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COMPARISON OF TYPES OF SECURITIES OFFERINGS FROM A US REGULATORY PERSPECTIVE

The Securities and Exchange Commission (the "**SEC**"), the primary United States securities regulatory authority, has broad jurisdiction over international offerings, and the level of applicable regulation depends on the extent to which the offering accesses the U.S. market and the relative size and sophistication of the investor base. Global offerings of securities generally have one of three sets of characteristics depending on the nature of the target investor base, particularly the investors' connection to the United States and their relative size and sophistication:

- Regulation S-only offerings to investors who are either not in the U.S. or are not U.S. persons (generally referred to as "**Reg S offerings**");
- Combination Regulation S offerings outside the U.S. and Rule 144A offerings to U.S. investors (generally referred to as "**144A offerings**", even when there is a Reg S component) who are "qualified institutional investors" or "**QIBs**" (i.e., large sophisticated institutional investors in the U.S.); and
- Registered offerings to the U.S. public market (generally referred to as "**registered offerings**").

Regulation centers on the preparation by the parties of a written offering document (variously referred to as the "offering memorandum", "offering circular" and "prospectus"), and the extent to which it discloses material information regarding the issuer and the offering. Regulation also broadly covers the manner in which the offering is conducted, such as the type of publicity (inadvertent or otherwise) before, during and after the offering process. Exposure to liability to offering participants primarily relates to the adequacy of the offering document and the manner in which the offering is conducted. Depending on the type of offering, the participants will expect the offering process to conform to market practice and procedures.

The following table sets forth a summary of certain differences between these three types of offerings in terms of legal requirements as well as market practice and procedures:

	Regulation S only	**Rule 144A/Regulation S**	**U.S. Registered Offerings**
Investor Base	Located outside the United States (including U.S. investors who have offshore affiliates or offices).[1]	The U.S. portion is limited to QIBs. Non-U.S. portion is to the same investor base as a Reg S offering.[1]	U.S. public market (i.e., retail investors). Can also sell to non-U.S. investors.
Listing Venue or Exchange	Cannot list on a U.S. exchange. Generally listed on local and/or international	Same as with Reg S offering.	Most commonly listed on NYSE or Nasdaq, in addition to local exchange.

[1] If there is an existing investor base for the issuer's securities in the U.S. that is sufficiently large, the offering may be limited to non-U.S. persons (even if they are located outside the U.S.), instead of just investors located outside the U.S. In 144A offerings, market practice often limits the international portion to non-U.S. persons in any case.

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	exchanges, such as London, Luxembourg, Hong Kong, or Singapore.		
Liability to Investors	If the securities are not listed on a US exchange and the transaction is not "domestic", the issuer should not be liable in the U.S. The issuer and underwriters may continue to be liable to claims from international investors under local securities or contract law.	Main liability concern is Section 10(b) and Rule 10b-5 of the U.S. Securities Exchange Act of 1934, as amended, focusing on fraudulent and deceptive practices in connection with purchase and sale of security. No due diligence defense but due diligence can negate scienter element. Secondary actors such as underwriters and lawyers are generally not liable to private plaintiffs under 10b-5.	Issuer is strictly liable to U.S. investors for inaccuracies in the offering document (i.e., the issuer guarantees its accuracy and completeness). Officers, directors, and underwriters are liable if negligent in preparation of the document (i.e., they have a "**due diligence**" defense).
Disclosure Level and Due Diligence	No legal requirement. Market practice is generally at a lower level than for 144A or U.S. registered offerings. The offering document may not include preparation of "management's discussion and analysis of financial conditions and results of operations", referred to as the "**MD&A**". The exchange on which the securities may be listed may require certain types of disclosure.	No legal requirement, but because securities are being sold into the U.S., market practice is to have level of disclosure in offering document and due diligence be similar to that for U.S. registered offerings. Includes an MD&A and "Risk Factors" similar to that in U.S. registered offerings. The exchange on which the securities may be listed may require certain types of disclosure.	Full disclosure as required by Form F-1 or F-3 registration statement. The highest level of due diligence. The registration statement may not contain any "untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading".
Financial Statements	Primarily determined by the exchange on which the securities are listed. Market practice is to require same types of financial statements in 144A offerings, although occasional exceptions depending on situation.	Market practice is to include in the offering document the same types of financial statements in U.S. registered offerings. Requirements of the exchange on which the securities are listed must also be satisfied.	The registration statement must include three years of audited financial statements and MD&A. Annual financial statements are required to be audited under U.S. GAAP or IFRS as issued by the IASB. Use of other IFRS or

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			other accounting standards requires a reconcilation to U.S. GAAP. Non-audited interim financial statements are also required.
Timetable	Generally a similar timetable as with 144A offerings, although may be somewhat shorter due to lower level of due diligence. Review by stock exchange on which securities will be listed will require same amount of time as with 144A offerings.	Depending on the issuer and the level of preexisting disclosure, generally takes less time than registered offerings. No review by SEC is required, but the stock exchange on which securities will be listed may require several weeks for review and approval process.	Generally takes at least 4-6 months, which includes (i) at least 3 months to conduct due diligence and other preparation (including financial statements) prior to filing registration statement with SEC and (ii) SEC review of the registration statement which generally takes an additional 30-60 days.
Parties to Offering	Generally the same as for 144A offerings, but a few jurisdictions have accepted one U.S. counsel acting as "deal counsel" but technically representing underwriters.	Generally the same as for U.S. registered offerings.	Market practice is to have, in addition to the issuer, underwriters, and auditors, local counsel and U.S. counsel for both issuer and underwriters.
Restrictions on Publicity	No "directed selling efforts" into the U.S.	Although the JOBS Act has loosened the restrictions on publicity in the U.S. with respect to the 144A tranche, many banks still impose publicity restrictions upon the issuer as a contractual matter in underwriting agreements, in order to limit risks relating to anti-fraud rules.	Strict regulation of the types of permissible publicity. Broad interpretation by SEC of impermissible publicity can result in substantial delays in the offer timing.
Comfort Letters	Generally patterned on either SAS 72 "look-a-like" or ICMA standard comfort letters, and includes some type of negative comfort for interim and stub periods.	Generally delivered by local auditors patterned after SAS 72 comfort letters, including negative comfort on interim and stub periods.	SAS 72 comfort letters which include negative comfort on interim and stub periods.
Legal Opinions	Market practice may require at closing of offering legal opinions from local and international counsel as to enforceability	Market practice generally requires the same opinions from local and U.S. counsel as with Reg S offerings, as well as so-called "10b-5"	Market practice generally requires the same opinions as in 144A offerings,

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	of legal documents, as well as opinions that generally cover issuer's representations. Generally does not include 10b-5 disclosure letters or U.S. no-registration opinions.	disclosure letters that opine as to the material accuracy of the offering document. U.S. counsel will also deliver no-registration opinions.	including U.S. no-registration opinions and 10b-5 disclosure letters.
Restrictions on Liquidity	No resales to U.S. investors. Generally no restrictions on resales of securities sold to non-U.S. investors under Regulation S.	Restrictions on resale of securities sold to U.S. investors, including procedures to ensure status of subsequent purchasers as QIBs. Generally no restrictions on resales of securities sold to non-U.S. investors under Regulation S.	Securities are freely tradeable.
On-going Reporting Obligations	Generally none, other than as may be required on the stock exchange on which the securities are listed.	The issuer is obligated to provide upon request certain basic business and products description and 2+ years of reasonably current financial statements. Otherwise the same as with Reg S offerings.	Subject to on-going reporting requirements, including filing of annual and quarterly reports conforming to SEC standards, as well as filing of periodic reports for major corporate events. Also includes reporting by major shareholders and directors and officers of transactions in equity securities of the issuer.
Other Sources of Regulation and Compliance	Generally not subject to other areas of U.S. regulation.	Other potential areas of U.S. regulation include U.S. taxation (in particular, in relation to passive foreign income), as well as U.S. Investment Company Act of 1940. Sarbanes-Oxley will not apply to issuers in 144A offerings unless such issuers have issued, or subsequently issue, U.S.-registered securities.	U.S. registered issuers are subject to other on-going regulations related to transactions in their securities, including regulation of tender offers, rights offerings, and use of shares as consideration in M&A transactions. U.S. registered issuers are also subject to the Sarbanes-Oxley Act, which includes, among other things, regulation of corporate governance; and the Foreign Corrupt Practice Act's record keeping provisions.

This chart is merely intended to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on the issues presented here, please contact one of your regular contacts at Dorsey & Whitney.