade association representing US-qualified lawyers and participants in the London capital markets. Membership is over 1,500 people and includes US-qualified lawyers practicing at over 45 law firms and 30 financial institutions in the London capital markets, as well as market participants including securities exchanges, settlement systems and registrars. Founded in 2006 by Daniel Winterfeldt, Partner, US Securities & International Capital Markets, Reed Smith and co-chaired by Edward Bibko, Head of Capital Markets, EMEA, Baker & McKenzie, the Forum is an independent, self-funded organization dedicated to addressing issues of the application of and compliance with US securities laws in London and international capital markets.

To find out more about the Forum and its projects, please see: <http://tffuslil.com>.

Forward Contract A contract to purchase/sell a specific quantity of a certain asset on a specified future date at a certain price. Forward Contracts are similar to **Futures Contract** except that the terms of a Forward Contract are not standardized, allowing for greater flexibility but also making them less liquid on the **Secondary Market**.

Forward-Looking Statements Statements made by an issuer that express expectations regarding the future. These include predictions of the company's future performance, such as revenue projections, anticipated **Capital Expenditure (CAPEX)** plans and objectives for future operations, or anticipated economic performance. Recognizing that such statements can add to investors' understanding of an issuer's prospects, under Section 27A of the **Securities Act** and Section 21E of the **Exchange Act**, and pursuant to the Private Securities Litigation Reform Act of 1995, the SEC provides a **Safe Harbor** for certain Forward-Looking Statements, and issuers will usually include a disclaimer regarding the limited reliability of such Forward-Looking Statements. To qualify for this Safe Harbor, statements must be identified as Forward-Looking Statements and must be accompanied by meaningful disclosure regarding factors that may affect whether these future predictions will actually occur.

FPI See **Foreign Private Issuer**.

Free Float In the United States, a method by which the **Market Capitalization** of a company is calculated. Generally, the Free Float is calculated by taking the share price and multiplying it by the number of shares readily available in the market. Rather than including all shares outstanding, the Free Float excludes locked-in shares such as those held by officers, controlling-interest investors, promoters and governments. The Free Float method of calculating Market Capitalization is seen as being more accurate than other methods since it provides a more accurate reflection of market movements.

In the United Kingdom, Free Float refers to the proportion of an issuer's listed share capital that is held by non-insiders.

Free-Riding Refers to two types of outdated illegal practices:

- 1) where an underwriter withholds part of a new securities issue and later sells it at a higher price (typically done in the context of **Hot Issues**, where investors are willing to purchase stock in the **Secondary Market** at a price that is significantly in excess of the IPO price); and

- 2) where a party sells on a security before paying for it.

Free-Riding is expressly prohibited by the SEC and FINRA.

Free Stock Shares that are held by brokerage firms and that can be loaned out for short selling, etc.

Free-Writing Prospectus Defined in Rule 405 of the **Securities Act** as a written communication that, under the **Securities Act**, falls outside the scope of various offer and registration documents. The communication will relate to the offer to buy or sell registered securities. A Free-Writing Prospectus is not subject to the strict regulations applicable to a **Prospectus** and is typically used to provide additional information once another document (e.g., a **Prospectus** or **Registration Statement**) has already been filed.

Freedom of Information Act (FOIA) US Freedom of Information Act, as amended, which governs the public disclosure of federal documents and information. The UK Freedom of Information Act 2000, in contrast, regulates the disclosure of information by all UK public authorities.

FSA See **Financial Services Authority (FSA)**.

FTSE 100 An index that measures the daily share price performance of the shares of the 100 largest companies listed on the **Main Market** of the **London Stock Exchange** (companies are measured by **Market Capitalization**).

Fully Paid and Non-Assessable Refers to shares in which the consideration has been paid in full before being issued, thereby preventing the issuing company from imposing or assessing levies on the holder to raise additional funds.

Funds Flow Memorandum A **Closing** document that describes the allocation of funds and is circulated to all parties upon Closing of a transaction.

Fungibility Securities that are identical to other securities previously issued by a company and that are deemed to be **Fungible** with the previous issuance of securities.

Fungible Assets, including securities, that are equivalent or identical in quality or commercial value and, therefore, interchangeable.

Futures Contract A contract pursuant to which a buyer agrees to purchase an asset or a seller agrees to sell an asset on a predetermined future date and at a predetermined price. Futures Contracts are standardized to promote **Liquidity** in the market.

FWP See **Writing Prospectus**.

GAAP See **Generally Accepted Accounting Principles (GAAP)**.

GAAS See **Generally Accepted Auditing Standards**.

GDRs See **Global Depositary Receipts**.

Gearing The ratio of a company's level of long-term debt compared to its equity capital. A company with a high Gearing has a high debt to equity ratio.

GEM See **Growth Enterprise Market (GEM)**.

General Solicitation and General Advertising A term generally used in the context of a business raising capital through an offering of equity and/or debt securities. General Solicitation and General Advertising is said to occur when securities are offered to the public at large via advertising (by any means) whereby the recipients of which cannot be limited (e.g., in a newspaper, radio, or TV broadcast, or on the internet) and have no pre-existing, substantive relationship with the issuer.

General Solicitation and General Advertising is generally prohibited in **Private Placements** conducted pursuant to exemptions from registration with the **SEC** under **Section 4(a)(2)** of the **Securities Act**. Registration of the offering is required if an exemption from registration is not available, pursuant to **Section 5** of the **Securities Act**.

As a result of the **JOBS Act**, the **SEC** removed its ban (July 2013) on General Solicitation and General Advertising in **Rule 144A Offerings** and certain offerings made in reliance of **Regulation D**. Although Rule 144A did not include an express prohibition against General Solicitation or General Advertising, prior to the 2013 rule changes, all offers and sales of securities under Rule 144A had to be limited to **QIBs**, having the same practical effect. Under the amended rules, offers of securities to persons other than QIBs, including by means of General Solicitation or General Advertising, are now permitted. However, the securities must still only be sold to persons that the seller and any person acting on behalf of the seller reasonably believe are QIBs. The SEC also removed its ban on General Solicitation and General Advertising in certain Regulation D Offerings made in reliance of **Rule 506(c)** provided that all purchasers are **Accredited Investors** and the issuer takes reasonable steps to verify that the purchasers of the securities are Accredited Investors.

It is important to note that the **JOBS Act** did not alter the requirements in relation to **Directed Selling Efforts** under **Regulation S Offerings**. Therefore, in a concurrent offering involving a **Rule 506(c)** or **Rule 144A** component as well as a Regulation S component, it is important to maintain the integrity of each offering so as not to jeopardize the Regulation S **Safe Harbor**.

Generally Accepted Accounting Principles (GAAP)

The rules, conventions, standards, and norms generally accepted and used for financial accounting. Although the term can apply to any jurisdiction, it is generally taken to refer to the US GAAP – a specific set of codified rules adhered to by certified public accountants in the United States.

Generally Accepted Auditing Standards (or GAAS)

A set of standards against which audits are judged and which most audit firms will endeavor to meet. Although these standards vary by jurisdiction, the term GAAS typically refers to the US GAAS, which refer to 10 specific standards developed by the US Auditing Standards Board of the **American Institute of Certified Public Accountants**.

GFMA See **Global Financial Markets Association (GFMA)**.

Global Coordinator In the context of a cross-border offering of securities, the **Lead Manager** or **Placement Agent** that manages the international offering. They are responsible for overseeing the offering, and coordinating the several underwriters in their respective markets.

Global Depositary Receipts (GDRs) Negotiable certificates issued as equity securities outside of the United States, representing an ownership interest in a pool of equity securities issued by a **Foreign Private Issuer** and denominated in a foreign currency. Compare with **American Depositary Receipts (ADRs)**, which are US dollar denominated certificates issued in the United States that represent interests in securities of a Foreign Private Issuer.

See also **Depositary Receipts (DRs)**.

Global Financial Markets Association (GFMA) An alliance comprising the **Association of Financial Markets in Europe (AFME)**, the **Asia Securities Industry & Financial Markets Association (ASIFMA)** and the **Securities Industry and Financial Markets Association (SIFMA)** representing the common interests of the world's financial and capital market participants. It addresses the global regulatory agenda and promotes coordinated advocacy efforts.

Global Note The single Global Note produced to represent the entire issue of securities in a bond issue. The note is deposited with the **Clearing System** that allocates interests in the Global Note through the **Book-Entry** system.

Going Concern The evaluation of a business based on the value and sustainability of its operations as a viable business for the foreseeable future, generally evaluated at the time that a company's financial statements are audited or reviewed.

Going Dark See **Going Private Transaction**.

Going Private Transaction From the perspective of the **SEC**, situations where either the issuer of a security or one of its **Affiliates** purchases the shares. In order for a transaction to be considered as "going private," it must satisfy the criteria set out in **Rule 13e-3**. The transaction may also be subject to court scrutiny under the **Entire Fairness Test** (i.e., whether or not it is fair to **Non-Affiliate** holders of the issuer's securities).

Golden Parachute A generous severance package granted to senior **Executive Officers**.

Greenlight See **Einhorn**.

GreenShoe Option The option of the underwriter to call for further securities (typically up to 15% of the issue) to cover the underwriter for the shares it has over-allotted in the event that the market price of the shares is higher than the **Strike Price** (typically the subscription price of the offering). A GreenShoe Option is used as a price stabilization mechanism. However, alternative structures may be used to conform to local legal systems, particularly in emerging markets. The term stems from the first exercise of such an option by The GreenShoe Company. Also referred to as an **Over-Allotment Option**.

The phrase "refreshing the Greenshoe" means to cover the initial over-allotments with the market purchases, but nevertheless to also exercise the GreenShoe Option to cover any syndicate short positions created by the initial over-allotment.

Grid-Based Pricing A mechanism for altering the cost of borrowing on the basis of a prearranged pricing schedule. Grid-Based Pricing means that the **Interest Rate** charged to a borrower reflects the current risk profile of their business.

Growth Enterprise Market A market in Hong Kong established by the **Stock Exchange of Hong Kong Limited (SEHK)** for growth companies that do not fulfill the requirements of profitability or track record required for a listing on the main market. Similar in function to **AIM** in London and **Catalist** in Singapore.

Guarantee An agreement whereby a third party accepts or assumes responsibility for the debt, payment, or performance of another party should that other party default on its obligations. The third party's obligations under the Guarantee are contingent on (as opposed to being independent from) the obligations of the party for which it is providing a Guarantee.

Guaranteed Deal See **Bought Deal**.

Guarantor An entity that guarantees the debt or obligations of an issuer or borrower, often the borrower's subsidiary, parent company, or sister company.

See also **Guarantee**.

Gun-Jumping A term used to describe an illegal offering prior to the public filing of a **Registration Statement** or an illegal sale of securities prior to the point at which the **SEC** declares the **Registration Statement** to be effective.



Haircut In debt restructuring agreements, a reduction in the amount of debt to be repaid to creditors.

Hang Seng Index A market capitalization-weighted index measuring the daily share price performance of companies listed on the **Stock Exchange of Hong Kong Limited (SEHK)**. The market value of the index's constituent stocks is maintained at approximately 60% of the total market value.

Happy Meal A stock repurchase by an issuer from an investor in that issuer's stock and **Convertible Bonds**. The investor takes a **Short Position** on the Convertible Bonds and the issuer uses the proceeds from the sale of its Convertible Bonds to repurchase its stock from the investor.

Hart-Scott-Rodino The Hart-Scott-Rodino Antitrust Improvements Act of 1976. A US statute that requires an investor to file a form, the premerger notification report, in any attempt to acquire either a 15% stake or an interest valued at US\$15 million, whichever is less. The federal government then has 30 days to respond.

Heads of Terms See **Term Sheet**.

Hedge Agreement An agreement entered into to offset

financial risk/reduce the risk of adverse price movements in an asset. Examples of a Hedge Agreement include where a party owns stock, then sells a **Futures Contract** stating that it will sell the stock at a set price, therefore avoiding market fluctuations. An **Interest Rate Swap** agreement is also a Hedge Agreement where two parties exchange periodic interest payments, commonly a **Fixed Rate** for a **Floating Rate** in order to protect against or speculate on changes in **Interest Rates**.

Hedge Wrapper See **Collar**.

Hedging The practice of making an investment or purchasing a financial product with the intention of insulating a party from the risk of fluctuations in the prices of, for example, securities, currencies, and **Interest Rates**.

For example, in the context of **Credit Agreements**, a borrower under a **Floating Rate** loan may enter into a **Hedge Agreement** in order to ensure that it always makes **Fixed Rate** payments by paying the **counterparty** (referred to as the "hedge counterparty") a Fixed Rate payment plus a service fee. The hedge counterparty then makes the Floating Rate payments, effectively taking on the risk of a rise in **Interest Rates**.

See also **Hedge Agreement**.

HIBOR Hong Kong Interbank Offered Rate. The daily **Reference Rate** at which banks can borrow unsecured funds from other banks in the Hong Kong interbank market.

High Growth Segment A segment of the **Main Market**, designed to assist mid-sized European and UK companies that require access to capital and a public platform to continue their growth. The High Growth Segment is for the equity shares of UK and European trading businesses that can demonstrate significant growth in revenues and a longer term aspiration to obtain a **Premium Listing**.

High Yield Shorthand for **High Yield Bonds** and **High Yield Offerings**.

High Yield Bonds Non-Investment-Grade Bonds that, at the time of purchase, are rated as below **Investment Grade** by the **Ratings Agencies**. High Yield Bonds offer higher levels of risk, but also higher levels of return (thus the high Yield). Also known as Junk Bonds.

High Yield Offering An offering of **High Yield Bonds** (or Junk Bonds).

Highly Confident Letter A non-binding statement from an

investment bank or commercial bank stating that it is very likely that, based on current market conditions and its analysis of the deal, it can raise the necessary capital for an acquisition, usually through **High Yield Bonds**, **Subordinated Debt**, secured bank borrowings, or **Bridge Loans**.

HKEx See **Hong Kong Exchanges and Clearing Limited (HKEx)**.

HKFRS See **Hong Kong Financial Reporting Standards**.

HKMA See **Hong Kong Monetary Authority**.

HKSE See **Stock Exchange of Hong Kong Limited (SEHK)**.

Holding Company A parent company that owns and controls one or more subsidiaries, where all of the assets are held by the subsidiaries rather than by the parent company.

See also **Shell Company**.

Hong Kong Capital Markets Association An industry association established in 1986 by various financial institutions in Hong Kong to promote the development of the local and regional debt capital markets.

Hong Kong Corporate Governance Code Contained in Appendix 14 to the Hong Kong Listing Rules and sets out the principles of good corporate governance, and two levels of recommendations:
(i) code provisions; and (ii) recommended best practices.

Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only. Issuers may also devise their own code on corporate governance on the terms they consider appropriate.

Issuers must state whether they have complied with the code provisions for the relevant accounting period in their interim reports (and summary interim reports, if any) and annual reports (and summary financial reports, if any).

Hong Kong Exchanges and Clearing Limited
A publicly-traded company which operates a securities market and a derivatives market in Hong Kong and the clearing houses for those markets. It is one of the world's largest exchange owners by market capitalization of its shares. It is the holding company for the **Stock Exchange of Hong Kong Limited (SEHK)**.

Hong Kong Financial Reporting Standards A set of financial reporting standards issued by the Hong Kong Institute of Certified Public Accountants in Hong Kong.

Hong Kong Monetary Authority Government authority established in 1993 with responsibility for maintaining monetary and banking stability.

Hostile Takeover Generally, a **Tender Offer** by an outside bidder for a **Target**, the management of which is unwilling to negotiate a deal to be sold. In the United States, both US state and federal securities laws regulate Hostile Takeovers. State laws govern the validity of anti-takeover measures, such as **Lockup Options** and **Poison Pills**, while federal Tender Offer rules govern how third-party bidders may make a Hostile Takeover bid.

In the United Kingdom, a Hostile Takeover refers to an offer that is made against the wishes of the **Target's** board of directors (so that they do not recommend that the Target's shareholders accept the offer). Directive 2004/25/EC of the European Parliament and of the Council on Takeover Bids requires that all states in the **European Economic Area (EEA)** introduce certain rules that regulate the takeover of companies whose shares are admitted to trading on a **EEA Regulated Market** (see **Main Market**). The Directive was implemented in the UK through changes to the Companies Act 2006 and the **Takeover Code**.

Hot Issue Securities that trade at a measurable premium—relative to the offering price in a **Public Offering**—after an **IPO**. **FINRA** rules restrict certain preferential allocations of Hot Issue securities.

See **FINRA** Rule 2790.

Hybrid Security A security that combines two or more features of both debt and equity instruments. For example, a bond with a **Fixed Rate** where the principal and interest converts into a certain number of shares on a specified date.

See also **Convertible Bond**.



IAIs See **Institutional Accredited Investor**.

IASB See **International Accounting Standards Board**.

See also **International Financial Reporting Standards**.

IASC See **International Accounting Standards Committee**.

ICA See **Investment Company Act**.

ICMA See **International Capital Markets Association**.

iCSD See **International Securities Depository**.

IFRS See **International Financial Reporting Standards**.

Ijara A lease-based form of Islamic financing. A **Special Purpose Vehicle (SPV)** issues certificates (**Sukuk**) to investors. The proceeds of the issuance are used by the SPV to purchase an asset which it then leases. The certificate holders have an ownership share in the underlying asset which has been purchased and are entitled to receive a proportionate share of the returns which the asset generates through rent.

Immobilized Securities A physical security held in a central **Depository** for the account of its **Beneficial Owner** that may be withdrawn from the Depository in physical form. Immobilized Securities may be transferred by entries on the records of the Depository or by withdrawal of the actual certificates.

Inadvertent Investment Company A company that falls within the definition of an **Investment Company** under the **Investment Company Act**, but which is not a traditional Investment Company. Because the definition of Investment Company under the Investment Company Act is so broad, a company that holds substantial minority interests in other companies that it does not control, or an **Operating Subsidiary** that temporarily holds investment securities constituting a large percentage of its assets, may be deemed an Investment Company even though they are not pursuing the activities that the Investment Company Act was meant to regulate.

Income Statement A mandatory component of a company's **Financial Statement(s)** that summarizes the revenues, costs, and expenses incurred over a specified period of time. It shows net income as a result of these calculations, but does not reflect the actual movement of cash in and out of the business over the period. May also be known as a Profit and Loss Statement (or P&L Statement).

The Income Statement enables investors to determine whether the company made or lost money over a certain period. It reflects a period of time, in contrast to the **Balance Sheet**, which shows a snapshot of a particular time.

See also **Balance Sheet** and **Financial Statement(s)**.

Incorporated by Reference When one document becomes part of another separate document by reference to the former in

the latter, and declaring that the former shall be considered part of the latter as if it were fully included there. This is permitted and often used for certain **SEC** filings.

Incurrence Covenants In the context of a **Credit Agreement** or an **Indenture**, a **Negative Covenant** that prohibits the incurrence of additional debt unless a particular financial ratio is below a specified level.

Indebtedness Covenant In the context of a **Credit Agreement** or an **Indenture**, a **Negative Covenant** that prohibits the incurrence of additional indebtedness by the borrower or issuer.

Indenture An agreement that declares the benefits and obligations between two or more parties for a series of bonds. An Indenture sets out the terms and conditions of the bonds and is entered into between the issuer and a **Trustee** on behalf of bondholders.

Independent Director A **Non-Executive Director** who is not an employee and does not have a material relationship with the company, and is deemed by applicable securities or other laws or exchange codes as "independent." An Independent Director does not own shares in the company in order to lower the likelihood of a conflict of interest. Also referred to as an Outside Director

See also **Non-Executive Director** (an Independent Director must be a Non-Executive Director, but a Non-Executive Director is not always independent (e.g., a Non-Executive Director might be appointed by a significant shareholder).

Index-Linked Pricing An alternative form of pricing where payments are determined according to a specific price index to give a real rate of return.

Information Agent An entity (usually a **Proxy Solicitor**) hired by a bidder for a **Tender Offer**. The Information Agent is hired to distribute Tender Offer materials and to answer questions from the **Target's** shareholders about how they mechanically tender their shares to the bidder's Tender Offer. Information Agents are instrumental in making sure that Tender Offer materials are distributed to the Beneficial Holders. The Information Agent may also solicit smaller shareholders.

Information Memorandum See **Prospectus** or **Offering Memorandum**.

May also refer to an offering document used in certain Private Placements, mergers and acquisitions, and private equity transactions. Such information memoranda, which are not widely or publicly distributed, typically include less detailed disclosure

as compared to a **Prospectus** or **Offering Memorandum**.

Initial Purchaser Entities (typically investment banks) that purchase unregistered securities directly from the issuer and/or **Selling Shareholders** under a valid **Private Placement** exemption under the **Securities Act** and then resell them only to suitable investors under another applicable registration exemption. Initial Purchasers typically act as **Placement Agents** that immediately resell such securities under a registration exemption such as **Rule 144A** and/or **Regulation S**. For example, in a **Rule 144A Offering**, an Initial Purchaser will initially purchase the shares from the issuer pursuant to **Section 4(a)(2)** of the **Securities Act** and then quickly resell them to Qualified Institutional Buyers (**QIBs**) under **Rule 144A** (i.e., the initial purchaser is the equivalent of an underwriter in an offering of unregistered securities).

Inside Information Each jurisdiction may have its own definition of what constitutes Inside Information. For example, in the United Kingdom, it is information of a precise nature that: (i) has not been made public; (ii) relates directly or indirectly to one or more issuers of qualifying investments or to the qualifying investments themselves; and (iii) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

Formerly known as “unpublished price-sensitive information.”

See also **Insider Information**.

Insider Information Non-public information about a company in the hands of (known by) insiders such as directors, officers, and employees of the company. The term generally also includes non-public information that has been passed on by insiders to relatives or other favored persons.

In the United States, there is no general legal prohibition against insiders trading securities. However, it is illegal under federal securities laws for insiders to trade securities using **material** Insider Information before the information has been publicly disclosed. Such **Insider Trading** is subject to civil damages and penalties. The same prohibition applies to people (tippees) who have received the information from insiders. It is also a violation of federal Insider Trading laws for anyone to use **Material Non-Public Information** that is obtained unlawfully (e.g., by breach of trust or theft) for trading in securities. In the case of **Tender Offer** information, there is an even more restrictive rule (**Rule 14e-3**) that dispenses with the condition that the information be unlawfully obtained. Determining materiality of information is a fact-specific inquiry. If the information is the reason for the trade, it is in all likelihood **material** by **SEC** and judicial standards. The

SEC antifraud **Rule 10b-5**, as interpreted in **SEC** rulings and court decisions, is the main source of most US Insider Trading law.

For trading by insiders pursuant to a prearranged selling plan, see **Rule 10b5-1 Trading Plan**.

See also **Inside Information**.

Insider Trading An illegal transaction whereby a buyer or seller with knowledge of **Material Non-Public Information** engages in the purchase or sale of securities. The transaction is not illegal once the **Insider Information** is in the public domain, but the insider is still required (by the **SEC**) to report all of its transactions. Insider trading violations may also include “tipping” such information, securities trading by the person “tipped,” and securities trading by those who misappropriate such information.

See also **Section 16**, **Section 16 Insiders** and **Section 16 Reports**.

Institutional Accredited Investor An **Institutional Investor** that is an **Accredited Investor** under Rule 501(a) of **Regulation D** of the **Securities Act**, which includes: (i) financial institutions such as banks, insurance companies, registered **Investment Companies**, registered investment advisers, business development companies, small business investment companies, Rural Business Investment Companies as defined in Section 384A of the Consolidated Farm and Rural Development Act, Limited Liability Companies; (ii) employee benefit plans, charitable organizations, trusts or limited liability companies with total assets exceeding US\$5 million; (iii) businesses in which all of the equity owners are Accredited Investors; (iv) any entity owning “investments,” as that term is defined in Rule 2a51-1(b) under the **Investment Company Act**, in excess of \$5 million that is not formed for the specific purpose of acquiring the securities being offered; and (v) certain family offices and their family clients (so long as they are institutions) as defined under the **Investment Advisers Act**. Under the **Securities Act**, securities offered and sold to Institutional Accredited Investors may be exempt from the registration requirements of the **Securities Act** pursuant to exemptions provided by Regulation D.

Also referred to as IAls.

Institutional Investor A large organization, such as a mutual fund, pension fund, bank, **Investment Company**, brokerage firm, endowment fund, university, or insurance company, that invests its own assets or those held in trust, either as its primary business or as an important secondary function.

Integrated Disclosure System A uniform set of reporting requirements under the **Securities Act** and **Exchange Act** that relies on **Regulation S-K** and **Regulation S-X** to determine the disclosures required from US **Public Companies**.

Integration A situation in which two or more **Private Placements** of similar securities made within a six-month period are aggregated and treated as a single **SEC**-registered offering for purposes of determining their exemption from the registration requirements of **Section 5**. Integration could prevent the application of the Private Placement exemption. See Rule 502(a) of **Regulation D** for the five-factor integration test.

Intention to Float (ITF) When a company first publicly announces its plans to carry out an **IPO**.

Intercreditor Agreement An agreement, typically entered into by creditors at the time a **Credit Agreement** is entered into, that regulates the various lenders’ rights, obligations, and overall **Priority** throughout the term of a financing.

Interest Coverage Ratio The ratio demonstrating how easily a company can pay interest on its outstanding debt.

$$\text{Interest Coverage Ratio} = \frac{\text{(EBIT)}}{\text{interest expense}}$$

Interest Payment Date In a **Credit Agreement** or an **Indenture**, the specified date on which interest is payable.

Interest Period The period of time during which interest accrues on the principal amount of a loan or bond. Interest Periods usually range from one to six months.

Interest Rate In a **Credit Agreement** or an **Indenture**, the rate of interest a borrower or issuer pays a lender or bondholder on the outstanding principal of a loan or bond. Interest Rates can be fixed at the time the loan is created (i.e., a **Fixed Rate**) or can vary over the loan term, for example, those calculated as a specified margin plus **LIBOR** rates (i.e., a **Floating Rate**).

Interest Rate Swap A method by which two counterparties agree to exchange one stream of future interest payments for another. Interest Rate Swaps often convert **Floating Rate Debt Instruments** into **Fixed Rate Debt Instruments**, and vice versa. Used to limit or manage exposure to **Interest Rate** fluctuations or to obtain a lower Interest Rate.

Interim Reports Reports that issuers must file upon the occurrence of particular events (such as a **Change of Control**, a significant acquisition, or a disposition of assets). **Form 8-K** is used by **Domestic Issuers**, **Form 6-K** is used by **Foreign Private Issuers**, and both are filed with the **SEC**.

Internal Audit An ongoing evaluation of a company's financial health by its Internal Audit team.

Internal Controls A company's internal set of methods and controls that ensure reliable financial reporting and the integrity of financial and accounting information, and generally convey management policies throughout the company.

See also **Section 404**.

Internal Revenue Service A US government agency responsible for tax collection and tax law enforcement.

International Accounting Standards Board (IASB) Independent standard-setting body of the International Financial Reporting Standards Foundation. Its members are responsible for developing international financial reporting standards. Commonly referred to as the IASB.

International Accounting Standards Committee Until 2001, the name of the **International Accounting Standards Board**.

International Capital Markets Association (ICMA) A self-regulatory organization for participants in the **Capital Markets** primarily focused on Europe but with a presence in regions around the globe.

International Counsel Legal counsel who act as sole transaction counsel on a particular transaction, representing all parties or one party where the other parties have not retained separate counsel.

International Financial Reporting Standards (IFRS) A set of international financial reporting standards issued by the **International Accounting Standards Board (IASB)**, and the international equivalent of **Generally Accepted Accounting Principles (GAAP)**.

In 2007, the **SEC** eliminated the long-standing requirement that **Foreign Private Issuers** reconcile financial statements in their **SEC** filings to **GAAP**, as long as those financial statements were prepared using **IFRS**, as issued by the **International Accounting Standards Board (IASB)**. This change was intended to facilitate access to the US capital markets by non-US companies and to

improve the consistency and readability of financial reporting for US investors who own foreign securities.

International Organization of Securities Commissions (IOSCO) Formed in 1983 to be an association of the world's securities regulators. These are typically the main financial regulators from each country. It aims to develop and implement international standards of regulation oversight and enforcement in the capital markets.

International Securities Depository (iCSD) A Central Securities Depository (CSD) providing clearing and settlement facilities for trades in international securities and in various domestic securities.

International Swaps and Derivatives Association (ISDA) An association created by the private negotiated **Derivatives** markets that represents participating parties. This association aims to improve the Derivatives market by identifying and reducing risks in the market. It promotes uniform practices in the writing, trading and settlement of swaps and other Derivatives, primarily through the **ISDA Master Agreement**.

ISDA was created in 1985 and has members from institutions world-wide.

See also **Derivatives** and Credit Default Swaps.

In-the-Money Describes the situation where a **Put Option** or **Call Option** is worth money to an investor. For a Put Option (an option to sell), this will mean that the market price is below the **Strike Price**. For a Call Option (an option to buy), this will mean that the market price of the security is above the **Strike Price**.

See also **Underwater** or **Out-of-the-Money**.

Investment Advisers Act The US Investment Advisers Act of 1940 regulates investment advisers and other securities professionals (such as brokers and dealers).

Investment Company/ Investment Companies As defined in Section 3(a)(1) of the **Investment Company Act**, in general terms, a company whose primary activity is holding securities of other companies for investment purposes.

Investment Company Act The US Investment Company Act of 1940, as amended, which applies to **Investment Companies** and regulates reporting requirements, securities pricing, and fund allocation. The Investment Company Act is broadly written and it is not uncommon for traditional companies operating through less-than-majority-owned associates to fall within the

Investment Company Act's definition of an Investment Company.

See also **Inadvertent Investment Company**.

Investment Company Act Opinion A legal opinion from lawyers stating that the issuer is not, and after the completion of the transaction and application of the proceeds will not be, required to register as an **Investment Company** under the **Investment Company Act**. This factually-based opinion is delivered by lawyers and is generally based on counsel's review of the issuer's **Financial Statement(s)**, business plans, **Offering Memorandum**, **SEC** or other regulatory filings and, in some cases, officers' certificates.

Investment Decision A determination of which assets to acquire or capital to spend in order to accomplish one's investment strategy or objective. In the securities law context, it refers, in general, to a decision on the part of an investor to acquire a security in exchange for some consideration. In the context of the **materiality** of disclosure or omissions in an offering document, the term is used with reference to the total mix of information an investor relies on in order to make a judgment as to whether or not to invest in the offered securities.

Investment Grade A term used to refer to a set of **Credit Ratings** given to securities (and borrowers/issuers) and is a rating of BBB- or higher by **Standard & Poor's** or **Fitch** and a rating of Baa3 or higher by **Moody's**. An Investment Grade Credit Rating reflects sound credit quality, and a borrower/issuer may be able to negotiate more favorable terms under a **Credit Agreement/Indenture** if it has a good Investment Grade.

See also **Investment-Grade Bonds**.

Investment-Grade Bonds Bonds rated higher than BBB- by **Standard & Poor's (S&P)** or **Fitch**, and Baa2 by **Moody's**. Unlike **Non-Investment-Grade Bonds** or Junk Bonds, Investment-Grade Bonds offer lower risk of default, but also lower **Yields**.

See also Ratings Agencies.

Investor Representation Letter A letter signed by an investor to an issuer and/or financial institution(s) providing representations and warranties in relation to an offering of securities. Some of these letters will include "big boy" representations.

See also **Big Boy Letter** and **Placing Letter**.

IOSCO See **International Organization of Securities Commissions (IOSCO)**.

IPO Initial Public Offering, the first **Public Offering** of an issuer's equity securities.

IRS See **Internal Revenue Service**.

ISDA See **International Swaps and Derivatives Association**.

ISDA Master Agreement Published by the **International Swaps and Derivatives Association**, the ISDA Master Agreement is the most commonly used master service agreement for **Over-the-Counter (OTC)** Derivative transactions internationally. This agreement is part of a framework of documents designed to allow OTC Derivatives to be documented fully, accurately and flexibly. Typically, the framework includes an ISDA Master Agreement, a schedule, confirmations, definition booklets and a credit support annex.

ISIN International Securities Identification Number, the identification number unique to each issue of securities and generally used in European markets. An ISIN consists of three parts: a two letter country code (securities cleared through **Clearstream** or **Euroclear** use XS as the country code), a nine character alpha-numeric national security identifier, and a single check digit (used for error detection). Where a security has a **CUSIP**, the main body of the ISIN is the original CUSIP with US as the country code added to the front and an additional check digit at the end.

Islamic Finance A financial system that is based on **Sharia** principles. Such principles prohibit the payment and receipt of interest (**Riba**), prohibit contracts which contain uncertainty (*gharar*), prohibit speculation (*maisir*) and preclude unjust enrichment or unfair exploitation.

Issuance See **Issue**.

Issue A series of equity or debt securities that have been offered in a **Public Offering** or as part of a **Private Placement**.

An Issue can also refer to the actual process of offering equity or debt securities as a method of financing a business.

Issue Price The gross price of the new issuance of securities, before deducting any **Placement Fees** and other offering expense.

Issuer An entity that offers securities for sale for the purpose of financing its operations.

Issuer Letter of Representations (ILOR) A form agreement containing certain representations that must be made

to the **Depository Trust Company, The (DTC)** by the issuer before various types of issues (e.g., **Book-Entry** only issues, **Rule 144A** issues, **Regulation S** issues) can be made eligible for deposit at DTC and for DTC Book-Entry services.

See **DTC Letter of Representations (LOR)**.

Issuer's Counsel The lawyers who represent an issuer.

Item 10 Item 10 under **Regulation S-K**. Item 10 in part regulates the content of the non-financial portions of a **Registration Statement** submitted to the **SEC**. For example, Item 10 contains the SEC's policy on the basis and format of projections, use of security ratings, **Incorporated by Reference**, and use of non-GAAP financial measures.

ITF See **Intention to Float (ITF)**.



JOBS Act Jumpstart Our Business Startups Act 2012. The JOBS Act is a federal law passed by the US Congress and intended to encourage capital-raising for small businesses by easing some securities regulations relating to disclosure. It also created a new issuer category of **Emerging Growth Company (EGC)** in an attempt to provide alternative means to raise capital. As a result of the JOBS Act, the **SEC** removed its ban (July 2013) on **General Solicitation and General Advertising in Rule 144A Offerings** and certain offerings made in reliance of **Regulation D**.

The JOBS Act also regulates **Crowdfunding**.

Junior Debt Debt that has lower **Priority** in a **Capital Structure** than other types of debt.

See also **Senior Debt**.

Junk Bond See **Non-Investment-Grade Bonds, High Yield Bonds** and **High Yield Offering**.



Kick-Off Meeting See **All-Hands Meeting**.

Know Your Client (KYC) A standard **Due Diligence** procedure used by investment advisers to ensure knowledge of their clients' identity, risk tolerance, investment knowledge, and overall financial position and in the UK by professional advisers to ensure that clients they take on are not involved in money laundering or terrorist financing.



L Plus Shorthand for **LIBOR Plus**.

Large Accelerated Filer As defined in **Rule 12b-2** of the **Exchange Act**, and generally includes a Public Company (i) with a **Market Capitalization** of more than US\$700 million at the end of its second fiscal quarter; (ii) that has been subject to certain reporting requirements under the Exchange Act for at least 12 months; and (iii) that has filed at least one **Annual Report** under the Exchange Act.

The **SEC** divides **Reporting Companies** into three categories: **Non-Accelerated Filers**, **Accelerated Filers**, and **Large Accelerated Filers**. Large Accelerated Filers are required to file their **Form 10-K** and **Form 10-Q** under the Exchange Act and their **Section 404** attestation reports under the **Sarbanes-Oxley Act** within deadlines that are shorter than those applicable to **Non-Accelerated Filers** and **Accelerated Filers**.

See also **Accelerated Filer** and **Non-Accelerated Filer**.

Last 12 Months (LTM) The most recently completed four-quarter financial period. Also known as the **Trailing 12 Months**.

Layered Cutback Whereby an **Underwriter's Cutback** is layered so that certain parties in the **Syndicate** have higher **Priority** than others. In a Layered Cutback, an underwriter pares down an offering until the "correct" size is reached.

Lead Arranger See **Lead Manager**.

Lead Left See **Managing Underwriter**.

Lead Manager The primary or senior manager responsible for the structuring of an offering or financing in a transaction that includes more than one Manager.

The Lead Manager makes the key decisions involving the structure, allocation, timing, and **Pricing** of an offering, selecting counsel, assessing market conditions, and preparing the **Registration Statement** and the **Roadshow**. Also known as the **Bookrunner**, Lead Arranger, or Lead Underwriter.

Lead Underwriter See **Lead Manager**.

Lender A person or entity that lends money to another party.

Lender Counterparty An **Affiliate** of the lender that acts as counterparty to a **Hedge Agreement**.

Letter of Credit (LOC) In a commercial transaction, a letter provided by a bank at the request of a buyer, in which the bank promises to make a payment to the seller provided the conditions of the letter are fully satisfied (e.g., certain documents are to be delivered). A Letter of Credit is meant to provide comfort to both the seller (that it will be paid upon satisfaction of conditions and that the credit risk it assumes is on the bank, not the seller) and the buyer (that the seller will only be paid upon satisfaction of conditions).

Letter of Representations (LOR) See **DTC Letter of Representations (LOR)**.

Shares that are not yet fully transferable, but will become so once certain conditions are met. Also known as **Restricted Securities**. For example, shares granted by a company to an employee as a form of compensation when the employee must remain employed for a period of time and/or certain performance milestones must be achieved for the shares to vest and become transferable.

Letter Stock is a popular alternative to **Stock Options**, particularly for executives, due to favorable accounting rules and income tax treatment.

Level of Comfort In the context of a **Comfort Letter**, the actions undertaken to verify, or provide comfort about, figures or accounting-related information in an offering document. The highest level of comfort is generally confirmation that the information was directly extracted from audited **Financial Statement(s)**. The procedure is undertaken by the **External Auditors**. As part of the **Tick and Tie** process a symbol representing a particular category of comfort is added next to

each figure comforted in the offering document to denote the appropriate Level of Comfort.

Leverage Ratio A measurement of the leverage of a company. The Leverage Ratio compares the company's overall debt level to their **EBITDA**.

Credit Agreements and **Indentures** often have **Maintenance Covenants** requiring a borrower or issuer to maintain a certain Leverage Ratio.

Leveraged Buy-Out (LBO) A method of purchasing outstanding stock of a **Public Company** by management (an MBO or Management Buy-Out) or outside investors, with financing consisting primarily of funds borrowed from investment bankers or brokers, following which the company is privately held.

Liability Management Liability Management refers to various methods for reducing outstanding debt or the potential for liability associated with it, including **Tender Offers**, **Exchange Offers**, **Consent Solicitations** and open market purchases.

Liability Management may be used to repay the debt cheaply when securities are trading significantly below face value, extend maturity, eliminate or modify covenants in bonds and/or lower a company's debt-to-equity ratio.

LIBOR London Interbank Offered Rate. The daily **Reference Rate** at which banks can borrow unsecured funds from other banks in the **London Interbank Market**.

LIBOR is being discontinued. LIBOR ceased or will cease (or no longer be representative) immediately after December 31, 2021, in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings; and immediately after June 30, 2023, in the case of the remaining US dollar settings.

See **SOFR** and **SONIA**.

Lien A creditor's or bank's claim/right against property to secure payment of a debt or performance of an obligation.

Liens Covenant A **Negative Covenant** given to protect a lender that restricts a borrower's future provision of new **Liens** so as to prevent the shifting of existing debt's **Priority** in the **Capital Structure**.

Limited Liability Company (LLC) An entity that has features of a partnership and a corporation, but is not a corporation although the liability of its members/subscribers

is (subject to certain exceptions) limited to the value of their respective investments (usually called units or interests).

The governance terms for an LLC are set out in an **Operating Agreement**. Most LLC statutes permit a wide range of governance practices and LLCs can be structured to operate like partnerships or corporations.

Limited Liability Partnership (LLP) A partnership where liability of some or all partners (depending on the jurisdiction) is limited. In some countries, an LLP must also have a general partner whose liability is unlimited and who manages the LLP. Notably, one partner is not responsible or liable for another partner's misconduct or negligence. In some LLPs, each limited partner's liability is also limited to the value of his or her investment in the LLP. An LLP incorporated in the United Kingdom is not a partnership but a body corporate with a separate legal personality and is tax transparent. Its members have limited liability and great flexibility in determining its governance agreement.

Liquidity The degree to which an asset can be sold without a significant effect on its value. Typically, cash in hand is the most liquid asset that can be converted into other assets, such as goods or services. The ability of an asset to remain liquid despite market fluctuations strongly depends on the availability of buyers and sellers in a market and their appetite for risk.

Liquidity is a large determinant in choosing where to list a company (both in choice of the country and the exchange), as it can have a large impact on pricing of the security.

Listed Company A company the securities of which are traded on a regulated stock exchange.

Listing Application An application by an issuer to list securities for trading on a recognized stock exchange.

Listing Hearing The time after **Pricing** at which a securities regulator, the **Financial Conduct Authority (FCA)** for example, reviews a **Listing Application** and all supporting documentation in consideration of that listing.

Listing Particulars Information disclosed by companies that are seeking admission of new securities to the **Official List** in circumstances where a **Prospectus** is not required under the **UK Prospectus Regulation**. Listing Particulars contain detailed information about the securities and the issuer.

Listing Rules Rules published by the **Financial Conduct Authority (FCA)** and contained in the **FCA Handbook** that specify certain requirements that must be met for a company's

securities to be admitted to the **Official List** (eligibility criteria) and certain rules that must be observed on a continuing basis by the Official List companies (continuing obligations).

Loan Participation Notes (LPNs) A **Fixed-Income Security** in which investors purchase a portion or portions of outstanding loan packages and collect interest and principal payments on a pro rata basis. Loan Participation Notes are generally a short-term investment.

Lockup An agreement in which underwriters ensure that large shareholders, the issuer, its directors, **Executive Officers**, and other insiders agree not to sell shares for a period after an offering of securities so as to prevent sending negative signals to the market and potentially depressing the stock price. A Lockup can run for up to 180 days.

Lockup Agreement See **Lockup**.

London Interbank Market The wholesale **Money Market** in London where commercial banks make loans to each other using a range of currencies for periods of up to 12 months.

London Stock Exchange The London Stock Exchange is one of the largest international exchanges in the world. It is the principal London exchange for trading equities, bonds and depositary receipts and hosts several markets, including the **Main Market** and **AIM**.

Long-Form Report An extensive **Due Diligence** report prepared by the **External Auditors**. The exact scope of the report will be specific to the requirements of that **IPO**, and the report, though private, will impact the contents of the **Prospectus**. Because Long-Form Reports are often not completed until the prospectus is substantially complete, their use in dictating prospectus disclosure may be limited. As a result, underwriters and advisors are beginning to rely more heavily on other accounting reports such as reports on the issuer's financial reporting readiness.

Long Position The buying of a security with the expectation that the asset will rise in value.

This is the opposite of a **Short Position**.

Long Stop Date See **Drop Dead Date**.

LOR See **DTC Letter of Representations (LOR)**.

LPNs See **Loan Participation Notes**.

LSE See **London Stock Exchange**.

LTM See **Last 12 Months**.



MAC See **Material Adverse Change**.

Mailing Agent A third party that acts as an agent in the mailing of certain documents to designated recipients.

Main Market (United Kingdom) The **London Stock Exchange**'s primary market for larger, more established companies. The Main Market comprises those securities admitted to the **Official List**.

The Main Market is made up of the **Premium Listing**, **Standard Listing** and **High Growth Segment**.

A Premium Listing is open to commercial companies and investment entities that want to list equity shares. Issuers with a Premium Listing are expected to meet the highest listing and corporate governance standards, including super-equivalent rules imposed by the **FCA** which go beyond the requirements mandated as a minimum by various EU directives that have been incorporated into UK law and the **FCA**'s rules. These include requirements to appoint a **Sponsor** in certain circumstances; to ensure that, where new shares are offered for cash, they are offered first to existing shareholders in proportion to their holdings (i.e., **Pre-Emption Rights**); to report on compliance with the **UK Corporate Governance Code**; to seek approval of shareholders for certain transactions that are large in size compared to the issuer or that are with a related party; and to announce certain events, such as board changes.

A commercial company that does not wish to comply with the super-equivalent rules of a Premium Listing can instead get its equity shares admitted to a Standard Listing. To do so, it must comply with the minimum requirements set out in the **FCA**'s rules. **Global Depositary Receipts (GDRs)**, options and warrants can also procure a Standard Listing (but not a Premium Listing).

The **High Growth Segment** is a segment of the Main Market, designed to assist mid-sized European and UK companies that require access to capital and a public platform to continue their growth.

Whether an issuer chooses a Premium Listing, Standard Listing or admission via the High Growth Segment, certain conditions set out in: (i) the **Listing Rules**; and (ii) the Admission and Disclosure Standards published by the **London Stock Exchange**, must be satisfied in order for the relevant securities to be admitted to trading on the **Main Market**.

See also **AIM**.

Maintenance Covenant A form of **Covenant** in a **Debt Instrument** that requires the borrower to satisfy certain financial performance thresholds, such as the obligation to achieve specified financial targets, among other requirements. A **Financial Covenant** is one form of Maintenance Covenant. Maintenance Covenants are typically found in a **Credit Facilities** or **Bridge Loans**.

Make Whole Shorthand for the "make whole call" or "make whole provision" feature in an **Indenture** in relation to a bond. A type of **Call Option** allowing the borrower to pay off remaining debt early. The borrower has to make a lump sum payment derived from a formula based on the **Net Present Value (or NPV)** of future **Coupon** payments that will not be paid because of the exercise of the Call Option. This provision is meant to give the debt holder the **Yield** they had anticipated. Also known as a **Prepayment Premium**.

Management Buy-Out See **Leveraged Buy-Out**.

Management Due Diligence Session A meeting or conference call involving the issuer, the underwriter(s) and their respective counsel, whereby the management of the issuer answers questions relating to the issuer and the offering. Typically, underwriters' counsel will draft a list of questions which will be circulated prior to the session. The questions usually cover topics such as: the accuracy of the offering document; material adverse events; confirmation that financial statements are accurate; and analysis of material tax and litigation issues. This session constitutes an important component of the **Due Diligence** process.

Management Representation Letter A letter addressed to a company's **External Auditors**, signed by the company's **CEO** and **CFO**, confirming representations made by management to the External Auditors during the audit review process.

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) Disclosure made in **SEC** filings pursuant to Item 303 of **Regulation S-K** (a section of most major filing documents such as **Form 10-K** or **Form 10-Q**) and in **Registration Statements**

submitted to the SEC under **Section 5** of the **Securities Act**, in addition to being provided, under current market practice, in offering documents issued to US investors under **Rule 144A**. It is, in effect, commentary by the issuer's management team to help investors interpret the historical **Financial Statement(s)** included in an offering document and to highlight known trends affecting the issuer. It also includes discussion on **Liquidity** and capital resources and segment information.

The European counterpart is the **Operating and Financial Review (OFR)**.

Manager An underwriter or initial purchaser.

Managing Underwriter The underwriter that leads an offering, has primary responsibility for organizing a credit or bond issue, and is named on the front cover on the far left-hand side of a **Prospectus** or other offering document. In particularly large issues there may also be several **Co-Managers**.

See also **Lead Manager** and **Lead Left**.

Mandate Letter See **Commitment Letter**.

Mandatory Prepayment A key provision in **Credit Agreements** that requires prepayment of **Term Loans** with certain proceeds if and when they are received before the **Maturity Date**. Some examples of Mandatory Prepayments include an **Asset Sale Sweep**, **Equity Sweep** and a **Debt Sweep**.

Mark-to-Market Accounting See **Fair Value Accounting**.

Market Abuse Regulation For the EU, see **EU Market Abuse Regulation (EU MAR)**. For the UK, see **UK Market Abuse Regulation**.

Market Capitalization The total market value of all of a company's outstanding shares. Market Capitalization is obtained by multiplying the number of outstanding shares by the current market share price. This term is commonly referred to as "market cap."

Market Flex A provision contained in the **Fee Letter** that permits an **Arranger** to alter the terms, conditions, **Pricing**, and structure of the **Credit Facilities** provided in the **Commitment Letter** if market changes occur before **Syndication**.

See also **Structure Flex**.

Market MAC (Market Material Adverse Change) A Condition Precedent (CP) that enables a lender/purchaser

to refuse to complete the acquisition, merger or financing if a negative **Material Adverse Change (MAC)** in the financial markets occurs.

Market Maker A broker-dealer firm that accepts the risk of holding a certain number of securities in order to facilitate trading in that security. Each Market Maker competes for customer order flow by displaying buy and sell quotations for a guaranteed number of securities. Once an order is received, the Market Maker immediately sells from its own inventory or seeks an offsetting order.

MAS See **Monetary Authority of Singapore (MAS)**.

Master Agreement Among Underwriters In the context of an underwritten securities offering, the main **Agreement Among Underwriters (AAU)** of the offering that describes the roles and functions of all underwriters involved in it.

Material The fundamental concept in securities laws relating to disclosure of material events or facts. A misstated or omitted fact is material if there is "a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote or invest" (TSC v. Northway, U.S. Supreme Court, 1976). If "the fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available," then it is material (Id.). The determination of **materiality** is fact specific. Whether a fact is material and whether the fact would be important to a reasonable shareholder or investor in making a voting or investment decision are specific to the circumstances of the case.

Material Adverse Change (MAC) Typically a contractual condition that reflects the impact of an event after the date of signing the contract, which would be expected to result in a material adverse effect. This term is used as a **Condition Precedent (CP)**, and is often connected to an **Event of Default** provision. This condition may allow a lender/purchaser to be released from certain of its obligations under the contract because there has been a material negative change of circumstances.

Material Non-Public Information material information about certain aspects of a company that has not been made public and is expected to have a **material** impact on the share price once it is released. It is illegal for holders of Material Non-Public Information, regardless of how they obtained it, to trade stock in a company while in possession of such information relating to the company.

See also **Insider Information**. The concept is similar in many respects to Material Non-Public Information.

Maturity The date on which the borrower/issuer must pay back the principal amount owed under a bond/loan.

Maturity Date The date on which a borrower/issuer agrees to repay principal for a bond/loan.

MD&A See **Management's Discussion and Analysis of Financial Condition and Results of Operations**. The European counterpart is the **Operating and Financial Review (OFR)**.

Member State See **European Union (EU)**.

Modeling An analytical exercise undertaken by underwriters, using a mathematical formula that considers the enterprise value of an issuer and value of specific aspects of a security in order to analyze the potential financial impact on the issuer of varying **Pricing** terms in different stress scenarios.

Modified Dutch Auction An auction structure in which tendering stockholders specify, from within a given range, a price at which they are willing to tender all or a portion of their shares. Once all tenders are received, the purchase price for all tendered shares accepted for payment is the lowest price per share from among the specified offer range at which the shares have been tendered that will enable the issuer to purchase the maximum number of shares, subject to the conditions of the **Tender Offer**.

See also **Dutch Auction**.

Monetary Authority of Singapore (MAS) Singapore's central bank which conducts monetary policy. It oversees all financial institutions and the stock exchange.

Money Market The global wholesale market in which short-term borrowing and lending occurs (e.g., treasury bills and commercial paper).

Moody's Moody's Investor Service, Inc., one of the leading **Ratings Agencies** that assesses the creditworthiness of borrowers on a scale from Aaa to C. Moody's also assigns **Credit Ratings** to and provides research for individual **Debt Instruments** and securities.

See also **Ratings Agencies**.

Morgan Stanley Letter A **No-Action Letter** that provides a basis for an **A/B Exchange Offer**, and governs resales by brokers.

See also **A/B Exchange Offer** and **Exxon Capital Exchange Offer**.

Morrison v. National Australia Bank *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010). A recent US Supreme Court case concerning the extraterritorial effect of US securities legislation. In this landmark decision, the Court ruled that **Section 10(b)** of the **Exchange Act** does not provide a cause of action to foreign plaintiffs suing foreign and US defendants for misconduct in connection with securities traded on foreign exchanges.

The Supreme Court's decision precludes so-called "**f-cubed**" claims (i.e., a lawsuit by foreign plaintiff(s), against a foreign defendant, concerning securities traded on a foreign exchange). The US Supreme Court said that the relevant portions of the US securities laws related solely to "transactions in securities listed on domestic exchanges" and to claims relating to "domestic transactions in other securities."

Most Favored Customer Provisions Stemming from a similar term contained in bilateral investment treaties between sovereign states, a clause in commercial contracts that imposes an obligation on the party providing the benefit to ensure that the other party is never treated less advantageously than any third party the providing party contracts with (typically in relation to pricing).

Most Favored Nation Pricing See **Most Favored Customer Provisions**.



Naked Short Selling The act of selling a security without either borrowing the security or making a reasonable effort to determine its availability. Various **SEC** rules ban this practice because, among other reasons, Naked Short Selling enables investors to manipulate and depress the price of a stock without any regard for actual supply and demand within the rest of the market.

Named Executive Officers (NEOs) Defined in Rule 402 of the **Securities Act** as a company's **CEO**, **CFO** and the three most highly compensated **Executive Officers** (other than the CEO) who were serving as Executive Officers at the end of the last completed **Fiscal Year**. Under **SEC** disclosure rules, a company must disclose certain compensation information regarding its Named Executive Officers.

NASD See **National Association of Securities Dealers, Inc.**

NASDAQ NASDAQ Stock Market, Inc., the largest electronic stock market and trading platform in the United States and a peer among the world's international stock exchanges.

NASDAQ NM NASDAQ National Market (NASDAQ-NM) referred to one of the market tiers of the NASDAQ and included over 3,000 companies with a national or international shareholder base.

The NASDAQ NM was broken up into two new tiers in 2006, the NASDAQ Global Market and the NASDAQ Global Select Market.

NASDAQ Capital Market The companies on the NASDAQ Capital Market do not meet the listing criteria for the **NASDAQ Global Market** and the **NASDAQ Global Select Market** and are generally smaller companies and/or start-ups. The securities traded through NASDAQ Capital Market tend to be higher risk and have lower trading volumes than those listed on the NASDAQ Global Market and the NASDAQ Global Select Market.

NASDAQ Global Market One of the three tiers of NASDAQ for mid-cap companies. To list initially, companies are required to have significant net tangible assets or operating income, a minimum public float of 1,100,000 shares, at least 400 shareholders and a bid price of at least US\$4.

NASDAQ Global Select Market One of the three tiers of NASDAQ for large-cap companies. To list initially, companies are required to have a minimum of 40 round lot or 2,200 total shareholders, a float of 1,250,000 shares and a bid price of at least US\$4.

National Association of Securities Dealers, Inc. (NASD) The former self-regulatory body for underwriters, brokers, and dealers that was responsible for operating **NASDAQ** and **Over-the-Counter** markets. In 2007, the NASD merged with the NYSE's enforcement operation to create **FINRA**.

See also **FINRA**.

Nationally Recognized Statistical Rating Organizations (NRSROs) **Credit Ratings Agencies** registered with the **SEC** under the US Credit Rating Agency Reform Act of 2006. Currently (September 2022) includes: A.M. Best Company, Inc., Dominion Bond Rating Service Ltd., Demotech, Inc. Egan-Jones Rating Company, **Fitch**, HR Ratings de México, S.A. de C.V., Japan Credit Rating Agency, Ltd., Kroll Bond Rating Agency, Inc. (formerly known as LACE Financial Corp.), **Moody's** and **Standard & Poor's (S&P)**.

Negative Assurance A representation that particular facts are believed to be accurate since no contrary evidence has been found.

Negative Assurance Letter See **10b-5 Letter**.

Negative Covenant A bond **Covenant** in an **Indenture** that restricts certain activities of the issuer but is generally subject to **Carve-Outs** within the agreement creating the bond issue. A greater number of Negative Covenants may contribute to lowering the **Interest Rate** on the debt. For example, a Negative Covenant may reduce the issuer's ability to dispose of parts of its business or borrow additional money. Also known as a Restrictive Covenant.

Negative Pledge In an **Indenture** or loan agreement (or a document creating security thereunder), a promise from the issuer/borrower to the bondholder/lender stating that it will not grant a security interest to another creditor that would negatively affect the bondholder/lender in the future, such as a change in **Priority** or a reduction of collateral available to the bondholder/lender.

Negotiable Instrument Pursuant to **UCC** § 3-104, a document that is signed by the maker or drawer and contains an unconditional promise or order to pay, to order or bearer, a sum certain on demand or at a fixed time to a specified person or an assignee. The payee (the person who receives the payment) must be named or otherwise indicated on the instrument. A document is not a negotiable instrument if it states that it is subject to another agreement.

Checks, bills of exchange, promissory notes, drafts and certificates of deposit are examples of Negotiable Instruments.

In the United Kingdom, negotiability is conferred by statute or market usage.

Net Present Value (or NPV) The difference in value between the present values of cash inflows and the present values of cash outflows, calculated for such cash flows over a given period of time.

Net Share Settlement A settlement mechanism for **Convertible Bonds**, **Options**, **Warrants**, or other contracts by which part or all is settled in stock.

Net Working Capital See **Working Capital**.

New Security Doctrine The doctrine whereby an attempt in a **Consent Solicitation** to revise key payment terms such as maturity, interest rate or type of interest paid (e.g., converting cash interest to **Payment-in-Kind**) is considered the offer and sale of a "new security" under **SEC** interpretations, which is then treated as an **Exchange Offer** for US securities law purposes and requires the issuer to comply with securities laws applicable to new issuances.

No Registration Opinion A legal opinion confirming that registration of the securities being offered in a transaction is not required under the **Securities Act**, either pursuant to an exemption from or in a transaction not subject to such registration requirements. In giving this opinion, the lawyer typically relies on the representations and warranties contained in the **Underwriting Agreement**, as well as the **Deemed Representations** contained in the **Offering Memorandum**.

No-Action Letter The formal advice provided by the **SEC** staff, upon request, that they will not recommend enforcement action (civil or criminal), based strictly on the fact pattern presented to them by the person or entity making the request. An entity or individual will usually make such a request for clarification when the legality of the activity is not well established. The **SEC** has identified a number of topics on which it will not respond to no-action relief requests. While no-action relief is limited to the requester and the specific facts and circumstances set forth in the request, No-Action Letters are publicly released and relied upon by other entities or individuals engaging in substantially similar activities. The **SEC** staff reserves the right to change the positions reflected in prior No-Action Letters. A No-Action Letter is not, however, legally binding. In practice, it is the greatest level of comfort the **SEC** is willing to provide.

NOMAD See **Nominated Adviser**.

NOMAD Agreement Engagement letter between an AIM company and its **Nominated Adviser** setting out their respective rights and obligations so that the AIM company can maintain its admission to AIM.

Nominated Adviser (NOMAD) An adviser who is approved and whose name appears on the register of nominated advisers held by the **London Stock Exchange**. A NOMAD is responsible to the London Stock Exchange for assessing the appropriateness of an application to **AIM** and for advising and guiding an AIM company on its responsibilities under the AIM Rules for Companies. An AIM company must appoint and retain a qualified nominated adviser at all times.

Non-Accelerated Filer Filers who are permitted to file their **Form 10-K** and **Form 10-Q** in compliance with the **Exchange Act** and their **Section 404** attestation reports in compliance with the **Sarbanes-Oxley Act** within deadlines that are longer than those applicable to **Accelerated Filers** and **Large Accelerated Filers**.

The **SEC** divides **Reporting Companies** into three categories: **Non-Accelerated Filers**, **Accelerated Filers**, and **Large Accelerated Filers**. A **Non-Accelerated Filer** is a **Public Company** that does not fall within the definition of an **Accelerated Filer** or a **Large**

Accelerated Filer in **Rule 12b-2** of the Exchange Act.

See also **Accelerated Filer** and **Large Accelerated Filer**.

Non-Affiliate Someone who is not an **Affiliate** under Rule 405 of the **Securities Act**.

See also **Affiliate**.

Non-Call Period A period during which a **Non-Call Provision** applies.

Non-Call Provision A clause in an **Indenture** stipulating that the issuer does not have the right to call, or buy back, an issuance prior to **Maturity**. Because call provisions are less favorable to investors, bonds with call provisions tend to be worth less than similar **Non-Callable Bonds**.

Non-Callable Bonds Bonds that cannot be optionally redeemed prior to **Maturity**. Also known as **Bullet Bonds**.

See also **Non-Call Provision**.

Non-Compete Agreement An agreement or undertaking whereby a key employee is bound not to engage in certain activities that are competitive with those of his/her employer for a specified period of time after he/she leaves that employer. In the United States, courts are generally hostile toward Non-Compete Agreements, particularly where the subject person is not a senior executive or someone who has entered into the agreement in connection with the sale of their business benefitting from the agreement.

See also **Non-Solicitation Agreement**.

Non-Deal Roadshow A meeting of executives of a company with potential or current investors during which there is no offer or sale of securities to the attendees. The material discussed is strictly limited to information that is public.

Non-Disclosure Agreement (NDA) In the context of an employment arrangement, an agreement or undertaking whereby a key employee is bound not to disclose certain sensitive or confidential information about his/her employer or employment, both while employed and after leaving that employment.

See also **Confidentiality Agreement**.

Non-Executive Director A member of a company's **Board of Directors (BoD)** who is not part of the executive team. A Non-Executive Director does not engage in the day-to-day

management of the company, but is involved in planning and policy making and is often included for positive public relations exposure. Generally, they are held equally liable as the **Executive Officers**.

See also **Independent Director** (an Independent Director must be a Non-Executive Director, but a Non-Executive Director is not always independent (i.e., a Non-Executive Director might represent a shareholder)).

Non-Investment-Grade Bonds Bonds given a **Credit Rating** lower than BBB- by **Standard & Poor's (S&P)** or **Fitch** and Baa2 by **Moody's**. These bonds are associated with a higher default risk (as compared to **Investment-Grade Bonds**), but do, however, offer higher rates of return and can offer **Yields** of up to four percentage points higher than a safer government issue (often regarded as the safest of Investment-Grade Bonds).

Also commonly known as **Speculative Bonds**, **High Yield Bonds**, and **Junk Bonds**.

See also **Ratings Agencies**.

Non-Solicitation Agreement In the context of an employment arrangement, an agreement or undertaking whereby a key employee is bound not to solicit the customers, clients, or other business contacts, or to engage other employees, of his/her employer after leaving that employer.

See also **Non-Compete Agreement**.

Note A **Debt Security** akin to a bond, but generally having a shorter **Maturity**.

Novation The transfer of an obligation owed by a party under a contract to a third party by replacing the obligor or substituting a new contract for the old one. It is valid only with the consent of all parties to the original agreement.

NPV See **Net Present Value**.

NRSROs See **Nationally Recognized Statistical Rating Organizations**.

NSMIA The National Securities Markets Improvements Act of 1996, which established that US federal securities laws pre-empt US state securities laws (**Blue Sky Laws**) for some securities offerings. As a result, **Private Placements** conducted in reliance upon **Rule 506** of **Regulation D** are generally not subject to separate state registration requirements, although certain limited state filings may be required.

NYSE The New York Stock Exchange, which is one of the world's longest-established principal securities markets (having begun in 1792) and among the world's largest international stock exchanges.



Obligors Borrowers and **Guarantors**, collectively.

OC See **Offering Circular**.

OFAC See **Office of Foreign Assets Control**.

Off-Balance-Sheet Arrangements Under certain accounting rules, a form of financing where certain assets and debts are not included on a company's **Balance Sheet** in an effort to keep **Leverage Ratios** low. **GAAP** sets guidelines for classifying which expenses may qualify for this form of treatment. Operating leases are a form of Off-Balance-Sheet Arrangement. Banks and asset management firms often record financial securities and other products they hold on behalf of clients using Off-Balance-Sheet Arrangements.

Offering The process of making an offer and sale of equity or debt securities.

See **Public Offering** and **Private Placement**.

Offering Circular (OC) See **Offering Memorandum**.

Offering Document The generic name given to a document used to make an offer for the sale of securities. This will either take the form of a **Prospectus** (for an **SEC**-registered offering or **Public Offering**) or an **Offering Memorandum** (for an exempt **Private Placement** or **Rule 144A Offering**).

See **Prospectus** and **Offering Memorandum**.

Offering Memorandum (OM) A disclosure document for a **Private Placement** or **Rule 144A Offering**. It contains a description of the company and the proposed transaction, including detailed financial information; such disclosure also helps to protect the seller from potential liability associated with selling unregistered securities. Also known as a **Private Placement Memorandum**.

Office of Foreign Assets Control (OFAC) US Office of Foreign Assets Control, an agency of the US Department of the Treasury under the auspices of the Under Secretary of the Treasury for Terrorism and Financial Intelligence, administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign states, organizations, and individuals.

Official List The **Financial Conduct Authority (FCA)**'s list of securities that have been admitted to listing. The FCA maintains the Official List in accordance with Part 6 of the Financial Services and Markets Act 2000.

OID See **Original Issue Discount**.

Offshore Used in US securities law to mean located or transacted outside the United States.

OM See **Offering Memorandum**.

One-Share-One-Vote The principle that all **Common Shares** in a **Public Company** must have equal voting power. The **SEC**'s Rule 19c-4 (which prohibited transactions that disenfranchised existing shareholders by implementing dual-class recapitalizations) was overturned by the D.C. Circuit Court of Appeals in *Business Roundtable v. SEC* in 1990. Nevertheless, in 1994 the SEC approved rules proposed by **NYSE**, **AMEX**, and **NASDAQ** prohibiting many types of dual-class recapitalizations.

Open Offer A secondary market offering similar to a **Rights Offering** in which a shareholder is given the opportunity to purchase stock pro rata to its existing shareholders at a price that is lower than the current market price. An Open Offer differs from a Rights Offering in that investors are unable to sell to other parties the right to purchase under the Open Offer.

Operating Agreement An agreement formed upon the establishment of a **Limited Liability Company (LLC)** that governs the LLC's business and sets forth the rights, obligations, and powers of each member or manager. The Operating Agreement may be used as evidence that the LLC is a structure distinct from its owner(s).

See also **Limited Liability Company (LLC)**. Also known as an LLC Agreement.

Operating and Financial Review (OFR) A narrative explanation, provided in an offering document or **Annual Report** of the main trends and factors underlying the development, performance and position of an entity during the financial year covered by the financial statements. It is normally less detailed

than the **Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)**, although market practice has expanded the scope of OFRs to bring them closer to the scope of disclosure in MD&As (primarily driven by investor demand and market practice in **Rule 144A Offerings**).

Operating Expense (OPEX) The expenditure that a business incurs in engaging in its day-to-day commercial operations.

Operating Subsidiary The subsidiary of a **Holding Company**. The Operating Subsidiary is the entity that carries out the primary business functions and holds the main assets. Also known as an operating company.

OPEX See **Operating Expense**.

Option A contract that gives its holder the right, but not the obligation, to buy or sell a security or asset at a specified price (known as the **Strike Price** or the exercise price) within a specified time frame. The right to buy is a **Call Option** and the right to sell is a **Put Option**. If the Option is a combination of both, it is called a straddle.

Optional Prepayment A term of an **Indenture** that permits the issuer to make a payment before its due date.

Optional Redemption A term of an **Indenture** that permits the issuer to redeem bonds at the issuer's **Option** before **Maturity** at the end of a **Non-Call Period**.

Ordinary Shares See **Common Stock**.

Organizational Meeting See **All-Hands Meeting**.

Original Issue Discount (OID) The difference between the face value of a bond when it is issued (**Issue Price**) and the stated **Redemption Price** at **Maturity**.

OTC See **Over-the-Counter**.

Out-of-the-Money The situation when the **Strike Price** of an **Option** is higher than the current market price of the security or asset underlying the Option. Out-of-the-Money positions can become **In-the-Money**.

Outside Director See **Independent Director**.

Over-Allotment Option See **GreenShoe Option**.

Over-the-Counter (OTC) Securities traded on platforms other than typical formal exchanges such as the **NYSE** or **AMEX**;

that is, stocks traded via a dealer network. Often securities that trade OTC do so because they do not meet an exchange's listing requirements. Such stock is referred to as unlisted stock.



P&L Statement See **Income Statement**.

See also **Balance Sheet** and **Financial Statement(s)**.

Panel on Takeovers and Mergers (Takeover Panel)

The Takeover Panel administers the **Takeover Code** in the UK and comprises representatives from financial institutions, lawyers, accountants and professional associations.

Par Usually referring to the stated or face value of a bond or the initial price given to a security. For **Common Stock**, Par is the nominal amount assigned to the share by the issuer, and is distinguishable from the actual market value of the stock. For bonds, Par is the principal amount repaid to the holder on **Maturity**. In the Secondary Market, if Interest Rates are higher than the **Coupon** of the bond, then the bond is sold below Par, or at a discount, and if Interest Rates are lower than the Coupon, then the bond is sold above Par, that is at a premium.

Pari Passu Latin, meaning "without partiality" or "of equal step." In both equity and debt security documents, this term refers to either securities or obligations that have equal rights to payment if a **Bankruptcy** were to occur.

Passive Foreign Investment Company (PFIC) A US tax term defined as a non-US corporation where either (i) at least 75% of its gross income is "passive" (generally investment income, including interest, certain dividends, and rents and royalties not derived in an active business) or (ii) 50% of the value of its assets is attributable to assets that produce passive income (generally including cash and financial investments). The PFIC rules were intended to deter US investors from using offshore investment vehicles to defer income. However, because the rules are drafted broadly, they may in fact capture US investments in corporations engaged in active businesses (for example, in the case that a corporation holds substantial amounts of cash relative to its other assets).

Subject to some exceptions, US investors in PFICs are subject to a special tax regime that may result in adverse US federal income tax consequences, including increased tax liabilities

on dispositions and certain dividends, and additional reporting requirements. The rules impact only US shareholders, rather than the non-US corporations in which they invest.

Passporting In Europe, a **Prospectus**, having been approved by one **European Economic Area (EEA)** competent authority, can be used for the same offer or listing in all other EEA countries, without further review or disclosure requirements being imposed by the competent authority of the state into which the Prospectus is "passporting."

Passporting can occur in other regions of the world. For example, an offering may passport from Canada to the United States, or vice versa under the multijurisdictional disclosure system.

Pathfinder A marketing or advertising document that precedes a **Prospectus** and aims to create investor interest in a potential offering. This document often closely resembles the Prospectus and is usually sent to a select group of investors.

See **Preliminary Prospectus** and **Red Herring**.

Patriot Act The name by which the US Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 is commonly known. The Patriot Act provides US law enforcement agencies with increased, broader powers to pursue and bring terrorists to justice.

Paying Agent An agent who accepts payments from and on behalf of the issuer and then distributes payments to security holders.

Payment-in-Kind (PIK) Where payment of interest or dividends is made in the form of additional bonds or shares instead of cash.

PCAOB See **Public Company Accounting Oversight Board**.

Periodic Reports The ongoing requirement, under the **Exchange Act**, of **Public Companies** to disclose information to the **SEC** annually and quarterly. **Domestic Issuers** must file **Form 10-K** annually and **Form 10-Q Quarterly**. If the company has a significant event between Form 10-Q and Form 10-K filings, then the issuer must complete a **Form 8-K**.

Foreign Private Issuers that are not exempt from SEC-registration must file **Form 20-F** annually and **Form 6-K** periodically.

Perpetual Bond Bonds that do not have a scheduled **Maturity Date** but are redeemable pursuant to a **Call Option**.

PFIC See **Passive Foreign Investment Company**.

Physical Delivery See **Physical Settlement**.

Physical Settlement Where settlement of a **Convertible Bond**, **Option**, **Futures Contract**, or other contract is satisfied by the actual delivery of the underlying asset itself. Also known as Physical Delivery.

Piggyback Registration Rights A form of **Registration Rights** granted to holders of an issuer's **Restricted Securities** (typically in a **Registration Rights Agreement**). Piggyback Registration Rights entitle investors to register their shares of **Common Stock** wherever the company conducts a **Public Offering**, subject to certain exceptions (i.e., such right allows a holder to include their shares in a **Registration Statement**). Piggyback Registration Rights are less advantageous than **Demand Registration Rights**, which allow holders benefiting from them to cause the issuer to initiate the registration process.

PIK See **Payment-in-Kind**.

PIK Notes A form of debt finance where interest accrues annually (usually for at least five years) but is only paid out at **Maturity** (i.e., payment is not made in cash until Maturity). PIK Notes are regarded as a high-risk form of financing and, consequently, give a higher **Interest Rate** than other forms of debt.

PIK Toggle A feature in a note which allows holders or issuers of **PIK Notes** to elect in each **Interest Period** whether to receive interest payments in cash or **Payment-in-Kind** until **Maturity**. Electing to PIK a payment usually results in that payment attracting a higher **Interest Rate**.

Pilot Fishing Pre-marketing (pre-deal) meetings to gauge early interest in a potential offering and sometimes used to locate **Anchor Investors** or **Cornerstone Investors**.

Pink or Pink Herring A **Preliminary Prospectus** or offering document used before it has been printed as a **Red Herring**. Primarily used for pre-marketing purposes in order to gauge preliminary investor interest prior to commencement of the **Bookbuilding** process. Pink Herrings have almost all of the information contained in a full **Prospectus**, except for the price and number of securities to be issued. **Comfort Letters** and **10b-5 Letters** are not provided on Pink Herrings, but verification must have progressed to give a high degree of confidence in the accuracy of the information in the document.

Pink Sheets A daily publication that includes a compilation of bid and ask prices for **Over the Counter (OTC)** stocks. It is put together by the OTC Markets Group Inc., formerly known as the National Quotation Bureau.

See **Bulletin Board**.

PIPE See **Private Investment in Public Equity**.

Placement Agent An entity, usually an investment bank, that acts as an agent for a company to help structure and locate buyers in a **Private Placement**. The Placement Agent is usually compensated in fees relating to the amount of capital it raises for the company and does not usually purchase (or underwrite) the securities itself. In the United States, Placement Agents are regulated by the **SEC's Broker-Dealer** rules under the **Exchange Act**, subject to certain exemptions (e.g., non-US agents having **Chaperone Agreements** with US-registered Broker-Dealers may undertake certain activities in respect of US investors).

Placement Fee A fee paid to the underwriters or **Placement Agent** on placing an offering of securities (i.e., on the **Closing** of an offering), the terms of which are set out in the **Engagement Letter** or **Placing Agreement**.

Also referred to as an **Underwriting Commission**.

Placing The sale of new or existing shares to a specific group of investors, all of whom will usually be **Institutional Investors**. Because of this, no prospectus is usually required. In order to issue new shares, **Pre-Emption Rights** must be disapplied (because the shares will not be offered to all of the company's shareholders in proportion to their existing holdings).

Institutional Investors in companies listed on the **Main Market** require that no more than 5% of the company's issued share capital be issued for cash on a non-pre-emptive basis in any one-year period or more than 7.5% of the company's issued share capital be issued for cash on a non-pre-emptive basis in any rolling three-year period.

Placing Agent See **Placement Agent**.

Placing Agreement An agreement by which a **Placement Agent** agrees to place securities, but not necessarily to underwrite them.

Placing Fee See **Placement Fee**.

Placing Letter A letter that is sent to placers in connection with a **Placing** and sets out the terms and conditions of the issue.

The letter will include a copy of any prospectus and a letter of confirmation (to be signed by the placee if the offer of shares is to be accepted).

Plain English A requirement in Rule 421 of the **Securities Act** that certain sections of a **Prospectus** filed with the **SEC** be written in simple and straightforward English, free of unnecessary technical jargon and defined legal terms, visually complex formatting, and illegible fonts.

Plain Vanilla A basic or standardized version of an instrument, agreement, or provision.

Pledge Agreement An agreement whereby a party provides security over personal property (as opposed to real property). Pledge Agreements are commonly seen as **Ancillary Documents** to **Credit Agreements** whereby the lender(s) take security over shares in or owned by the borrower.

Poison Pill A defensive strategy used by US companies to discourage **Hostile Takeovers**. With a Poison Pill, the **Target** attempts to make its stock less attractive to the acquirer. The two most common types of Poison Pills include a "flip-in," which allows existing shareholders (except the acquirer) to buy more shares at a discount, and a "flip-over," which allows stockholders to buy the acquirer's shares at a discount after the merger.

Positive Covenant A bond **Covenant** requiring an issuer to take certain actions for a specified period of time, such as paying interest and fees under a **Debt Instrument**, maintaining insurance, paying taxes, and providing quarterly operating reports and other information.

Post-Effective Period The period after **Pricing** when the **SEC** declares a **Registration Statement** effective. During this period, underwriters can confirm orders from prospective investors based on a **Pricing Supplement**.

PPM See **Private Placement Memorandum**.

Pre-Closing Most often occurring in complex transactions, a rehearsal of the **Closing** where the instruments are prepared and signed by some or all of the parties to the contract and usually held in **Escrow** until Closing.

Pre-Emption Rights An **Anti-Dilution** provision in favor of existing shareholders, pursuant to which those holders have the right to participate in a securities offering pro rata to other existing holders before such securities are offered to third parties.

Pre-Filing Period See **Quiet Period**.

Preferred Stock (or Preferred Shares) A type of hybrid security that has certain traits of equity and debt. While having a lower **Priority** than bonds, it usually pays a fixed dividend that has Priority over **Common Stock** dividends and, in liquidation, Priority over **Common Stock**. Preferred Stock usually carries no voting rights. However, the exact package of rights (economic and voting) ascribed to Preferred Stock can vary widely.

Preliminary Prospectus The preliminary offering document filed with the **SEC** at launch of an offering of registered securities, pursuant to a **Registration Statement**. The preliminary **Offering Memorandum** is its counterpart for a **Private Placement**. It contains a brief description of the company's business and financial condition for the benefit of prospective investors. A Preliminary Prospectus has practically all of the information that will be contained within the **Final Prospectus**, such as information concerning the issuer and the securities, save for the price and number of securities to be issued.

The portions of the Preliminary Prospectus that may be subject to change need to be clearly marked in red on the cover of the **Prospectus**. Because of the use of red ink, the Preliminary Prospectus is sometimes referred to as a **Red Herring**. The Red Herring is used for marketing and **Bookbuilding** purposes in order to determine investor interest and to price the securities.

Under the **JOBS Act**, an **Emerging Growth Company (EGC)** may engage in communications with potential investors that are **Qualified Institutional Buyers** or **Institutional Accredited Investors** in order to gauge interest in a securities offering, either prior to or following the filing of a Preliminary Prospectus, without those communications being "offers" in violation of **Section 5** of the **Securities Act**.

See also **Offering Document**, **Offering Memorandum**, **Prospectus**, and **Red Herring**.

Premium Listing Only available to equity securities on the **Main Market** issued by trading companies and closed and open-ended investment entities. Issuers with a Premium Listing are required to meet the UK's super-equivalent rules which are higher than the minimum requirements established by previously applicable EU directives.

Prepayment Premium See **Make Whole**.

Price Range Typically refers to the Price Range provided on a **Preliminary Prospectus**. Normally, a Price Range will be replaced by the exact price of the security which is determined upon **Pricing**.

Price Sensitive Information See **Inside Information**.

Pricing The moment at which securities are priced. In an equity offering, Pricing occurs when the price of the shares is set. In a debt offering, Pricing occurs when the **Interest Rate (Coupon)** and any discount is set.

See also **Pricing Supplement**.

Pricing Supplement The **Term Sheet** that is distributed to investors after **Pricing** takes place. Also known as a Pricing Term Sheet.

Pricing Term Sheet See **Pricing Supplement**.

Primary Listing The main stock exchange where a publicly traded company's stock is listed. In addition to its Primary Listing, a stock may also trade on other exchanges (a secondary listing) in order to increase its liquidity and ability to raise capital.

See also **Dual Listing**.

Primary Market The initial sale of securities to the public on a recognized securities exchange.

See **Secondary Market**.

Primary Offering An offering of debt or equity securities (such as an **IPO**) in the **Primary Markets**. A Primary Offering will generally be the first time the issuer's securities are registered with the **SEC**.

Primary Offerings should be distinguished from **Secondary Offerings**.

Prime Rate Term used in some countries to denote the **Interest Rate** that commercial banks charge their most creditworthy borrowers.

Principal Market The primary market on which a company's securities are listed. See **Primary Listing**.

Printer Refers to the Printer that prints the offering document or **Proxy** materials. In London, an example of a reputable and generous Printer is RR Donnelley.

Priority The order in which a company's creditors have rights to receive the company's assets to discharge the company's obligations in the event of **Bankruptcy**. In general, secured creditors rank highest, followed by unsecured creditors, followed by equity holders, who have the right to distribution of the assets

then left (if any). Priority can be determined by contractual agreements between creditors, such as **Intercreditor Agreement** and **Subordination Agreement**, by virtue of the structure of the group, or by the order in time when which the obligations arose.

See also **Subordination** and **Subordinated Debt**.

Private Investment in Public Equity (PIPE) A type of **Secondary Offering** (although rarely referred to as such because the securities are not offered for sale to the public) conducted by issuers with registered, publicly traded equity securities to quickly and cheaply raise additional capital.

The transaction involves the sale, by way of a **Private Placement** of equity securities (either newly issued or out of treasury) to **Accredited Investors**. There are two types of PIPE transactions: traditional and structured. In a traditional PIPE transaction, the equity securities are offered at a discount to market price. In a structured PIPE transaction, the investor is offered **Convertible Bonds** or **Preferred Stock** at a slight premium to market price. In either event, following the Private Placement, the issuer undertakes to file a **Registration Statement** to allow for the public resale of the equity securities as soon as possible after the Private Placement.

PIPE deals are attractive to issuers as they generally complete more quickly than other Secondary Offerings, involve limited **Due Diligence**, and, in the case of a traditional PIPE transaction, only require shareholder consent if the offering represents more than 20% of the issuer's equity capital. A structured PIPE transaction does not require shareholder consent. To the extent that they increase the supply of a company's stock in the market, PIPE offerings can potentially dilute the value of existing shares.

PIPE transactions also offer an alternative funding option for a **SPAC** seeking to finance its business combination rather than raising additional finance from traditional sources. A PIPE offers a speedier and certain alternative to some traditional methods of fund raising and is more appropriate for a SPAC. The PIPE may also mean there is a cushion of capital in case investors in the SPAC decide to sell their shares after a target is announced.

Private Offering See **Private Placement**.

Private Placement A non-public, unregistered offer of securities to a limited range of buyers, usually wealthy individuals or large institutions. Private Placements are ordinarily conducted pursuant to **Section 4(a)(2)** of the **Securities Act** which exempts from **SEC** registration "transactions by an issuer not involving any **Public Offering**."

Regulation D provides non-exclusive **Safe Harbors** under **Section 4(a)(2)**.

Private Placement Memorandum See **Offering Memorandum**.

Process Agent A representative upon whom court papers may be served. In the United States, the role is generally a requirement of state law. In the United States and England, it is the market standard, and in many instances a requirement by transaction parties, that each transaction party with no presence or representation in the United States or England, as the case may be, appoints a Process Agent in the applicable jurisdiction, and agrees that service at the address of its Process Agent will constitute proper service for the purposes of the court procedures.

Pro Forma Financial Statements **Financial Statement(s)** that are prepared to emphasize current, hypothetical, or projected situations but do not reflect actual figures (e.g., Financial Statements delivered in connection with a bank loan **Closing** to show potential positive effect). To be distinguished from Financial Statements set out according to **GAAP**.

For **SEC** registered offerings, Pro Forma Statements must be prepared in accordance with Article 11 of Regulation S-X.

Pro Supp Shorthand for **Prospectus Supplement**.

Profit and Loss Statement See **Income Statement**.

Prospectus Formal legal document that must be given to investors prior to any: (i) sale of securities in an **SEC**-registered offering; or (ii) **Public Offering** or certain other offerings in an **EU Member State** and/or the United Kingdom pursuant to the **EU Prospectus Regulation** and/or the **UK Prospectus Regulation**. The Prospectus formal should contain all the information necessary to enable an investor to make a reasonable and informed investment decision.

In **SEC**-registered offerings, potential investors (and the **SEC** upon receipt of the **Registration Statement**) first receive a **Preliminary Prospectus** (also known as a Red Herring), which contains all the information regarding the issuer and the securities to be issued, except for the price and number of securities. Following the declaration of effectiveness by the **SEC** and the **Pricing** period, the Prospectus is then distributed to the investors as a **Final Prospectus** with details of the price and number of securities.

See also **Offering Document**, **Offering Memorandum**,

Preliminary Prospectus, Pink Herring, and Red Herring.

Prospectus Regulation For the EU, see **EU Prospectus Regulation**. For the UK, see **UK Prospectus Regulation**.

Prospectus Regulation Rules The rules introduced by the **Financial Conduct Authority (FCA)** to implement the **UK Prospectus Regulation**.

Prospectus Supplement Under US securities laws, a Prospectus Supplement is used in connection with a **Shelf Registration Statement**. It contains information about the issuer and the securities not previously known and is filed when the issuer eventually sells its securities in a **Shelf Takedown**. It supplements the **Base Prospectus** that is included in the original **Shelf Registration Statement** filing.

To be distinguished from a **Supplementary Prospectus**.

Proxy A person who is authorized to vote on behalf of a shareholder for a particular purpose. For instance, a shareholder who cannot attend a company's **Annual General Meeting (AGM)** may choose someone to vote his or her shares by Proxy.

A Proxy may also refer to a power of attorney document signed by a shareholder authorizing another shareholder or representative to vote on behalf of the shareholder at a company's Annual General Meeting.

See also **Proxy Statement**.

Proxy Agent See **Proxy**.

Proxy Card The card or other instrument that authorizes a **Proxy**.

Proxy Contest A contest for control of a company through the solicitation of shareholder votes for the election of new directors, which can either be attempted by the party proposing a **Hostile Takeover** or by a group of corporate activists with their own objectives.

See also **Consent Solicitation**.

Proxy Fight See **Proxy Contest**.

Proxy Rules The rules governing the solicitation of Proxies under Sections 14(a), 14(b) and 14(c) of the **Exchange Act**, and the rules and schedules promulgated thereunder. Relevant state corporation law should also be noted.

Foreign Private Issuers are exempt from the Proxy Rules.

Proxy Solicitor An individual or entity employed by a company to solicit Proxies for a meeting of shareholders or to solicit consents if no meeting is to be held. The Proxy Solicitor plays an important role in a **Proxy Contest** or **Consent Solicitation**. Proxy Solicitors are also adept at helping companies determine the makeup of their shareholders.

See also **Proxy Contest** and **Consent Solicitation**.

Proxy Statement The disclosure document containing certain information (as required by the **Proxy Rules**) to be provided to securities holders of **Public Companies**, pursuant to the solicitation of their Proxies.

Proxy Statements are filed on **SEC Form DEF 14A** and must contain all the information that a shareholder might need in order to come to an informed decision on voting on matters in an **Annual General Meeting (AGM)**, or other shareholder meeting.

Public Company Under US securities laws, a company with its securities registered under **Section 12 of the Exchange Act** and traded on the open market. Pursuant to Section 12(b), securities listed on a national securities exchange must be registered. Public Companies must satisfy strict reporting requirements set out by the **SEC**, including public disclosure of **Financial Statement(s)** and the filing of **Periodic Reports**.

Public Company Accounting Oversight Board (PCAOB) A nonprofit corporation established by the US Congress to oversee the audits of public companies to provide investor protection and further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB also oversees the audits of **Broker-Dealers**, including compliance reports filed pursuant to federal securities laws, to promote investor protection. When US Congress created the PCAOB, it gave the **SEC** the authority to oversee the PCAOB's operations, to appoint or remove members, to approve the PCAOB's budget and rules, and to entertain appeals of PCAOB inspection reports and disciplinary actions.

Public Float In the United States, denotes the aggregate market value of outstanding securities held on the public exchange.

Public Offering An offering of debt or equity securities by an issuer to the public for the purpose of raising funds or conducting business expansion. Public Offerings are usually conducted by an underwriter and, if conducted in the United States, require registration under the **Securities Act** and a declaration by the

SEC that the **Registration Statement** is effective.

A **Prospectus** relating to a **Public Offering** to residents of **EU Member States** must be filed with and approved by the relevant Member State securities regulatory authority, absent an exemption from such requirements under the **EU Prospectus Regulation**.

A **Prospectus** relating to a **Public Offering** to residents of the United Kingdom must be filed with and approved by the **Financial Conduct Authority (FCA)**, absent an exemption from such requirements under the **UK Prospectus Regulation**.

Public Offering System **FINRA's** Public Offering System, which is an online system used by filers to make electronic filings of **Public Offerings** with FINRA. Generally, counsel for the underwriters or agents makes the filing. Counsel for the issuer is permitted to make the filing for shelf offerings only.

Publicity Guidelines A memorandum prepared by legal counsel that sets forth the applicable **Publicity Restrictions**, guidelines, and other requirements imposed on all participants in an offering. The Publicity Guidelines restrict communications of marketing or promotional information, and are intended to prevent **Gun-Jumping**, Writing Prospectuses, and violations of applicable securities law exemptions. Publicity Guidelines are often prepared for international offerings with a **Private Placement** into the United States and often serve as back-up to a **No Registration Opinion**.

Publicity Restrictions Restrictions placed on what the issuer and underwriters can write, say, publish, or send during an offering. These restrictions are dictated by the securities laws in the jurisdiction in which an offering is marketed. The specific restrictions an issuer or underwriter may face are dependent upon the type of offering and care should always be taken to ensure these restrictions are not breached.

Publicity Restrictions were eased under the **JOBS Act** which amended **Rule 144A** and **Rule 506** under **Regulation D** to permit the use of **General Solicitation and General Advertising** in certain **Private Placements**.

It is important to note that the JOBS Act did not alter the requirements relating to **Directed Selling Efforts in Regulation S Offerings**.

Purchase Agreement The principal agreement between the issuer and investors to sell debt or equity securities in a **Private Placement**. This agreement includes the terms and conditions, representations and warranties between the parties, and particular **Covenants**.

Put See **Put Option**.

Put Option The right of a security holder to sell a specific security at a specified price by a predetermined date. Also known as a Put. This is the opposite of a **Call Option**. The right is purchased for a fee paid to the party who agrees to accept the security if the security is offered for sale.

Put Right An **Option** giving holders a right to force the issuer to buy back its securities at a specified amount.

Q

QIB See **Qualified Institutional Buyer**.

QIU See **Qualified Independent Underwriter**.

QP See **Qualified Purchaser**.

Qualified Independent Underwriter (QIU) As set out in **FINRA** Rule 5121, a Qualified Independent Underwriter is required when the **Managing Underwriter** or **Lead Manager** has a conflict of interest in the offering (e.g., where 5% or more of the offering's proceeds are to be used to repay a loan owed to an **Affiliate** of the underwriter).

A QIU must be a **FINRA** member and must have been actively engaged in the investment banking and securities business for five years immediately prior to the filing of a **Registration Statement**, and must not have **Beneficial Ownership** of more than 5% of the outstanding securities of the issuer. A QIU will be mandated to conduct the requisite **Due Diligence** and undertake the legal responsibilities and liabilities of an underwriter.

Qualified Institutional Buyer (QIB) As defined in **Rule 144A** under the **Securities Act**, an institution that owns or invests, on a discretionary basis, at least US\$100 million in securities of issuers with whom they are not **Affiliated**. QIBs include banks, insurance companies, savings and loan institutions, employee benefit plans and **Investment Companies**. Banks must satisfy the US\$100 million threshold test and a US\$25 million net worth requirement. QIBs can also include registered **Broker-Dealers** owning or investing, on a discretionary basis, US\$10 million in securities of **Non-Affiliates** or acting in a riskless principal transaction on behalf of a QIB. QIBs may participate in **Section 4(a)(2)** and **Rule 144A Offerings**.

Qualified Purchaser (QP) An entity or individual that is deemed to be sophisticated enough not to require certain protections applicable to a general **Public Offering**. **Section 3(c)(7)** of the **Investment Company Act** provides an exemption from registration if prospective investors are QPs within the meaning of the Investment Company Act. The categories of persons or entities deemed to be QPs are: (i) individuals who own US\$5 million in investments; (ii) **Institutional Investors** that own US\$25 million in investments; (iii) family-owned companies that own US\$5 million in investments; (iv) certain trusts in which the **Trustee** and each settlor are QPs; (v) certain QIBs; (v) any company, if each beneficial owner of the company's securities is a QP; (vi) knowledgeable employees of certain funds as defined under **Section 3(c)(7)** of the Investment Company Act; and (vii) certain persons who receive securities in a Section 3(c)(7) fund from a QP as a gift, bequest, or due to certain other involuntary events.

Quarterly A financial period denoting a period of three consecutive months.

Quarterly Reports A report filed **Quarterly** in accordance with **SEC** regulations, and containing unaudited or interim **Financial Statement(s)**.

See **Form 10-Q**.

Quiet Period The term Quiet Period is used to refer to the period of time surrounding the filing of a **Registration Statement** during which an issuer of securities must ensure that its offering-related communications comply with the federal securities laws. This period lasts, at a minimum, from the time an issuer files a registration statement with the **SEC** to the time that SEC staff declare the registration statement "effective." During that period, issuers and other participants in the registered offering must be careful that any "offer" of the registered securities is made in accordance with the federal securities laws. The failure to comply with applicable restrictions on making "offers" is referred to as **Gun-Jumping**. Because the SEC and courts have broadly construed the term "offer" to include communications that might generate public interest in an issuer or its securities, the scope of communications that are potentially subject to restriction is quite broad.

To ensure that the flow of information about issuers and securities offerings is not unduly limited, the **SEC** has adopted a number of rules to permit issuers to communicate during this period about matters other than the registered securities offering (including the release of factual business information), as well as rules that permit issuers to provide limited public information about their plans to engage in, or the status of, a registered securities offering.

See also **Gun-Jumping**.

R

Ratings Agencies Independent organizations such as **Fitch**, **Moody's** and **Standard & Poor's (S&P)** that rate the creditworthiness of securities and issuers.

Ratio Test A calculation used to assess the debt levels of a company so as to prevent it from taking certain actions (e.g., paying dividends or incurring more debt). A Ratio Test builds in an amount of protection to the bondholder(s)/lender(s). It is often an **EBITDA to Fixed Charges Ratio**-based debt incurrence test.

Record Date The official date on which a company shareholder must own stock in order to exercise its rights, such as voting at a shareholder meeting or receiving a dividend.

Record Holder Holders deemed to be the record owners of securities on a **Record Date**. Rule 12g5-1 of the **Exchange Act** defines securities "held of record."

Red Herring See **Preliminary Prospectus**.

Redemption Price The price at which a security is redeemed prior to **Maturity**. The Redemption Price is established when the securities are issued.

Reference Rate A moving rate, such as **EURIBOR**, **HIBOR**, **LIBOR**, **SIBOR**, **RPI**, or **CPI**, on which a **Floating Rate** security or **Interest Rate Swap**, is based. For example, the interest on a Floating Rate security can be assessed at 2% above LIBOR on a particular date.

Refinancing A method for the repayment of existing debt through the issuance of new debt. For a business, this often involves the extension of the **Maturity** on the debt and a change in the **Interest Rate**, and is usually accompanied by a penalty fee.

Reg AB See **Regulation AB**.

Reg AC See **Regulation AC**.

Reg D See **Regulation D**.

Reg FD See **Regulation FD**.

Reg S See **Regulation S**.

Reg S-K See **Regulation S-K**.

Registered Bonds A security where ownership is recorded by the **Registrar** in the name of the holder, and can be transferred only by an entry on the company's register. Most Registered Bonds are now tracked electronically.

Registered Shares A stock that is registered in the name of the exact owner. If the owner of such share sells his share, the new owner must register with name and address. Registered Shares offer issuers the ability to always know exactly who their shareholders are.

Registered Shares also refer to, under the **Securities Act**, the shares registered pursuant to **Section 5** for a specific **Public Offering** under the **Registration Statement** for that Public Offering in addition to a class of securities that is registered under the **Exchange Act** in connection with the listing of the shares. A share is deemed registered when the **Registration Statement** has become effective under **Section 12 of the Exchange Act**. Registration subjects the issuer to ongoing reporting requirements. Shares that are not registered are usually subject to restrictions on their resale under **Rule 144**.

Registrant An issuer of securities subject to **SEC** registration.

Registrar The agent of the issuer. The Registrar's principal task is to record ownership of the **Registered Shares** and **Registered Bonds** in the issuer's register.

Registration In the United States, a requirement of the **SEC** for the issuance of all securities. Typically, securities are registered via a **Registration Statement**.

See also **Securities Act** and **Exchange Act**.

Registration Rights Contractual rights granted to holders of an issuer's **Restricted Securities** that the holders can use to force the issuer to register the securities with the **SEC**. These rights protect the holders by improving the **Liquidity** and marketability of the securities. These rights comprise **Demand Registration Rights** and **Piggyback Registration Rights**, and are generally contained in a **Registration Rights Agreement** negotiated between the investors and the issuer.

See **Demand Registration Rights** and **Piggyback Registration Rights**.

Registration Rights Agreement An agreement that governs the **Registration Rights** between an issuer and investors.

See also **Registration Rights**, **Demand Registration Rights**, and **Piggyback Registration Rights**.

Registration Statement In the United States, a legal document, such as a **Form S-1 Registration Statement**, **Form F-1 Registration Statement**, **Form S-3 Registration Statement** or a **Form F-3 Registration Statement** under the **Securities Act**, that must be submitted to the **SEC** by an issuer before any solicitation of the public is permitted. Pursuant to the **Exchange Act**, it is the legal document required to effect the registration of a class of securities. The precise form used largely depends on the issuer's status. The Registration Statement is designed to give investors a basis upon which to make an investment decision, and includes information about the securities being offered and the issuer's business. In the case of an **IPO** or **Secondary Offering**, this will be the **Prospectus**.

See also **Prospectus**.

Regulated Market For the EU, see **EEA Regulated Market**. For the UK, see **UK Regulated Market**.

Regulation AB An **SEC** regulation regarding the registration, disclosure, and reporting requirements for publicly issued **Asset-Backed Securities** under the **Securities Act** and the **Exchange Act**.

Regulation AC An **SEC** regulation that requires **Broker-Dealers** and their associated persons to include certain information in **Research Reports**.

Regulation D An **SEC** regulation under the **Securities Act** that details the **Safe Harbors** from SEC registration for **Private Placements**. Regulation D includes three rules (Rules 504, 505 and 506) that provide exemptions from the registration requirements, allowing some companies to offer and sell their securities without having to register the securities with the SEC.

Pursuant to Section 3(b) of the **Securities Act**, Rules 504 and 505 exempt certain offerings up to US\$1 million and US\$5 million, respectively, and are designed to facilitate capital-raising for smaller businesses.

Pursuant to **Section 4(a)(2)** of the **Securities Act**, **Rule 506** exempts certain offerings without, however, placing a cap on the amount raised, thus making it attractive to larger companies. In July 2013, the **SEC** adopted amendments under the **JOBS Act** to **Rule 506** and **Form D**.

Regulation FD An **SEC** regulation about fair disclosure, and intended to improve market transparency. If an issuer provides

Material Non-Public Information to certain professionals, it must publicly disclose the same information to other investors under Regulation FD.

Regulation G An **SEC** regulation about the reporting requirements for an issuer that releases non-GAAP financial measures. It requires the issuer to provide proper analysis and reconciliation with the nearest comparable **GAAP** financial measure.

Regulation M An **SEC** regulation about the activities of issuers, underwriters' **Agents**, and other related persons. The intention of the regulation is to prevent anyone with an interest in an offering from manipulating the market conditions of the offering.

Regulation M-A An **SEC** regulation on mergers and acquisitions and **Tender Offers**. Regulation M-A sets out disclosure requirements for Tender Offers of equity securities in **Public Companies**, including information relating to the issuer, the bidder, and the reasons behind the bid. These include lower reporting and procedural requirements where the issuer's securities are held by a limited number of US holders. Regulation M-A also includes provisions applicable to **Going Private Transactions**.

Regulation S An **SEC** regulation relating to offerings outside the United States. Regulation S includes two **Safe Harbors** from the registration requirements of the **Securities Act** for Offshore sales, one for issuers, underwriters, and **Affiliates** (Rule 903) and one for resales by persons other than the issuer (Rule 904).

In order to qualify as a Regulation S offering, two general conditions must be complied with: (1) each offer or sale must be made in an **Offshore** transaction; and (2) no **Directed Selling Efforts** can be made.

There are three categories for Regulation S. Issuers may use Category 1 where there is no Substantial US Market Interest (SUSMI) in their securities. Generally, there are no offering restrictions imposed other than the two general conditions listed above. Category 2 of the Safe Harbor is available where the securities being distributed in reliance on the issuer Safe Harbor are: (a) equity securities of an **Exchange Act** reporting foreign issuer; or (b) debt securities of any Exchange Act reporting issuer or of a non-reporting foreign issuer. The offering restrictions under Category 2 require that all offers and sales of the securities made prior to 40 days following the closing (the "**Distribution Compliance Period**") be made only in accordance with the issuer Safe Harbor or the resale Safe Harbor or pursuant to registration under the **Securities Act** or an applicable **Exemption** therefrom.

Category 3 is the only category available for offerings of equity securities of reporting and non-reporting US issuers, debt securities of non-reporting US issuers and equity securities of non-reporting foreign issuers with SUSMI. In addition to the general conditions, the most restrictive offering restrictions (for example, with regard to distribution compliance periods and purchaser certifications) are imposed by Category 3, which are designed to prevent unregistered distributions in the United States under circumstances where the likelihood of the offering inadvertently extending to the US is greatest.

See also **Flowback**.

Regulation S Offering An offering of securities made pursuant to the **Safe Harbor** provisions of **Regulation S** from the registration requirements with the **SEC** under the **Securities Act**.

Regulation S-K An **SEC** regulation about the disclosure requirements for non-financial aspects of a **Registration Statement** filed under the **Securities Act** and the **Exchange Act**.

Regulation S-X An **SEC** regulation about the form and content requirements for **Financial Statement(s)** within a **Registration Statement** under the **Securities Act** and the **Exchange Act**.

Related-Party Transactions A transaction between two parties who are connected by a special relationship prior to the transaction (e.g., a contract between a company and one of its major shareholders). There are several regulatory and accounting rules regarding the disclosure of Related-Party Transactions due to the potential that they may not have been negotiated on an "arm's length" basis and may not be on standard commercial terms.

Reporting Company A company that is required to file **Periodic Reports** with the **SEC**. A Reporting Company is subject to **Section 13(a)** or **Section 15(d)** of the **Exchange Act**. A company can become a Reporting Company: (i) as a prerequisite to listing on a national exchange in the United States; (ii) by having total assets greater than US\$10 million and a class of equity securities held by 2,000 or more persons, or more than 500 holders of its equity securities who are not **Accredited Investors**; or (iii) by having issued its securities to the public.

Rescission The undoing of a contract or transaction to restore the parties to the position in which they were before the contract or transaction. A common statutory remedy for fraud and similar legal violations in the sale of securities. However, it is rarely used after acquisitions of **Public Companies**. Once the **Closing** has occurred it is often not practical to get money back from public shareholders and undo the integration of businesses.

Research Guidelines Guidelines prepared by the **Syndicate's** counsel in connection with an offering and to be followed by all **Syndicate** members wishing to publish or distribute **Research Reports** relating to the issuer. Research Guidelines are ordinarily applicable during a certain period of time during and after the offering or at the termination of stabilization arrangements and trading restrictions with regard to the offering, whichever is later. Failure of a **Syndicate** member to comply with the Research Guidelines could create a delay or prevention of the offering by regulatory authorities.

SEC Rule 139(a)(1) generally permits issuer-specific research on the issuer or the issuer's securities as long as the **Syndicate** member (i) publishes or distributes Research Reports on such types of securities in the regular course of business; and (ii) such publication or distribution does not represent the initiation of publication of Research Reports about the issuer or its securities or re-initiation of such publication following discontinuation of publication of such Research Reports.

Research Report A report prepared by an analyst in the investment research arm of an investment bank, which includes analysis of a specific company or security offering, or of industry sectors, currencies, or geographic regions or countries. Research Reports are disseminated to the institutional and retail clients of the investment bank that produces the report.

SEC's Regulation FD includes guidelines for communications between a company's management team and any analysts during the preparation of Research Reports.

This is an area regulated by complex rules and regulations as well as market practice in relation to potential risk and liability.

Restricted Securities

1. Securities that cannot be transferred freely without **SEC** registration or an exemption from registration. These securities are acquired privately (i.e., in a **Private Placement**) rather than being bought in the open market.
2. Securities in respect of which permission to transfer is based on a contingent event occurring.

See **Rule 144** and **Letter Stock**.

Restricted Subsidiary A definition used in **Debt Instruments** designed to determine which of the borrower's subsidiaries are obligated to satisfy **Covenants** or pledge security (generally referred to as collateral).

Restrictive Covenant See **Negative Covenant**.

Retail Investors An individual (not an **Institutional Investor**) who purchases securities for his or her own account. Also known as an individual investor. The **SEC's** primary focus is on the protection of Retail Investors.

Return on Equity A financial ratio that measures a company's return on shareholder investment, equal to a **Fiscal Year's** after-tax income (after **Preferred Stock** dividends but before **Common Stock** dividends) divided by the company's **Book Value**, and expressed as a percentage.

Review Process The **SEC's** review of a **Registration Statement**, **Periodic Report**, or **Proxy Statement**.

Review Report A report issued by a company's **External Auditors** in connection with unaudited **Financial Statement(s)**, and which reports on the company's compliance with **GAAP**.

Revolving Facility A **Credit Agreement** under which a borrower can repeatedly borrow and repay monies, with certain restrictions, until the Revolving Facility expires.

Revolving Loan See **Revolving Facility**.

Riba Commonly translated from Arabic as the interest rate. The payment and receipt of interest is prohibited under Sharia. A key concept under **Sharia** is that money must not be made from money. Money must be used to create real economic value (profit is acceptable).

RICO The Racketeer Influenced and Corrupt Organizations Act, a US statute. RICO was enacted in 1970 to prosecute the Mafia as well as others who were engaged in organized crime, but its later application has been more widespread.

Rights Issue See **Rights Offering**.

Rights Offering A type of **Secondary Offering** involving the sale of new shares of **Common Stock** by distributing purchase rights to a company's existing shareholders.

Risk Factors The section of an offering document or **Annual Report** or **Quarterly Report** addressing the most significant factors that make an investment in that company or a particular offering speculative. Item 503 of **Regulation S-K** addresses the basic form and substance of risk factors.

Roadshow The marketing tour taken by an issuer's senior management and financial advisers to visit potential investors

and deliver one-on-one and group presentations. In the United States, the Roadshow commences after the **Registration Statement** has been filed with the **SEC** and can take up to three weeks to complete. Outside the United States, in general the Roadshow commences after the **Preliminary Prospectus** has been finalized.

Rollover Fee See **Conversion Fee**.

Rule 10b-5 An antifraud rule under the **Exchange Act** that makes it unlawful to issue **materially** misleading statements or omit **material** facts in connection with a sale or purchase of securities.

Typically, a **10b-5 Letter** will be prepared by issuer's counsel. This letter states that, based on counsel's **Due Diligence** procedures, there is no reason to believe such offering document contains any untrue statements of **material** facts or omits to state any **material** facts that are necessary in order to make the statements in the offering document, in the light of the circumstances under which they were made, not misleading.

Rule 10b5-1 A rule under the **Exchange Act** relating to **Insider Trading** rules and liability.

See also **Rule 10b5-1 Trading Plan**.

Rule 10b5-1 Trading Plan A company program for trading securities established so as to avoid liability under **Rule 10b5-1** that includes restrictions on purchases and sales, a policy regarding prearranged, nondiscretionary trades, and windows permitting trading. In general, any person who executes a transaction pursuant to such a plan before s/he was aware of any **Material Non-Public Information** may rely on the plan as an affirmative defense to liability for **Insider Trading** under Rule 10b5-1.

Rule 12b-2 A rule under the **Exchange Act** that includes definitions of terms related to registration and reporting requirements, including **Accelerated Filer** and **Large Accelerated Filer**.

Rule 12g3-2(b) A rule under the **Exchange Act** that exempts **Foreign Private Issuers** from having to register a class of equity securities under **Section 12(g)**. Absent the **Exemption**, a Foreign Private Issuer with 300 or more US shareholders might be required to register with the **SEC**.

Rule 13e-3 A rule under the **Exchange Act** that regulates private transactions in which existing shareholders of an issuer buy publicly held securities of the issuer.

Rule 13e-4 A rule under the **Exchange Act** that regulates **Tender Offers** by issuers.

Rule 14e-3 A rule under the **Exchange Act** relating to **Tender Offers** and prohibiting trading in securities while in possession of **Material Non-Public Information**.

Rule 144 A **Safe Harbor** under the **Securities Act** that places limits on the ability of persons who hold **Restricted Securities**, or who are **Affiliates**, from selling an issuer's securities.

Generally, in order to utilize Rule 144, the person seeking to sell the **Restricted Securities** must meet the holding period established by Rule 144(d). The holding period is six months for **Restricted Securities** of **Exchange Act** reporting issuers and one-year for **Restricted Securities** of non-reporting issuers.

Rule 144A An exemption under the **Securities Act** from **SEC** registration for the resale of certain **Restricted Securities** to **Qualified Institutional Buyers (QIBs)**. Amendments under the **JOBS Act** (July 2013) provide that offers of securities to persons other than **QIBs**, including by means of **General Solicitation** or **General Advertising**, are now permitted. However, the securities must still only be sold to persons that the seller and any person acting on behalf of the seller reasonably believe are **QIBs**.

Rule 144A is only available for resale transactions and therefore, as a technical matter, most Rule 144A transactions involve two steps. First, with respect to the sale by the issuer to the initial purchasers, issuers in Rule 144A transactions ordinarily rely on **Section 4(a)(2)** of the **Securities Act**. The initial purchasers subsequently rely on Rule 144A for the resale to **QIBs**.

Rule 144A Offering A **Private Placement** of securities through which an initial purchaser first acquires the securities from the issuer and subsequently resells only to **QIBs** pursuant to the exemption provisions of **Rule 144A**. Also known as a Rule A financing.

Rule 159 A rule under the **Securities Act** relating to **Securities Offering Reform**. The key implication of Rule 159 is that **Section 12(a)(2)** and **17(a)(2)** liability are determined by reference to the total package of information conveyed to the purchaser in a securities offering at or before the time of sale, which effectively means that prospective investors must receive all **material** information about an issuer before the **Applicable Time**.

Rule 506 A rule under **Regulation D** that provides a non-exclusive **Safe Harbor** under **Section 4(a)(2)** of the **Securities Act**.

Prior to the July 2013 amendments under the **JOBS Act**, an issuer relying on Rule 506 could sell securities, without any limitation on the offering amount, to an unlimited number of **Accredited Investors** and to no more than 35 non-Accredited Investors who met certain requirements provided there was no **General Solicitation** or **General Advertising**. Under the July 2013 amendments, this existing framework is unchanged and redesignated as Rule 506(b).

The amendments under the **JOBS Act** provide for Rule 506(c) that allows issuers to offer securities through means of **General Solicitation** or **General Advertising** provided that all purchasers are **Accredited Investors** and the issuer takes reasonable steps to verify that the purchasers of the securities are **Accredited Investors**. With regard to the latter requirement, the **SEC** highlights that "this requirement is separate from and independent of the requirement that sales be limited to **Accredited Investors**, and must be satisfied even if all purchasers happen to be **Accredited Investors**."

The **JOBS Act** amendments also revised **Form D**. An issuer relying on Rule 506 will now be required to check a box specifying which Rule 506 exemption, either Rule 506(b) or 506(c), they have relied on.

Rule 701 A rule under the **Securities Act** that permits holders of unregistered securities received as part of certain written compensatory plans to resell their securities in the public markets without registration with the **SEC**.

Rule Proposal Rules that have been proposed by the **SEC** on a particular topic. Generally, the **SEC** will issue a Rule Proposal for public comment. Following careful analysis of all comments received, the **SEC** will typically issue a Final Rule.

Rump Shares that are not taken up by shareholders in a **Rights Offering**.

Run Rate Refers to how the financial performance of a company would look by extrapolating current results out over a certain period of time. Used by bankers to make financial projections on a company's performance. The Run Rate can be a very deceiving measure, especially in seasonal industries.



S-3 Eligible An **SEC** classification. An issuer that is eligible to use a **Form S-3 Registration Statement** for **Primary Offerings**.

SAF See **Securities Admission Form**.

Safe Harbor A set of guidelines to provide certainty that an entity is exempt from particular requirements. Some examples include **Rule 144** (a Safe Harbor from treatment as an underwriter) and **Rule 506** (a Safe Harbor from registration under **Section 4(a)(2)** of the **Securities Act**).

Safe Harbor Statement A statement about forward-looking information that enjoys a **Safe Harbor** from private litigation under the **Securities Act** or the **Exchange Act**.

Sarbanes-Oxley Act (SOX) The Sarbanes-Oxley Act of 2002, which sets corporate governance standards and reporting obligations for all **Public Company Board of Directors (BoD)**, management, and public accounting firms. See, for example, **Section 404**, which requires **Reporting Companies** to maintain certain **Internal Controls** and procedures over financial accounting systems. SOX does not apply to privately held companies.

SAS 72 "Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties" promulgated by the US Auditing Standards Board. Provides the criteria and guidelines for a **Comfort Letter**. The **135-Day Rule** is derived from SAS 72/AS 6101, which notes that auditors will generally provide comfort (including **Negative Assurance** on **Financial Statement(s)**) that are less than 135 days old.

SAS 76 "Amendments to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties" promulgated by the US Auditing Standards Board. Provides guidance to accountants who issue **Comfort Letters** to underwriters and other requesting parties.

SAS 100 "Statement on Interim Financial Information" promulgated by the US Auditing Standards Board. Provides guidance and establishes standards for accountants who conduct reviews of interim financial information.

Say on Frequency A corporate law concept regarding the frequency of a company's shareholders' right to vote on the remuneration of executives. Under the **Dodd-Frank Act**, the **SEC** adopted a requirement that **Public Companies** solicit an advisory vote on the frequency of holding an advisory **Say on Pay** vote.

Say on Golden Parachutes A corporate law concept whereby a company's shareholders have the right to vote on executive severance packages received on termination of employment. Under the **Dodd-Frank Act**, the **SEC** adopted a requirement that, in the event of a merger or other similar extraordinary transaction, **Public Companies** solicit an advisory

vote on certain **Golden Parachute** compensation that is triggered by the transaction.

Say on Pay A corporate law concept whereby a company's shareholders have the right to vote on the remuneration of executives. The effect of Say on Pay measures can be binding or non-binding, depending on regulatory requirements or internal corporate policy as determined by **Proxy** votes. Under the **Dodd-Frank Act**, the **SEC** adopted a requirement that **Public Companies** solicit an advisory Say on Pay vote on executive compensation.

Schedule 13D The **Beneficial Ownership** form used by a person who has acquired more than 5% of the voting class of a company's equity securities registered under the **Exchange Act**.

Schedule 13G The short-form **Beneficial Ownership** report used by a person within the specified categories of "passive investors" who has acquired more than 5% of a company's equity securities registered under the **Exchange Act**.

SDN List See **Specially Designated National and Blocked Persons List**.

Seasoned Issuer An **SEC** classification of an issuer that is eligible to register **Primary Offerings** of securities on a **Form S-3 Registration Statement**.

SEC The US Securities and Exchange Commission. The SEC is a federal agency that is responsible for enforcing the federal securities laws and regulating the securities industry, the stock and **Options** exchanges in the United States, and other electronic securities markets in the United States.

SEC Comment Letter Refers to: 1) the letters that individuals and entities submit in response to requests for public comment on **SEC** rule proposals or concept releases; or 2) the correspondence between SEC staff and SEC registrants.

Public comment letters relating to SEC rulemaking and regulatory actions are found in the Regulatory Actions section of the SEC's website. Correspondence between SEC staff and SEC registrants are contained in the SEC's **EDGAR** database.

When issuing comments to a company, the SEC staff may request that a company provide additional information, revise disclosure in a document on file with the SEC, provide additional disclosure in a document on file with the SEC, or provide additional or different disclosure in a future filing with the SEC. Often, there may be several rounds of comments with the SEC staff and the company until all issues are resolved.

Secondary Listing The listing of a company's shares on an exchange other than where it has its **Primary Listing**. Generally, a Secondary Listing is used to raise additional funds or to increase its visibility abroad.

Secondary Market Sales of securities after a **Public Offering**. In the Secondary Market, investors purchase securities and assets from other investors rather than from the issuers. In Europe and the United Kingdom, a Secondary Market is also sometimes used to refer to a junior stock market or market segment.

Secondary Offering

1. Where a company that has already filed its **IPO** issues new stock. Companies generally conduct a Secondary Offering of stock for purposes of growth and expanding the business or **Refinancing** existing debt.
2. The sale, as part of a managed offering, of stock by one of the majority shareholders in the company.

See also **Follow-On Offering**.

Section 3(c)(7) Section 3(c)(7) of the **Investment Company Act** provides an exemption from registration for **Investment Companies** if all prospective investors are **Qualified Purchasers (QPs)** within the meaning of the Investment Company Act.

Section 4(a)(1) (formerly Section 4(1)) Section 4(a)(1) is a registration exemption from **Section 5** of the **Securities Act** available for ordinary transactions not involving an issuer, dealer, or underwriter. This exemption is often relied upon for resales and secondary distributions.

Section 4(1-1/2) Section 4(1-1/2) of the **Securities Act** is not formally established by any written **SEC** rule or regulation although it is now thought that **Section 4(a)(7)** largely codifies Section 4(1-1/2). Section 4(1-1/2) is a non-statutory, interpretive resale exemption developed over time and stemming from **Section 5** of the **Securities Act** (although it technically relies on **Section 4(a)(1)**). It relates to private transactions involving holders of **Restricted Securities** who meet appropriate standards of sophistication and therefore can follow **Section 4(a)(2)** or **Regulation D** procedures.

A set of mechanisms has been developed by market participants that permit limited resales from one sophisticated purchaser (such as **Accredited Investors**) in a **Private Placement** to another.

Section 4(a)(2) (formerly Section 4(2)) An exemption relied on for a **Private Placement**. Section 4(a)(2) of the **Securities Act** exempts “transactions by an issuer not involving any **Public Offering**.”

Section 4(a)(7) An exemption providing for private resales of **Restricted Securities** and control securities. Section 4(a)(7) of the **Securities Act** provides a statutory basis for resales of securities by persons other than the issuer, who previously relied on the **Section 4(1-1/2) Private Placement** procedures.

Section 4(a)(7) was adopted as part of the **FAST Act** on December 4, 2015.

Section 5 Section 5 of the **Securities Act**. Section 5 is a key statutory requirement that states that a company cannot offer its securities into the United States unless it has filed a **Registration Statement** or availed itself of an appropriate exemption from registration.

Section 10(a) Section 10(a) of the **Securities Act**. Sets out the requirements for what must be included in a **Prospectus**.

Section 10(b) Section 10 of the **Exchange Act** entitled “Regulation of the Use of Manipulative and Deceptive Practices.” Subsection (b) under Section 10 makes it unlawful to use any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the **SEC** may prescribe as necessary or appropriate for the protection of investors.

Rule 10b-5 is one of the most important rules promulgated by the **SEC** targeting securities fraud pursuant to its authority granted under Section 10(b). The rule prohibits any act or omission resulting in fraud or deceit in connection with the purchase or sale of any security.

Section 11 Section 11 of the **Securities Act**, entitled “Civil Liabilities on Account of False Registration Statement.” Provides a private right of action against a party to a **Registration Statement** who allegedly makes an untrue statement of a **material** fact or omits to state a material fact that must be made in the **Registration Statement**, and includes exemptions from such liabilities.

See also **Due Diligence Defense**.

Section 12 of the Exchange Act Section 12 of the **Exchange Act** details the registration requirements for securities.

Section 12 of the Securities Act Section 12 of the **Securities Act**, entitled “Civil Liabilities Arising in Connection

with Prospectuses and Communications.” Imposes civil liability where a person offers or sells unregistered securities that must be registered. This section is broader in scope than **Section 11** of the **Securities Act**, which is confined to **Registration Statements**.

Section 12(g) Section 12(g) of the **Exchange Act**. Requires an issuer to register a class of equity securities with the **SEC** within 120 days after its fiscal year end if, as of the last day of that fiscal year, the number of worldwide **Record Holders** is 2,000 or more persons or 500 or more **Accredited Investors** or 2,000 or more persons in the case of a bank, savings and loan holding company or bank holding company and its assets exceed US\$10 million. **Rule 12g3-2(b)** is one of several exemptions adopted by the **SEC** to grant certain **Foreign Private Issuers** relief from SEC-registration under Section 12(g).

Section 13(a) Section 13(a) of the **Exchange Act**. Requires that every issuer of a security registered pursuant to **Section 12 of the Exchange Act** must file with the **SEC** the requisite information and documents the SEC deems necessary to keep the information in a **Registration Statement** current and updated. Section 13(a) forms part of the basis for a **Public Company’s** periodic reporting requirements.

See also **Periodic Reports** and **Section 15(d)**.

Section 15(d) Section 15(d) of the **Exchange Act**. Requires issuers who have filed **Registration Statements** to provide periodic information, documents, and reports, as required pursuant to **Section 13(a)**, in respect of a security registered pursuant to **Section 12 of the Exchange Act**. Section 15(d) forms the other part of the basis for a **Public Company’s** periodic reporting requirements.

See also **Periodic Reports**.

Section 16 Section 16 of the **Exchange Act**. Prohibits “short swing trading” by **Section 16 Insiders** and requires periodic disclosure of equity ownership and changes in ownership.

See also **Forms 3, 4, 5** and **Section 16 Reports**.

Section 16 Insiders Executive Officers, directors, and shareholders with a greater than 10% holding of an issuer who are required to file **Section 16 Reports**.

Section 16 Officers Executive Officers of a company who are required to file **Section 16 Reports**.

Section 16 Reports Reports required to be filed with the **SEC**

by **Section 16 Insiders**. Form 3 is used to report initial **Beneficial Ownership** of securities. Form 4 is an interim report used to report changes in Beneficial Ownership. Form 5 is filed annually to report Beneficial Ownership.

See also **Forms 3, 4, 5** and **Section 16**.

Section 404 Section 404 of the **Sarbanes-Oxley Act**, pursuant to which a **Public Company** is required to implement **Internal Controls** and procedures for financial reporting and file, along with its **Annual Report**, a Section 404 attestation report about management’s assessment of the effectiveness of such Internal Controls and procedures.

Securities Stocks, bonds, or other investments in entities regulated by federal and state securities laws. The term security is very broadly defined in Section 2(a)(1) of the **Securities Act**.

Securities Act US Securities Act of 1933, as amended. A federal law, passed by the US Congress in the aftermath of the 1929 stock market crash, that governs the offer and sale of securities in the **Primary Market** and prohibits the offer or sale of securities (aside from certain exempt securities or transactions) unless the securities have been registered with the **SEC**. It is based on the belief that all investors should be provided full and accurate disclosure of information at the time of making investment decisions, which is sometimes called the “sunlight” (or sunshine) theory of regulation. Also referred to as the **’33 Act**.

Securities Admission Form The form submitted by an issuer for the admission of a security to **CREST**. The Securities Admission Form incorporates the CREST rules, regulations and other requirements and creates a contractual obligation between **Euroclear UK** and the issuer of the securities to be accepted into CREST.

Securities and Exchange Commission (SEC) See **SEC**.

Securities Exchange Act See **Exchange Act**.

Securities Industry and Financial Markets Association (SIFMA) A member of the **Global Financial Markets Association (GFMA)** alliance comprising the **Association of Financial Markets in Europe (AFME)**, the **Asia Securities Industry & Financial Markets Association (ASIFMA)**, and the Securities Industry and Financial Markets Association. It is the US regional member of GFMA representing broker-dealers, banks and asset managers.

Securities Offering Reform A set of **SEC** rules and forms promulgated after December 1, 2005, and which were intended

to ease “unnecessary and outmoded restrictions” on securities offerings under the **Securities Act**. These rules, among other things, softened restrictions on permissible communications during the offering process, clarified certain definitions, and simplified registration in some circumstances. The category of **Well-Known Seasoned Issuer (WKSI)** was created to address concerns about overly cumbersome regulations.

Securitization A pooling of cash-generating assets (such as mortgages, loans, and corporate debt) and securities into a single financial instrument and the subsequent sale of these instruments to investors.

Security Agent See **Collateral Agent**.

Security Interest Generally, an interest in a particular asset that secures payment or performance of an obligation.

SEDOL See **Stock Exchange Daily Official List**.

SEHK (or HKSE) See **Stock Exchange of Hong Kong Limited (SEHK)**.

Selective Disclosure Selective disclosure of information (i.e., not to all investors at the same time) by a **Registrant**.

See also **Regulation FD**.

Self-Tender A **Tender Offer** by a company for its own shares, which is subject to Rule 13e-4 under the **Exchange Act**.

Selling Shareholders In the context of a **Primary Offering**, investors in a private company who sell their shares at the **IPO**. Investors may be skeptical of any **IPO** in which shareholders are selling large amounts of stock.

In the context of a **Secondary Offering**, the term may simply refer to a shareholder reselling its shares in the market or it also may refer to holders of securities who are selling in an **SEC**-registered Secondary Offering.

Senior Debt Generally, debt with the highest **Priority** out of a company’s borrowings. Where **Super Senior Debt** exists, Senior Debt is subordinate to such debt.

Senior Notes Debt that has **Priority** over **Senior Subordinated Notes** and any other **Junior Debt**.

Senior Secured Credit Facilities Syndicated bank loans that are secured by the borrower’s assets and those of its subsidiaries.

Senior Subordinated Notes Notes that have lower **Priority** — and are therefore subordinated — to **Super Senior Debt**, **Senior Notes** and **Senior Secured Credit Facilities**, but precede other debt.

SFAS Statement of Financial Accounting Standards. A **Financial Accounting Standards Board (FASB)** pronouncement that establishes fundamental principles of GAAP.

SFRS See **Singapore Financial Reporting Standards (SFRS)**.

SGX See **Singapore Exchange Limited (SGX)**.

SGX-ST See **Singapore Exchange Securities Trading Limited (SGX –ST)**.

Share Purchase Agreement See **Stock Purchase Agreement**.

Shares (or Stock) A unit of ownership interest in a corporation or financial asset. The main types of shares are **Common Shares** and **Preferred Shares**.

Sharia (or Shari’a) Literally translates from Arabic as “the way.” It means Islamic law based on Islamic principles and jurisprudence derived from various sources including the Quran (Koran) and the Sunnah (the actions and words of the Prophet Mohammed).

Shelf Registration A process available in the United States to both **Domestic Issuers** and **Foreign Private Issuers** pursuant to Rule 415 of the **Securities Act**, whereby an issuer’s securities are registered with the **SEC** for one or more future offerings of the securities within a three-year period following registration. This process permits issuers to issue new securities quickly because the registration of the securities is effective and they merely have to be “taken off the shelf” rather than undergo the full registration review process with the **SEC** at the time of the offering. A company must still comply with its **Quarterly Reporting** and **Periodic Reporting** obligations with the **SEC** regardless of whether it has a Shelf Registration on file with the **SEC**. A Shelf Registration is effective for three years.

See also **Automatic Shelf Registration**.

Shelf Registration Statement A **Base Prospectus** that permits the eventual issue of multiple securities, up to three years before the actual offering. For a **Domestic Issuer**, a **Form S-3 Registration Statement** is required, and for a **Foreign Private Issuer**, a **Form F-3 Registration Statement** is required.

Shelf Takedown The **Public Offering** where a company issues the shares that were previously registered under a **Shelf Registration Statement** by using a **Prospectus Supplement**.

Shell Company A company that serves as a vehicle for business transactions without itself having significant assets or operations. A Shell Company is defined under Rule 144(i)(1) under the **Securities Act** as a company that is now, or at any time previous, has been an issuer that has no or nominal operations; and either: (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.

Short Form Report The report included in a UK prospectus or **AIM** admission document summarizing the **Financial Statement(s)** of its issuer instead of including its full Financial Statements.

Short Position The sale of a borrowed security with the expectation that the asset will fall in value. For example, an investor who borrows shares from a broker and sells them on the open market is said to have a short position in the stock. The investor must eventually return the borrowed stock by buying it back from the open market.

This is the opposite of a **Long Position**.

Short Sale A sale of securities that the seller does not own, but which will be available for delivery at the time the sale is completed.

SIBOR See **Singapore Interbank Offer Rate**.

SIC Codes Standard Industrial Classification. A system used for classifying industries by a four-digit code. Established in the United States in 1937, the **SEC** uses **SIC Codes** to classify companies by economic activity. The **SIC** system is also used by agencies in other countries including by **Companies House**.

SIFMA See **Securities Industry and Financial Markets Association**.

Singapore Code of Corporate Governance The most recent iteration of the Code was issued in February 2018 and has been under the purview of the **Monetary Authority of Singapore** and the **Singapore Exchange Limited (SGX)** since September 1, 2007.

Compliance with the Code is not mandatory but listed companies are required under the Singapore Exchange Listing Rules to disclose their corporate governance practices and

give explanations for deviations from the Code in their **Annual Reports**.

Singapore Exchange Limited (SGX) Founded in 1999. In 2000, it became the second bourse in Asia Pacific to be listed. It provides a range of services including trading, clearing, settlement and depository.

One of the divisions of SGX is the **Singapore Exchange Securities Trading Limited (SGX –ST)**.

Singapore Exchange Securities Trading Limited (SGX-ST) A division of the **Singapore Exchange Limited (SGX)**. It represents a premier access point for managing Asian capital and investment exposure. The SGX-ST has two boards, the Main Board and the **Catalist**. The Main Board generally attracts larger, more established companies that have met prescribed financial entry requirements. Companies on the Main Board are exchange regulated and supervised. Fast-growing companies may list on Catalist without a track record of profitability as required on the Main Board. Companies on Catalist are exchange regulated but sponsor supervised.

Singapore Financial Reporting Standards (SFRS) A set of financial reporting standards issued by the Accounting Standards Council in Singapore.

Singapore Interbank Offer Rate (SIBOR) The daily **Reference Rate** at which banks can borrow unsecured funds from other banks in the Singapore interbank market.

SLAP Supplemental Listing Application. A SLAP is filed by a company with the **Financial Conduct Authority (FCA)** or **NYSE** when it wishes to issue additional securities. It must list relevant information relating to the transaction(s) including the number of shares and name of security to be issued or reserved for each transaction and the number of shares outstanding prior to the SLAP.

SLB Staff Legal Bulletin. An informal statement by the **SEC** legal review staff that presents their current interpretation of disclosure rules.

Small and Medium Enterprises (SMEs) Companies which are below a certain threshold for employees, turnover and/or **Balance Sheet** total. This term is commonly used by the **European Union (EU)** and by international organizations such as the World Bank, the United Nations and the World Trade Organization.

SMEs outnumber large companies by a large margin and overall employ more people. SMEs are often the driving force for innovation and competition in many economic sectors.

Smaller Reporting Company An **SEC** classification of an issuer that is not: (i) an **Investment Company**; (ii) an asset-backed issuer; or (iii) a majority-owned subsidiary of a parent company that is not a Smaller Reporting Company and that has either (a) a **Public Float** of less than US\$250 million or (b) less than US\$100 million in annual revenues for its most recently completed fiscal year and either no Public Float or Public Float of less than US\$700 million.

SMEs See **Small and Medium Enterprises**.

SOFR Secured Overnight Financing Rate. A broad measure of the cost of overnight borrowing collateralized by Treasury securities. SOFR is published on the following business day at approximately 8:00 a.m. on the Federal Reserve Bank of New York website.

In 2017, in response to concerns about the sustainability of **LIBOR**, the Alternative Reference Rates Committee, a committee convened by the Federal Reserve Board and the Federal Reserve Bank of New York, identified SOFR as its preferred **LIBOR**-alternative reference rate for financial contracts.

SONIA Sterling Overnight Index Average. SONIA, administered by the Bank of England, is based on actual transactions and reflects the average of the interest rates that banks pay to borrow sterling overnight from other financial institutions and other institutional investors. It is a rate that is being used as an alternative to **LIBOR**.

SOX See **Sarbanes-Oxley Act**.

SPA See **Stock Purchase Agreement**.

SPAC See **Special Purpose Acquisition Company**.

Special Purpose Acquisition Company A special purpose acquisition company which is typically sponsored by an experienced investor and/or management team. The SPAC has historically also been known as a “blank cheque” company or a “blind pool.” It has no prior business or operating revenue and is established to raise money in an **IPO** in anticipation of completing a future business combination. The future acquisition will not have been identified at the time of the **IPO**.

Special Purpose Vehicle (SPV) Entity formed for the purpose of owning and operating a special project in order to

minimize financial and **Bankruptcy** risk. Typically, a SPV is not permitted to incur debt, and is strictly limited in its purpose and functions. SPVs are often used in asset **Securitization** to hold assets and issue the **Asset-Backed Securities**. Also known as a special purpose entity.

Specially Designated National and Blocked Persons List (SDN List) A list issued by the Office of Foreign Assets Control (OFAC), comprised of companies, groups, or individuals that are controlled or acting on behalf of sanctioned countries or entities. Absent an applicable exemption or obtaining special permissions, US persons are typically prohibited from dealing with persons on the SDN List.

Speculative Bonds See **Non-Investment-Grade Bonds**.

Sponsor Generally, the person responsible for organizing and promoting investment opportunities, as well as raising capital. Typically, a major equity-holder in a private equity company.

In the United Kingdom, a **Financial Conduct Authority (FCA)** approved adviser who is registered on the FCA’s list of sponsors. An issuer must appoint a Sponsor: (i) to guide it through the listing process for the premium segment and confirm to the FCA that all the relevant requirements have been met; (ii) if publishing a circular or a prospectus for a major transaction; (iii) when applying to transfer equity shares from the standard to the premium segment; and (iv) in certain other circumstances specified in the **Listing Rules**. Once appointed, the Sponsor has obligations to both the company and the Financial Conduct Authority (FCA).

Spot Market A securities market where goods are sold for cash and delivered immediately. Contracts bought and sold on these markets are immediately effective. The Spot Market is also called the “cash market” or the “physical market,” because prices are settled in cash on the spot at current market prices, as opposed to forward prices.

Spread The difference between the bid price and ask price of a security. The Spread for an asset is influenced by supply and demand.

An **Options** position where one Option is purchased and another Option of the same class, but different series, is sold.

SPV See **Special Purpose Vehicle (SPV)**.

SRO Self-Regulatory Organization. SROs are nongovernmental organizations that have the authority to create and enforce industry regulations with the overriding goal of protecting investors. The **NYSE** and **NASDAQ** are examples.

Stabilization To place a bid or effect a purchase of a security in order to support the market price for such security. The **Lead Managers** often conduct Stabilization during the 30 days following an offering. Stabilization is an accepted practice and is exempted from the general prohibitions on market manipulations.

See **Over-Allotment Option**.

Staff Accounting Bulletin An informal statement by the SEC accounting staff that presents their current interpretation of accounting rules.

Staggered Board See **Classified Board**.

Stale or Staleness Refers to **Financial Statement(s)** that are older than the required periods for Financial Statements to be included in an offering document.

Stamp Duty See **Stamp Tax**.

Stamp Off Approval of the **Prospectus** by the **Financial Conduct Authority (FCA)** or other securities regulator, and evidenced by a physical stamp placed on the cover page of the Prospectus by such regulator.

Stamp Tax In the United Kingdom, a tax, either *ad valorem* or flat, applied to certain legal transactions including the transfer of securities. Once the transfer is recorded, the document attracts the tax and must be stamped "paid" or "exempt."

Standard Listing Allows issuers to access the **Main Market** by meeting minimum standards originally established by EU directives and implemented into UK law and the **FCA Handbook** rather than the UK 'super-equivalent' requirements. Standard Listings cover issuance of shares, **Global Depositary Receipts**, debt and securitized derivatives. Standard Listings are open to all companies regardless of domicile.

Standard & Poor's (S&P) A **Ratings Agencies** that assesses the general creditworthiness of companies on a scale from AAA to D. The S&P determines **Credit Ratings** based on qualitative and quantitative information, including non-public information. The S&P also produces the well-known S&P Indexes.

See also **Ratings Agencies**.

Standby Letter of Credit Also known as a "non-performing letter of credit." A **Letter of Credit** used as a "payment of last resort" should the borrower fail to fulfill its contractual duties. The bank issuing the Standby Letter of Credit makes an irrevocable obligation to make payment to the third-party beneficiary on

account of any indebtedness undertaken by the borrower or to make payment on account of any **Default** by the borrower in the performance of a non-financial or commercial obligation.

See also **Commercial Letter of Credit**.

Standstill Agreement See **Lockup**.

Statutory Underwriting Liability The potential civil liability that underwriters may have under the **Securities Act** and other US laws and rules for incorrect, incomplete or misleading disclosure. This is distinguished from additional liabilities that may arise under common law. See **Due Diligence Defense** for a description of the primary defenses to these liabilities.

Sticker A subsequent amendment or supplement to a **Prospectus** or other offering material that is delivered concurrently with the **Base Prospectus**. It sometimes takes the form of an actual sticker attached to the **Final Prospectus**, but is more often a separate document.

Stock See **Shares**.

Stock Exchange Daily Official List (SEDOL) A list of security identifiers used in the United Kingdom and Ireland for clearing purposes. The numbers are assigned by the **London Stock Exchange**, on request by the security issuer.

Stock Exchange of Hong Kong Limited (SEHK) The Hong Kong Stock Exchange is one of the largest in the world and often considered a gateway to Mainland China and Asia. It is the principal Hong Kong exchange for trading equities, bonds and derivatives and hosts the main market and the **Growth Enterprise Market (GEM)**.

Stock-For-Stock Transaction In a merger & acquisition transaction, the exchange of an acquiring company's stock for the acquired company's stock. The majority of US mergers consist of some combination of cash and shares as consideration for an acquisition.

See also **Exchange Offer**.

Stock Options A right, sold by one party to another, that gives the buyer the right, but not the obligation, to buy (call) or sell (put) a stock at an agreed-upon price within a certain period or on a specific date. In the US, Stock Options typically can be exercised any time between the date of purchase and the date of expiration. In Europe, Stock Options typically can only be redeemed after a specified date.

Stock Purchase Agreement (SPAs) An acquisition agreement outlining the terms and conditions for a buyer purchasing stock in a **Target**.

Stock Split An action by a company whereby its existing shares are divided into multiple shares. Although the number of shares outstanding increases, the total value of the shares remains the same compared to the pre-split amount. No real value has been added as a result of the Stock Split. It is often done for the purpose of reducing each share's market price to a level thought to be more attractive to **Retail Investors**.

Straits Times Index A market capitalization-weighted index that is regarded as the benchmark index for the Singapore stock market. It tracks the performance of the top 30 companies listed on the **Singapore Exchange Limited (SGX)**.

Strike Price The price at which an **Option** holder may buy or sell the security or asset underlying the Option.

Structural Subordination When a lender is prohibited access to the subsidiary's assets (by virtue of possessing security only over the shares in the subsidiary rather than its assets) until all of the subsidiary's creditors have been paid.

Structure Flex A provision in the **Fee Letter** that permits the **Arranger** to reallocate portions of the loans between **Credit Facilities** or other debt securities of the borrower or its parent company if necessary for successful **Syndication**.

See also **Market Flex**.

Stub Period An interim or non-standard financial period. This is the portion of the current **Fiscal Year** that has occurred or is reportable so far. Stub Period **Financial Statement(s)**, commonly referred to as interim financial statements, are typically unaudited, but are often subject to a review by the company's **External Auditors**.

Style Guide See **Style Manual**.

Style Manual An underwriter's in-house guidelines for the style and format of the documents it produces, including offering documents. It includes guidance on typefaces, layout of the cover page, and the description of underwriting arrangements. All members of a transaction team should follow the underwriter's Style Manual, although these guides are typically designed for SEC-registered offerings and certain guidance may not apply to **Private Placement** documents.

Also known as a Style Guide.

Subordinated Debt Debt that is situated below **Senior Debt** in terms of **Priority**. Such debt tends to carry less-restrictive **Covenants** but higher Yields. Hence, Subordinated Debt securities are often, but not necessarily, **High Yield Bonds** (or Junk Bonds).

Subordination Where a claim or right is given lower **Priority** with respect to other claims in the **Capital Structure**. For instance, agreements can include a Subordination clause that states that a current claim on debts will have Priority over other claims formed in future agreements.

See also **Priority**, **Subordinated Debt**, and **Subordination Agreement**.

Subordination Agreement An agreement among creditors that addresses their **Priority** to receive a company's assets in the event of **Bankruptcy**.

See also **Priority**, **Subordination**, and **Subordinated Debt**.

Subrogation The substitution of one creditor for another creditor. A creditor who has Subrogated another's claim has the right to pursue that claim.

Subscription Agreement See **Purchase Agreement** and **Placing Letter**.

Substantial US Market Interest (SUSMI) As defined under **Regulation S** of the **Securities Act**, there is deemed to be a Substantial US Market Interest (SUSMI) if in the issuer's prior **Fiscal Year**:

With respect to equity securities, either (i) the securities exchanges and interdealer quotation systems in the United States constituted the single largest market for the issuer's shares; or (ii) 20% or more of all trading in the class of equity securities took place through US securities exchanges and interdealer quotation systems, and less than 55% of all trading took place through the securities markets of a single foreign country. See Rule 902(j)(1) of the **Securities Act**.

With respect to debt securities, that (i) the issuer's debt securities, in the aggregate, are held by 300 or more US persons; (ii) US\$1 billion or more of the principal amount outstanding of an issuer's debt securities is held by US persons; and (iii) 20% or more of the principal amount outstanding of its debt securities is held by US persons. See Rule 902(j)(2) of the **Securities Act**.

If SUSMI exists in either case, then Category 1 under Regulation S is not available and the issuer will be required to follow either Category 2 or Category 3 (depending on its level of SUSMI) requirements.

Substantially All See **Substantially All**.

Sukuk (singular Sakk) The Arabic name for financial instruments such as Islamic bonds which represent an undivided ownership share in an asset. No **Riba** (or interest) is payable on such bonds in comparison to conventional bonds. Investors hope to receive a return in reliance on an asset based income structure such as those involving **Ijara** or **Wakala** contracts.

Summary Under US securities law, the Summary or overview section of an offering document that includes a short description of the issuer, its strengths and strategy, the key terms of the securities and the offering, and certain summary financial information.

In Europe and the United Kingdom, the **EU Prospectus Regulation** and **UK Prospectus Regulation** respectively strictly govern the Summary section of an offering document.

See also **Box**.

Super Senior Debt The top-rated debt in a **Credit Rating**. In case of **Default**, Super Senior Debt is more likely to see at least a portion of its value returned to the investor.

Supermajority Voting When a large percentage (typically 65% or 80%) of lenders are required to make **Material** amendments and/or other similar changes under a **Credit Agreement**.

Supplemental Listing Application See **SLAP**.

Supplementary Prospectus In relation to a **Prospectus** filed with and approved by an **EU Member State's** regulatory authority or by the **Financial Conduct Authority (FCA)** in the United Kingdom pursuant to the requirements of the **EU Prospectus Regulation** or the **UK Prospectus Regulation**, a Supplementary Prospectus is used to update a Prospectus if a significant new factor, **Material** mistake or inaccuracy relating to the information in the Prospectus arises.

To be distinguished from a **Prospectus Supplement**.

Suretyship The surety or **Guarantor's** assumption of another party's debts and liabilities.

Swap An agreement between two counterparties to exchange certain specified cash flows contingent on certain factors such as **Interest Rates** or currencies.

Sweetener See **Warrant**.

Syndicate The group of underwriters selected by the **Managing Underwriter** that will market and sell the securities. In a banking context, the group of lenders in a debt financing deal.

Syndicate Agreement See **Agreement Among Underwriters (AAU)**.

Syndicated Investment See **Club Deal**.

Syndication Where several different lenders provide various portions of a loan. In the context of especially large loans, Syndication enables a lender to provide a sizeable loan while limiting its credit exposure.

Syndication Agent A bank or financial institution that acts as agent for a group of lenders in the loan **Syndication** process. In many cases, the Syndication Agent is offered as a marketing incentive to encourage other banks to join the **Syndicate**, but the Syndication Agent has no meaningful duties. In these cases, the Syndication is typically organized by another institution (the **Arranger**) with which the borrower has a banking relationship. In some transactions, the Syndication Agent has an active role in the Syndication process.



T+2 A rule that payment of funds and delivery of securities must be completed no later than the two business day after the date of the sale or purchase contract, unless expressly agreed by the parties.

Tacking The treatment of additional shares (e.g., those received in a **Stock Split**) whereby the additional shares are deemed to be acquired at the same time as the original shares. **Rule 144** permits certain transfers to "tack" the holding period of the seller to the buyer's holding period.

Tag-Along Rights The contractual rights of a minority shareholder to be included in a transaction where the majority shareholder is selling its interests to a third party.

See also **Drag-Along Rights**.

Takeover Bid A bid where an acquiring company makes an offer to the **Target's** shareholders to buy the Target's shares in order to gain control of the Target. Takeover Bids can be made either with the Target's board (who recommend Target shareholders to accept the offer) or without it (so that the Target's board recommend shareholders not accept the offer). The latter is referred to as a **Hostile Takeover**.

Takeover Code The UK City Code on Takeovers and Mergers, which focuses mainly on ensuring that shareholders are treated fairly in takeover or merger situations, given the opportunity to decide on the merits of the offer and are treated the same as other shareholders of the same class.

Takeover Panel See **Panel on Takeovers and Mergers**.

Target The company that is being purchased for cash, securities, **Payment-in-Kind (PIK)**, or a combination thereof.

TARGET2 The second generation Trans-European Automated Real-Time Gross Settlement Express Transfer System, an interbank payment system for the processing of cross-border Euro-denominated transfers throughout the **European Union (EU)**.

Tax Gross-Up If a payment is subject to a withholding tax, a provision in a **Debt Instrument** that requires the issuer to pay an amount in addition to a payment due under the Debt Instrument such that the holder receives an amount equal to the payment due plus the amount subject to withholding tax. Effectively, the holder receives a payment equal to the amount it would have received if no withholding taxes had been imposed.

TEFRA US Tax Equity and Fiscal Responsibility Act of 1982. TEFRA was broadly intended to limit tax avoidance by US persons, including curtailing the issuance of **Bearer Bonds** to US persons. TEFRA impose penalties on US investors in Bearer Bonds. In addition, the rules may result in the imposition of a US excise tax on issuers (including non-US issuers) of Bearer Bonds, unless the issuances comply with the TEFRA rules.

Telephone Manual The Manual of Publicly Available Telephone Interpretations and Supplements, published by the Office of Chief Counsel of the **SEC**. It contains descriptions of staff interpretations issued on the telephone by members of the SEC's Division of Corporate Finance.

Tender Offer When an issuer or a third party makes a public invitation to all shareholders to tender their shares for purchase

at a specified cash price. Such offers are primarily governed under the **Exchange Act**. The exact application of this term is not clearly defined in statute, and case law is still used to identify the factors that indicate that a transaction is a Tender Offer. Tender Offers are often used by a third party to gain control of a **Public Company** by offering an amount at a premium above the shares' market price. The issuer may use Tender Offers to reduce the amount of its outstanding **Common Stock**.

See **Wellman v. Dickinson**.

Term Loan A bank loan that includes the specific amount, repayment schedule, time of Maturity, and a **Floating Rate**.

Term Sheet

1. The supplemental terms and conditions to a **Commitment Letter**, including information on the **Bridge Facility** and **Senior Secured Credit Facilities**.
2. A document setting out the main terms on which parties to a transaction propose to contract. Also referred to as a letter of intent (or LOI), **Heads of Terms**, and memorandum of understanding (or MOU). Though not usually intended to be legally binding, Term Sheets indicate the parties' intent.

TIA See **Trust Indenture Act**.

Tick and Tie A document containing marks used by auditing firms to confirm circled financial figures in an offering document which are then tied back to their **Comfort Letters** in the transaction.

See also **Circle-Up** and **Level of Comfort**.

Tippee A person who receives **Insider Information**.

Tipper A person who provides **Insider Information**.

Tombstone See **Deal Toy**.

Tombstone Ad A written advertisement placed by underwriters after the **Closing** of a securities offering that includes the basic details about the offering.

Tracking Stock Shares issued by a parent company that have been designed to track the performance of a particular division or subsidiary.

Trailing 12 Months See **Last 12 Months**.

Tranche French for "slice." Refers to a particular division of

shares, loan finance, or bonds that are released at different times, or have different attributes.

Transaction Bible See **Bible**.

Transfer Agent An agent typically used by **Public Companies** to keep track of the individuals and entities that own their stocks and bonds. Transfer Agents usually perform three main functions: (i) issue and cancel certificates to reflect changes in ownership; (ii) act as an intermediary for the company, as **Paying Agent** (distributing dividend or other payments), **Proxy Agent** (sending out **Proxy** materials), exchange agent (exchanging a company's stock or bonds in a merger), tender agent (tendering shares in a **Tender Offer**), and **Mailing Agent** (mailing the company's **Quarterly Reports**, **Annual Reports**, and other reports); and (iii) handle the replacement of lost, destroyed, or stolen certificates.

Trust Indenture Act (TIA) US Trust Indenture Act of 1939 supplements the **Securities Act** and governs the issue of debt securities. The TIA prohibits bond issues valued at over US\$5 million from being offered for sale without a formal written agreement (an **Indenture**). The TIA requires that the **SEC** approve the **Indenture** and that the Indenture includes certain protective clauses and excludes certain exculpatory clauses, and requires **Trustees** under the Indenture to be independent of the issuer.

Trustee In a bond transaction, the entity that acts in a fiduciary capacity on behalf of bondholders and the duties of which are defined in the **Indenture**. For instance, the Trustee would monitor the administrative aspects of a bond, such as ensuring the borrower complies with the Indenture's terms.



UCC See **Uniform Commercial Code**.

UCC-1 Financing Statement See **Financing Statement**.

UK Corporate Governance Code Published by the Financial Reporting Council, the UK Corporate Governance Code replaced the **Combined Code** and seeks to increase confidence in, and promote good corporate governance practices by UK listed companies. Companies with ordinary shares admitted to the premium segment of the **Main Market** must describe in their **Annual Report** the extent to which they have complied with the Code and explain any non-compliance.

UK Exchange Regulated Market A trading market that is not a UK Regulated Market and is therefore not subject to the **UK Prospectus Regulation** and certain other UK rules that impose disclosure requirements and ongoing reporting requirements. For example, AIM in London.

See also **EEA Exchange Regulated Market**.

UK MAR See **UK Market Abuse Regulation (UK MAR)**.

UK Market Abuse Regulation (UK MAR) Regulation (EU) 596/2014 as it forms part of the domestic laws of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018. The UK Market Abuse Regulation (UK MAR) came into effect at 11:00 pm GMT on 31 December 2020. It contains prohibitions for insider dealing, market manipulation, unlawful disclosure of inside information and provisions to prevent and detect these.

See also **EU Market Abuse Regulation (EU MAR)**.

UK Prospectus Regulation Regulation (EU) 2017/1129 as it forms part of the domestic laws of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018, which regulates offers and sales of securities to investors in the United Kingdom.

See also **EU Prospectus Regulation**.

UK Regulated Market A market for a variety of securities in a state in the United Kingdom that complies with the relevant criteria of the UK version of the Markets in Financial Instruments Regulation and which is a UK Recognised Investment Exchange under the Financial Services and Markets Act 2000.

The primary market in the United Kingdom is a UK Regulated Market (e.g., the **Main Market** in the United Kingdom is a UK Regulated Market but the **AIM** is not).

See also **EEA Regulated Market**.

Underwater Convertible securities, **Warrants**, or **Options** that a holder cannot effectively exercise for a profit. See **Out-of-the-Money**.

Underwriter(s) In the United States, bank(s) that purchase securities from a company and resell them to the public on that company's behalf. Section 2(a)(11) of the **Securities Act** states that an underwriter is "any person who has purchased a security from an issuer or a controlling person of an issuer with a view to distributing the security."

Underwriter's Cutback The ability of the **Lead Manager** to reduce the number of shares that are sold by **Selling Shareholders** in an **IPO** or follow-on offering. To reduce the likelihood of a **Piggyback Registration Rights** adversely affecting an offering, typically Piggyback Registration Rights are limited in case the **Managing Underwriter** concludes that the shares of the company in question cannot fit within the **Public Offering** without adversely affecting the offering.

Underwriters' counsel The lawyers/law firm(s) who represent the underwriters.

Underwriting Agreement An agreement between the issuer and the underwriters where the latter agree to purchase the securities from the former. The agreement includes information regarding the **Placement Fee** or discount and selling restrictions, as well as **Covenants**, representations and warranties.

Underwriting Commission See **Underwriting Fee**.

Underwriting Fee The fee, which is deducted from the offering proceeds, that investment banks charge for underwriting an issue of securities. The Underwriting Discount is a percentage of the offering price for equity or of the principal amount of debt. Also known as an Underwriting Commission for the underwriters' selling and marketing efforts.

Underwriting discounts vary widely between different jurisdictions.

Uniform Commercial Code (UCC) In the United States, a standard set of business laws that regulate contracts, developed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. Most US states have adopted the UCC, which consists of nine articles governing banking and loans.

Unrestricted Subsidiaries A class of subsidiary within **Indentures** that is not subject to the usual representations, **Covenants**, and **Event of Default** that is normally associated with such type of debt.

Unseasoned Issuer An issuer that is required to file **Periodic Reports** pursuant to **Section 13(a)** or **Section 15(d)** of the **Exchange Act**, but does not satisfy the eligibility requirements of Form S-3 for a primary offering of securities.

US Person As defined in Rule 902(k) under **Regulation S**: any natural person resident in the United States; any partnership or corporation organized or incorporated under the laws of the United States; any estate of which any executor or administrator

is a US person; any trust of which any **Trustee** is a US person; any agency or branch of a foreign entity located in the United States; any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a US person; any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and any partnership or corporation if: organized or incorporated under the laws of any foreign jurisdiction; and formed by a US person principally for the purpose of investing in securities not registered under the **Securities Act**, unless it is organized or incorporated, and owned, by **Accredited Investors** who are not natural persons, estates, or trusts.

US Securities Digest Published by the **Forum for US Securities Lawyers in London (the "Forum")**, this Digest is published periodically and includes summaries of recent rules, regulations and case law. To receive this Digest, please e-mail info@tffuslil.com.

Use of Proceeds A part of the **Term Sheet**, **Offering Memorandum**, or **Prospectus** that describes the manner in which the proceeds of the financing will be used.



Verification A type of **Due Diligence** conducted on **Capital Markets** transactions. Verification involves obtaining evidence that supports statements and claims made in the offering document or prospectus.

See also **Due Diligence**.

Verification Notes Confidential documents and notes that provide a record of the evidence given by, and obtained from, a company's directors in order to confirm that the statements and claims made in the company's offering document or prospectus are accurate, true and not misleading. The Verification Notes reduce the risk that the directors will incur civil or criminal liability if the offering document or prospectus proves to be false or misleading.

See also **Verification**.

Virtual Roadshow An internet-based version of the traditional in-person **Roadshow**, generally organized by the **Lead Manager**.

Investors must receive a password or log-on protocol in order to view and access the material. However, they are prohibited from copying the presentation. The Lead Manager will most likely monitor access to the site to help estimate interest, as well as to comply with distribution restrictions under applicable securities laws.

Voluntary Filer An issuer that is not statutorily required to file **Periodic Reports** (exempt from **Section 13(a)** and **Section 15(d)** of the **Exchange Act**), but nevertheless files pursuant to certain financing agreements.

Voluntary Prepayment See **Optional Prepayment**.



Waiting Period See **Quiet Period**.

Waiver The Waiver of a past **Default** under a **Credit Agreement** or **Indenture**, and usually containing, among other things, time restrictions.

Wakala An investment agency form of Islamic financing.

See **Islamic Finance**.

Wall Crossing The act of providing an individual with **Inside Information**, thereby making them an insider.

Warrant A type of security that gives its holder the right to purchase equity securities for a specific price at a specific time. Also known as a **Sweetener** as it tends to be offered with a new debt issue as an incentive for potential investors.

Website Filter A mechanism to block specific websites from being accessed without the appropriate approval. In the securities law context, one or more click-through screens to determine whether a prospective investor may access offering materials posted online, based on distribution restrictions under applicable securities laws. The creation of a Website Filter is usually addressed in **Publicity Guidelines**.

Weighted Average Life The average number of years for which there remains outstanding unpaid principal on a loan, mortgage, or other **Debt Instrument**.

Well-Known Seasoned Issuer (WKSI) An **SEC**

classification of an issuer that: (i) has a **Public Float** of a minimum of US\$700 million or has issued in the last three years a minimum of US\$1 billion aggregate amount of nonconvertible securities, other than common equity; and (ii) is otherwise **Form S-3 Registration Statement** or **Form F-3 Registration Statement** (as applicable) eligible. If an issuer is deemed to be a WKSI, the issuer can rely on certain exemptions from the **SEC** rules applicable to offerings.

Wellman Test See **Wellman v. Dickinson**.

Wellman v. Dickinson *Wellman v. Dickinson*, 475 F.Supp. 783, 823-24 (S.D.N.Y. 1979), aff'd on other grounds, 682 F.2d 355 (2d Cir. 1982), cert. denied, 460 U.S. 1069 (1983). Most courts refer to the eight-factor test suggested by the **SEC** and approved in *Wellman v. Dickinson* to determine whether a series of purchases constitutes a **Tender Offer**. Not all eight factors (listed below) need be present for the court to find a Tender Offer.

1. Was there an active and widespread solicitation of shares by the offeror?
2. Was the solicitation of a substantial percentage of the outstanding stock?
3. Was a premium price offered over the prevailing market?
4. Were the terms fixed rather than negotiable?
5. Was the offer contingent on the tender of a fixed minimum number of shares?
6. Was the offer open for a limited period of time?
7. Was there pressure put on shareholders to sell their stock? and
8. Were there public announcements accompanying the offer?

Also referred to as the Wellman Test.

Wells Notice A letter sent by the **SEC** to an individual or entity when it is planning to bring an enforcement action against them. Named after the Wells Committee that created the process in 1972.

White Knight A party that, with the encouragement or co-operation of the board of a company that is already the subject of a **Hostile Takeover** offer by a third party, makes a **Takeover Bid** for the company, usually at a higher price or on better overall terms. One of the numerous defenses available against Hostile Takeovers.

Williams Act Amendments to the **Exchange Act** enacted in 1968 and codified in Sections 13(d) and Section 14 of the **Exchange Act**. The Williams Act was enacted, in part, to eliminate abuses with cash **Tender Offers** and requires mandatory disclosure of information regarding cash Tender Offers. Filings and public disclosures with the **SEC** are also required of anyone who acquires more than 5% of the outstanding shares of a company subject to SEC-registration. The Williams Act also requires disclosure of securities holdings to alert issuers of stake building in their securities.

WKSI See **Well-Known Seasoned Issuer**.

Working Capital A measure of both a company's efficiency and its short-term financial health calculated as current assets minus current liabilities. If current assets are less than current liabilities, a company has a Working Capital deficiency or deficit. Also known as Net Working Capital.

A company can have assets and profitability but be short of **Liquidity** if its assets cannot readily be converted into cash. To assist with cash flow challenges, a company may put in place a **Working Capital Facility**.

Working Capital Facility A loan used by companies to cover day-to-day operations expenses. A Working Capital Facility covers only expenses incurred by existing capital and human resources (e.g., payroll, rents, utilities, etc.). Working Capital Facilities are generally granted only to companies with a high **Credit Rating**.

See also **Working Capital**.

Working Capital Statement A statement that in the opinion of the issuer the **Working Capital** available to it is sufficient for present requirements, that is, for at least the next 12 months from the date of publication of the offering document (or in the case of **AIM**, the date of admission of securities), or, if not and the issuer has securities already listed, how it plans to provide the additional **Working Capital** thought necessary.

Working Group List (WGL) See **Working Parties List (WPL)**.

Working Parties List (WPL) A list that contains the names and contact details of the parties involved in a particular equity or debt transaction. It is distributed to everyone on the list at the beginning of the transaction. Also referred to as a Working Group List (WGL).

Wrap A disclosure document that is wrapped around (or stapled to the front of) an **Offering Memorandum** or **Prospectus** in

order to comply with specific statutory disclosure requirements in certain jurisdictions in which an offering is being made (e.g., in a cross-border **Private Placement** in Canada, a Canadian Wrap which surrounds or is stapled to the front of the Offering Memorandum is customarily required. The Wrap contains a description of the statutory rights of action, tax disclosure where the securities in the hands of Canadian holders differs **materially** from the tax treatment in the hands of US holders, and other information of interest to prospective Canadian purchasers).

Wrapper See **Wrap**.



XBRL eXtensible Business Reporting Language. An open-source market-driven standard for exchanging financial information. The **SEC** requires companies to use XBRL when filing financial information.



Yield The return on an investment, such as a dividend, or interest on debt. This term is typically used in the context of bonds, and is the **Coupon** payment divided by the price paid for the bond. Because the price for the bond can vary depending on market conditions, Yield will, accordingly, vary (inversely to price).



Zero Coupon Bond A bond that pays no interest during its life, but is instead bought at a deep discount to its face value. The face value is then repaid to the holder on **Maturity**.



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