U.S. SECURITIES LAW FOR INTERNATIONAL FINANCIAL TRANSACTIONS AND CAPITAL MARKETS pdf

1: Securities / Capital Markets Law | Best Law Firms

U.S. Securities Law for International Financial Transactions and Capital Markets, 2d answers your questions about U.S. securities law and its international aspects. It discusses how U.S. law relates to cross-border financial transactions and capital markets.

Current issues In a nutshell Capital markets lawyers feel all the highs and lows of market forces more than any other practitioner, and when the Great Recession hit the practice went under too. However, the vast sums exchanged and the technicality of the transactions mean that it will always remain an important area for BigLaw firms. They offer more freedom to companies than obtaining cash via bank loans, which tie both parties into the term of the loan. Capital markets allow for companies to obtain massive sums with more flexibility; they also offer up limitless investment opportunities. Large financial institutions offer customized services to companies seeking funding on the capital markets. These services include advice on debt and equity offerings, on securitization and on the creation of derivatives. Issuer and underwriter will both engage a separate law firm. This decision depends on the nature of the company, the desired duration of the loan, who the buyers are likely to be, and market demand. Equity capital markets Within equity, there are initial public offerings IPOs and follow-on offerings of common and preferred stock. An IPO is a transformational event for a company. Companies can list on multiple exchanges around the world. Debt capital markets This covers many types of debt instrument, but generally speaking it deals with a borrower raising capital by selling tradable bonds to investors, who expect the full amount lent to be paid back to them with interest. Why would a company issue bonds rather than take out a bank loan? As mentioned above, the terms of a bank loan can be restrictive to both parties: Bonds are tradable; risk and its rewards can be sold on and spread across numerous lenders bondholders , meaning that a company can raise much larger sums that can only be matched by arranging a syndicated loan a group of banks chipping in on the principal , but without the same bank loan obligations that syndications entail. Plus bondholders can be anyone, not just a bank. Structured finance and securitization This can get gloriously complex, but its aims are simple: Securitization is the core of the process, which takes a lowly untradable piece of debt, such as a mortgage, vehicle loan or a credit card receivable, bundles it together with debt of the same class, and sells the bundle of debt on to investors, such as pension funds, hungry for the cash flows that come with the debt. Within the SPE are the bundled loans which enable the SPE to issue bonds, where the interest on the bundled debt forms the cash flows or bond yields. Securitization shouldered much of the blame for the credit crunch and the ensuing global economic havoc. Complicated structures led to a murky tangle of debt obligations, grouping different debt classes and exploiting credit enhancement. All was rosy until the housing bubble burst, mortgages defaulted and the ugly truth emerged. For a leisurely introduction to the topic, watch The Big Short. Derivatives At its most basic, a derivative is a financial instrument used by banks and businesses to hedge risks to which they are exposed due to factors outside of their control. They can also be used for speculative purposes by betting on the fluctuation of just about anything, from currency exchange rates to the number of sunny days in a particular region. The value of a derivative at any given time is derived from the value of an underlying asset, security or index. Futures, forwards, options and swaps are the most common types of derivatives. Forwards are agreements between two parties that one will buy a certain product from the other for a fixed price at a fixed date in the future. Hedging against future price risks and speculation over the price movement of the underlying assets are the big attractions. Futures are standardized forwards, which can be traded on the futures market. Options are optional futures, where a buyer has the right but not the obligation to purchase or sell a product at a certain date in the future for a certain price. Swaps are agreements between two parties to exchange assets at a fixed rate, for example to protect against fluctuations in currency exchange rates. Do due diligence on the issuer company and draft a prospectus as part of the registration statement that provides a welter of information about the company and its finances, as well as past financial statements. Help the accountants draft a comfort letter, assuring the financial soundness of the issuer. File with the SEC and wait 30 days before getting initial comments from them. Undergo multiple rounds of commentary back and forth with the SEC. This can take one or two months. Negotiate approval of a listing on the stock exchange. This involves the submission of documentation, certifications and letters that prove the client satisfies the listing requirements. Finalize the underwriting agreement and other documentation. Debt offering Plan out the deal with issuer and underwriter. A timeline is drawn up and tasks are allocated between the different parties. Conduct due diligence on the issuer to examine its creditworthiness, make the disclosure accurate and highlight any associated risks. Deliver to the underwriters at closing a legal opinion and a disclosure letter on the offering based on due diligence. Securitization Work with the underwriter and issuer to draw up the structure of a security, and help the parties negotiate the terms of that structure. Derivatives Be approached by a financial institution client eg, a hedge fund with an idea to create a new derivatives product. Communicate back and forth with the client discussing legal issues and risks related to various possible structures for the product. Home in on a specific structure for the product. If all has gone well, and if the new structure has sufficient prospects for legal and commercial success, lawyers will draft new documentation describing the make-up of the derivative. Realities of the job Notwithstanding the differences mentioned in the descriptions above, there are big similarities between the work of lawyers on debt, equity and other securities transactions. Some top firms have specialist departments for each capital markets subgroup. Partners often specialize in debt, equity, securitization or derivatives work, but they may continue to dabble in other areas too. On the plus side, clients are also smart, sophisticated and dynamic. Large law firms usually have strong and close relationships with investment bank clients, meaning that juniors can get frequent client contact. The purchase agreement is a lengthy contract in which the underwriter agrees to buy the securities and resell them to investors. As soon as a company undergoes an IPO, it will be subject to all the rules and requirements of a public company, so the necessary organizational structure must be in place before the IPO. Follow-on offerings of common equity are much simpler than an IPO because most of the basic disclosure has already been drafted and will only need to be updated. In the latter case bonds can only be bought by certain large registered institutional buyers. There are moments when we have disagreements, but rarely does it get acrimonious. The bond market is huge and influential. It is generally considered to have a large influence on the health of the US and global economy. Market conditions are very important to the success of capital market deals â€” more important even than the willingness of the parties to get the deal done. Knowledge of bankruptcy, property and tax law is useful too, as is gaining an understanding of the basic principles of accounting. Reading the financial press â€” starting with The Wall Street Journal â€” is a must. Activity levels were predicted to be stronger in the last quarter of , but uncertainties in the Asia-Pacific region â€” which included alterations to listing rules in Hong Kong â€” meant that those expectations were not met. Hot areas for the US included energy, healthcare and technology. Activity in the latter sector continued into , as streaming service Spotify made its direct listing on the New York Stock Exchange in April. The US Federal Reserve raised interest rates by 0. A further three increases are anticipated in , off the back of improved economic forecasts in the US. They were based on lore. Many regulations in the industry are new. That means old hands like me have a smaller advantage over new people entering the field than we used to. Industrious young associates can learn about new regulations and outsmart the partners! Related practice areas Becoming a lawyer in capital markets:

2: Capital markets

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For example, a company may have inbound payments from customers that have not yet cleared, but need immediate cash to pay its employees. When a company borrows from the primary capital markets, often the purpose is to invest in additional physical capital goods , which will be used to help increase its income. It can take many months or years before the investment generates sufficient return to pay back its cost, and hence the finance is long term. In the widest sense, it consists of a series of channels through which the savings of the community are made available for industrial and commercial enterprises and public authorities. Versus bank loans[edit] Regular bank lending is not usually classed as a capital market transaction, even when loans are extended for a period longer than a year. First, regular bank loans are not securitized i. Second, lending from banks is more heavily regulated than capital market lending. Third, bank depositors tend to be more risk-averse than capital market investors. These three differences all act to limit institutional lending as a source of finance. Two additional differences, this time favoring lending by banks, are that banks are more accessible for small and medium-sized companies, and that they have the ability to create money as they lend. In the 20th century, most company finance apart from share issues was raised by bank loans. But since about there has been an ongoing trend for disintermediation , where large and creditworthy companies have found they effectively have to pay out less interest if they borrow directly from capital markets rather than from banks. The tendency for companies to borrow from capital markets instead of banks has been especially strong in the United States. According to the Financial Times , capital markets overtook bank lending as the leading source of long-term finance in , which reflects the risk aversion and bank regulation in the wake of the financial crisis. When a government wants to raise long-term finance it will often sell bonds in the capital markets. In the 20th and early 21st centuries, many governments would use investment banks to organize the sale of their bonds. The leading bank would underwrite the bonds, and would often head up a syndicate of brokers, some of whom might be based in other investment banks. The syndicate would then sell to various investors. For developing countries, a multilateral development bank would sometimes provide an additional layer of underwriting , resulting in risk being shared between the investment bank s , the multilateral organization, and the end investors. However, since it has been increasingly common for governments of the larger nations to bypass investment banks by making their bonds directly available for purchase online. Many governments now sell most of their bonds by computerized auction. Typically, large volumes are put up for sale in one go; a government may only hold a small number of auctions each year. Some governments will also sell a continuous stream of bonds through other channels. The biggest single seller of debt is the U. If it chooses shares, it avoids increasing its debt, and in some cases the new shareholders may also provide non-monetary help, such as expertise or useful contacts. On the other hand, a new issue of shares will dilute the ownership rights of the existing shareholders, and if they gain a controlling interest, the new shareholders may even replace senior managers. Conversely, bonds are safer if the company does poorly, as they are less prone to severe falls in price, and in the event of bankruptcy, bond owners may be paid something, while shareholders will receive nothing. When a company raises finance from the primary market, the process is more likely to involve face-to-face meetings than other capital market transactions. Whether they choose to issue bonds or shares, [e] companies will typically enlist the services of an investment bank to mediate between themselves and the market. The bank then acts as an underwriter , and will arrange for a network of brokers to sell the bonds or shares to investors. This second stage is usually done mostly through computerized systems, though brokers will often phone up their favored clients to advise them of the opportunity. Companies can avoid paying fees to investment banks by using a direct public offering , though this is not a common practice as it incurs other legal costs and can take up considerable management time. Most 21st century capital market transactions are executed electronically; sometimes a human operator is involved, and sometimes unattended computer systems execute the transactions, as happens in algorithmic trading. Most capital market transactions take place on the secondary market. On the primary market, each security can be sold only once, and the process to create batches of new shares or bonds is often lengthy due to regulatory requirements. On the secondary markets, there is no limit to the number of times a security can be traded, and the process is usually very quick. With the rise of strategies such as high-frequency trading , a single security could in theory be traded thousands of times within a single hour. Sometimes, however, secondary capital market transactions can have a negative effect on the primary borrowers: An extreme example occurred shortly after Bill Clinton began his first term as President of the United States; Clinton was forced to abandon some of the spending increases he had promised in his election campaign due to pressure from the bond markets. In the 21st century, several governments have tried to lock in as much as possible of their borrowing into long-dated bonds, so they are less vulnerable to pressure from the markets. Following the financial crisis of â€"08 , the introduction of quantitative easing further reduced the ability of private[clarification needed] agents to push up the yields of government bonds, at least for countries with a central bank able to engage in substantial open market operations. Individual investors account for a small proportion of trading, though their share has slightly increased; in the 20th century it was mostly only a few wealthy individuals who could afford an account with a broker, but accounts are now much cheaper and accessible over the internet. There are now numerous small traders who can buy and sell on the secondary markets using platforms provided by brokers which are accessible via web browsers. When such an individual trades on the capital markets, it will often involve a two-stage transaction. First they place an order with their broker, then the broker executes the trade. If the trade can be done on an exchange, the process will often be fully automated. If a dealer needs to manually intervene, this will often mean a larger fee. Investment banks will often have a division or department called "capital markets": Pension and sovereign wealth funds tend to have the largest holdings, though they tend to buy only the highest grade safest types of bonds and shares, and some of them do not trade all that frequently. According to a Financial Times article, hedge funds are increasingly making most of the short-term trades in large sections of the capital market like the UK and US stock exchanges , which is making it harder for them to maintain their historically high returns, as they are increasingly finding themselves trading with each other rather than with less sophisticated[clarification needed] investors. A common method is to invest in mutual funds [g] or exchange-traded funds. It is also possible to buy and sell derivatives that are based on the secondary market; one of the most common type of these is contracts for difference â€" these can provide rapid profits, but can also cause buyers to lose more money than they originally invested. There is no universally recognized standard for measuring all of these figures, so other estimates may vary. A GDP column is included as a comparison.

3: U.S. Regulation of the International Securities and Derivatives Markets

*U.S. Securities Law for International Financial Transactions and Capital Markets (West Group Securities Law Series, V. 14, 14A) [Guy P. Lander] on www.enganchecubano.com *FREE* shipping on qualifying offers.*

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5: International Securities Regulation

This book review assesses Guy P. Lander's two-volume work on U.S. Securities Law for International Financial Transactions and Capital Markets.

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