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Market Trends 2018/19: International Capital Markets

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This market trends article discusses a selection of trends experienced by companies as they raised capital in cross-border securities offerings in the international equity capital markets (ECM) and debt capital markets (DCM).

Overall, 2018 was a mixed year in the international capital markets making a strong start but finishing with one of the weakest Decembers on record across several capital markets products. Globally, equity issuance was 17% down compared to 2017 and investment grade debt issuance was down 7%, reflecting various geopolitical concerns contributing to increased volatility. High yield debt issuance was also muted. Initial public offering (IPO) issuance was a bright spot, up 6% compared to 2017, led by Hong Kong which just outstripped the strong performance of the New York Stock Exchange. The U.S. IPO market continued to show considerable special purpose acquisition company IPO activity and another year-on-year increase in Chinese issuers listing in the United States. By contrast, the amount of capital raised in EMEA (Europe, the Middle East, and Africa) in IPOs was significantly down compared to 2017 (9%) with the greatest number of IPOs withdrawn since 2012 and ECM volume (including IPOs) decreasing markedly (40%) compared to 2017, reflecting concerns over interest rates, the deadlock over the United Kingdom's proposed exit from the European Union (EU) (Brexit), trade wars, global political uncertainty, and increased volatility.

This backdrop drove deal participants to continue to focus on how to structure deals to minimize execution risk so the de-risking trends seen in 2016 and 2017 continued in 2018. A key regulatory trend in 2018 was stock exchanges (including in London and Hong Kong) aiming to increase their attractiveness as listing venues relative to other exchanges by implementing significant listing rule changes to attract new issuers that came into effect in 2018; these developments are discussed below.

Another new development in 2018 was the IPO by direct listing on the New York Stock Exchange of the tech giant Spotify, the Swedish music streaming service. A direct listing does not involve a capital raise but does give liquidity to existing shareholders, which is also one of the main purposes of an IPO. It remains to be seen if direct listings become established as an alternative to the traditional IPO for cash rich companies that do not need to raise capital. In June 2019, another tech giant, Slack, the workplace messaging

app, also conducted a successful direct listing on the New York Stock Exchange. For more discussion of direct listings, see "Types of Capital Market Transactions" in Deal Structure and Process.

As is usually the case, U.S. companies tended to focus on the U.S. capital markets because they remain the deepest markets globally, and generally U.S. companies are required to meet certain U.S. disclosure requirements under applicable U.S. securities rules regardless of where they offer their securities and list. However, recently, the cost of raising debt capital in Europe has become lower than in the United States, which made eurobond offerings more attractive for U.S. companies. This trend was bolstered in June 2016, when the European Central Bank (ECB) began buying corporate bonds in a program of economic stimulus, thereby further reducing the cost of raising debt capital in Europe. In January 2018, the ECB began tapering the pace by cutting the monthly amount by half then by half again from September 2018, finally ending the program in December 2018. By contrast, U.S. companies rarely use non-U.S. exchanges as the primary listing venue for their equity securities, although sales of equity securities in offerings by U.S. companies are often made to international investors. For additional information on international capital markets, see Debt Capital Markets in International Jurisdictions, Market Trends 2017/18: International Capital Markets, and International Stock Exchange Selection for an IPO.

Notable Transactions in 2018

Set forth below are notable transactions and trends in the following main regions for capital markets activity: Asia (excluding Japan), Europe, and the United States (according to financial markets platform Dealogic).

Asia (excluding Japan)

ECM Largest IPOs – Asia (excluding Japan)

Issuance was down 3% in 2018 compared to 2017.

- **China Tower Corp.** A $7.5 billion IPO by the Chinese telecom tower operator, listed on the Hong Kong Stock Exchange.
- **Xiaomi Corp.** A $5.4 billion IPO by the Chinese electronics and smart phone manufacturer, listed on the Hong Kong Exchange.
- **Foxconn Industrial Internet Co.** A $4.3 billion IPO by the Chinese communications equipment manufacturing company, listed on the Shanghai Stock Exchange and mainland China's largest IPO for nearly three years.

ECM Largest Follow-On Offerings (including Equity-Linked) – Asia (excluding Japan)

Issuance was down 19% in 2018 compared to 2017.

- **Tencent Holdings.** A $9.8 billion follow-on offering by the Chinese internet conglomerate, listed on the Hong Kong Exchange.
- **China National Petroleum Corp.** A $3.2 billion equity linked offering by the Chinese oil and gas company, listed on the Shanghai Stock Exchange.
- **Blackcow Food Co.** A $2.4 billion follow-on offering by the Chinese food company, listed on the Shenzhen Stock Exchange.

DCM Largest Bond Offerings – Asia (excluding Japan)

Issuance was down 18% in 2018 compared to 2017.

- **CNAC (HK) Finbridge Company.** A subsidiary of **China National Chemical Corporation**, a $6.4 billion offering of U.S. dollar and Euro denominated guaranteed notes by the Chinese chemical company.
- **Tencent Holdings.** A $5 billion offering of U.S. dollar denominated senior notes by the Chinese internet conglomerate.
- **Syngenta Finance NV.** A $4.8 billion offering of U.S. dollar denominated senior unsecured notes by the global agriculture business (following its recent acquisition by **China National Chemical Corp**).

High Yield – Asia (excluding Japan)

Issuance was down 25% in 2018 compared to 2017.

- **Scenery Journey.** A subsidiary of **China Evergrande Group**, a $1.8 billion offering of U.S. dollar-denominated notes by the Chinese property developer and a subsequent similar offering of $1 billion.
- **ABJA Investment Company.** A subsidiary of Tata Steel, a $1.3 billion offering of U.S. dollar-denominated notes by the Indian steel company.
- **Sunac China Holdings.** A $1.1 billion offering of U.S. dollar-denominated senior notes by the Chinese property developer.

Europe

ECM Largest IPOs Plus Top London Listing Separately – Europe

Issuance was down 9% in 2018 compared to 2017.

- **Siemens Healthineers.** A $5.2 billion IPO by the German medical technology company, listed on the Frankfurt Stock Exchange.
- **Knorr-Bremse.** A $4.4 billion IPO by the German manufacturer of braking systems, listed on the Frankfurt Stock Exchange.
- **SIG Combibloc.** A $1.8 billion IPO by the Swiss packaging company, listed on the SIX Swiss Exchange.
- **Aston Martin Lagonda.** A $1.4 billion IPO by the British luxury automotive manufacturer, listed on the London Stock Exchange.

ECM Largest Follow-On Offerings (including Equity-Linked) – Europe

Issuance was down 40% in 2018 compared to 2017.

- **Bayer.** A $7 billion follow-on equity offering by the German pharmaceutical and life sciences company, listed on the Frankfurt Stock Exchange.
- **Royal Bank of Scotland.** A $3.3 billion follow-on equity offering by the British bank, listed on the London Stock Exchange.
- **Covestro.** A $2.6 billion follow-on equity offering by the German materials sciences company, listed on the Frankfurt Stock Exchange.

DCM Largest Bond Offerings – Europe

Issuance was up 9% in 2018 compared to 2017.

- **Bayer.** A $15 billion offering of U.S. dollar-denominated notes by the German pharmaceutical and life sciences company.
- **Vodafone.** A $11.5 billion offering of U.S. dollar-denominated notes by the British telecommunications company.
- **Anheuser-Busch InBev.** A $10 billion offering of U.S. dollar-denominated notes by the Belgian brewer.

High Yield – Europe

Issuance was down 29% in 2018 compared to 2017.

- **Altice France.** A $2.9 billion offering by the French telecommunications and media company.
- **Nexi Capital.** A $2.6 billion offering by the Italian payments provider.
- **Cirsa Finance International (formerly LHMC Finco).** A $1.8 billion offering by the Spanish gambling company, acquired in 2018 by Blackstone.

United States

ECM Largest IPOs – United States

Issuance was up 7% in 2018 compared to 2017.

- **AXA Equitable.** A $3.2 billion IPO by the U.S. life and health insurance company, listed on the New York Stock Exchange.
- **PagSeguro Digital.** A $2.6 billion IPO by the Brazilian e-commerce payments provider, listed on the New York Stock Exchange.
- **iQIYI.** A $2.4 billion IPO by the Chinese online video platform, listed on The Nasdaq Stock Market (Nasdaq).

ECM Largest Follow-On Offerings (including Equity-Linked) – United States

Issuance was up 3% in 2018 compared to 2017.

- **Hilton Worldwide Holdings.** A $4.8 billion follow-on offering by the U.S. hotel company, listed on the New York Stock Exchange.
- **Sempra Energy.** A $2.9 billion follow-on offering by the U.S. energy infrastructure company, listed on the New York Stock Exchange.
- **Centene Corp.** A $2.9 billion follow-on offering by the U.S. managed care company, listed on the New York Stock Exchange.

DCM Largest Bond Offerings – United States

Issuance was down 13% in 2018 compared to 2017.

- **CVS Health Corp.** A $40 billion U.S. bond offering by the U.S. pharmacy company.
- **Comcast Corp.** A $27 billion U.S. bond offering by the U.S. telecommunications company.
- **Halfmoon Parent Inc.** A subsidiary of **Cigna**, a $20 billion U.S. bond offering by the U.S. healthcare and related services provider.

High Yield – United States

Issuance was down 43% in 2018 compared to 2017.

- **Teva Pharmaceutical.** A $4.5 billion offering by the Israeli pharmaceutical company.
- **Refinitiv.** A $4.3 billion offering by the U.S. financial markets data and infrastructure company.
- **T-Mobile USA.** A $2.5 billion offering by the U.S. telecommunications company.

Global

Of the deals discussed by region above, the following sets forth the largest of those deals globally.

ECM Largest IPO – Global

Global IPO issuance was up 6% in 2018 compared to 2017.

- **China Tower Corp.** A $7.5 billion IPO by the Chinese telecom tower operator, listed on the Hong Kong Exchange.

ECM Largest Follow-On Offering – Global

Global ECM offering issuance (including follow-on, equity-linked, and IPOs) was down 17% in 2018 compared to 2017.

- **Tencent Holdings.** A $9.8 billion follow-on offering by the Chinese internet conglomerate, listed on the Hong Kong Exchange.

DCM Largest Bond Offering – Global

Global investment grade debt issuance was down 7% in 2018 compared to 2017.

- **CVS Health Corp.** A $40 billion U.S. bond offering by the U.S. pharmacy company.

High Yield – Global

Global high yield debt issuance was down 5% in 2018 compared to 2017.

- **Teva Pharmaceutical.** A $4.5 billion offering by the Israeli pharmaceutical company.

Deal Structure and Process

Types of Capital Market Transactions

There is a wide range of products used in the international capital markets.

For ECM, there are:

- Companies listing their shares for the first time in an IPO
- Issues of new shares of a class that are already listed (such as capital increases or rights issues, open offers, and placings including by an accelerated book building process)
- Private placements of shares by companies across the spectrum of development

Existing shareholders also resell their shares in various ways, ranging from common secondary market trades to IPOs comprised wholly or partly of shares being sold by a private equity sponsor making an exit from its earlier investment in a portfolio company. Partial IPO investor exits may be completed by a series of subsequent sell downs, usually as block trades or accelerated bookbuilt transactions (referred to as ABBs or ABOs). In April 2018, the tech giant Spotify used a direct listing as a way to give liquidity to its existing shareholders. A direct listing is the process by which a company can become a public company with its shares listed and traded on an exchange but without having underwriters underwriting an offering of its shares so without raising any capital. Spotify was a "unicorn," meaning a private company with a valuation exceeding $1 billion and as the name suggests, there are few such companies. So while this novel approach to "going public" worked for Spotify and in 2019 for another tech unicorn, Slack, it is unclear whether it heralds a broader trend that will change the market.

ECM also includes offerings of equity-linked securities such as convertible bonds whereas offerings of hybrid capital securities (which also have both debt and equity characteristics) tend to be regarded as DCM. For additional information on equity offerings in the U.S. context, see Initial Public Offerings Resource Kit, Top 10 Practice Tips: Initial Public Offerings, Follow-On Offerings Resource Kit, Market Trends 2018/19: Follow-On Offerings, and Registered Securities Offerings Post-IPO. For additional information on equity-linked securities, see Equity Derivatives Essentials.

For DCM, the range of types of deal and issuer is characterized by a series of contrasts, including the following:

- An investment grade debt issuance by a company with a strong credit rating
- A high-yield issuance by a company with a sub-investment grade rating
- An issuance by a company from the emerging markets

Common Elements

Although details may vary, in deal structure and process, there are common elements across all the capital markets products (ECM, DCM, and high yield) in the international capital markets, including:

- Choosing a listing venue and dealing with the regulator or competent authority where applicable
- Pre-marketing and marketing activities, including publicity and research
- Due diligence
- Disclosure
- Underwriting arrangements

Differences

There are differences as well, which vary according to the product and the market. Most notably, there will be differences relating to the timeline. An IPO can take several months whereas a high-yield bond offering is typically

accomplished with a tighter timetable. In contrast, a repeat investment grade debt drawdown from a Euro Medium Term Note (EMTN) program or an equity block trade or ABB can take place in days. As noted below, a recent trend in the international capital markets is mounting pressure to shorten the public timetable (the period between announcement and pricing of a deal) to make it easier to take advantage of market windows and to minimize execution risk. For additional information on medium-term note program in the U.S. context, see Medium-Term Note (MTN) Programs.

The markets targeted also make a difference to deal structures. For example, where the deal has a Rule 144A (17 C.F.R. § 230.144A) component for a private sale to qualified institutional buyers in the United States, the timetable tends to be longer and the disclosure more detailed than for a deal sold entirely to investors outside the United States under Regulation S (17 C.F.R. §§ 230.901–230.905). For non-U.S. companies accessing the U.S. capital markets through an offering registered with the SEC, the process will generally have additional complexity and may require more time than similar transactions in other markets. For additional information on Rule 144A / Regulation S offerings, see Rule 144A / Regulation S Offerings Resource Kit.

However, the time period and complexity of the process also depend on the type of offering and type of issuer. A well-known seasoned issuer with a SEC-registered shelf registration can accomplish a large U.S. capital raising as swiftly as it can conduct a large eurobond offering from an EMTN program, and it might choose to proceed in parallel with both routes until it is clear which market offers the best price at the chosen time. By contrast, conducting a SEC-registered IPO may be more complicated and time-consuming for a non-U.S. company than in other markets, unless it qualifies for the lighter touch U.S. regulatory regime available to emerging growth companies (EGCs). Also, non-U.S. companies that meet the definition of foreign private issuer under U.S. federal securities law set forth in Rule 405 (17 C.F.R. § 230.405) under the Securities Act of 1933, as amended (Securities Act), and Rule 3b-4 (17 C.F.R. § 240.3b-4) under the Securities Exchange Act of 1934, as amended, benefit from several accommodations under the U.S. ongoing reporting regime once they become SEC-reporting companies (e.g., no quarterly reporting, exemption from Section 16 reporting short swing profit provisions and proxy rules, and ability to follow home country corporate governance). This lighter touch regime is not available to U.S. companies conducting their IPO in the United States, although some aspects apply where the issuer is an EGC.

Choosing the Listing Venue

Choosing the listing venue, particularly for an IPO, is a key decision for participants in the international capital markets and is made early in the process. Listing is accomplished at the time of the offering, except in high-yield transactions where listing generally occurs after the offering. Many factors will be taken into consideration, from both regulatory and business perspectives, to determine the best fit for the company. For example, the scope of applicable EU regulation varies according to whether a security is admitted to trading on an EU-regulated market or a multilateral trading facility (MTF) or other unregulated venue. Directive 2004/109/EC of December 15, 2004, as amended (the EU Transparency Directive) and Regulation (EU) 2017/1129 (the Prospectus Regulation) (replacing Directive 2003/71/EC, as amended (the Prospectus Directive) and in full effect from July 21, 2019), which together prescribe the detailed reporting and disclosure requirements for listed securities, apply only to securities admitted to trading on an EU-regulated market, although the EU Market Abuse Regulation – Regulation (EU) No.596/2014 (MAR)—applies across all EU markets, regulated or unregulated. The difficulties caused by MAR that came into effect in July 2016 (as discussed below) prompted some high-yield issuers to consider alternatives to EU listing venues. In April 2018, the Luxembourg Stock Exchange began offering a new service that allows debt and equity securities to be admitted to its official list in the Securities Official List (SOL) section without admission to trading, thereby largely avoiding the application of regulations related to admission to trading, including the Prospectus Regulation, the EU Transparency Directive, MAR, and recast Markets in Financial Instruments Directive (MiFID II), as discussed below. By contrast, some venues, such as London and Hong Kong, have a so-called gold-plated approach for equity offerings with additional requirements not generally found elsewhere (e.g., on eligibility to list). For further information on MAR and MiFID II in various contexts, see Market Trends 2018/19: Sovereign Bonds, Market Trends 2017/18: Sovereign Bonds, Market Trends 2018/19: Hedge Funds, and Reverse Yankee Bonds and the New EU Market Abuse Regime.

For IPOs, the main markets for an international listing continue to be the United States, Hong Kong, London, and other major European exchanges such as Frankfurt and Amsterdam. In Asia, the Shanghai Stock Exchange generally attracts Chinese companies, whereas the Hong Kong Stock Exchange attracts Chinese companies (including those with global operations) as well as international and Hong Kong companies. For DCM transactions, the main markets for European listings tend to be Luxembourg and Ireland while in

the United States, DCM transactions tend not to be listed but are often registered with the SEC. DCM transactions in Asia tend to be listed in Singapore or Hong Kong.

Another aspect in considering the regulatory burden of a venue is the regulator review process—how lengthy, substantive, and predictable it is, and whether filings are confidential. For equity offerings in some venues, a sponsor is required to act as the interface between the company and the listing authority (e.g., in London (for premium listings), Hong Kong, and Singapore). The sponsor is usually one of the investment banks acting on the offering. A further consideration is governance and other eligibility criteria that need to be met. Some exchanges have significant eligibility requirements while others, like the United States, focus on disclosure and allowing investors to make their own decisions based on that disclosure. Another area of difference between the United States and other international markets is with respect to the underwriting agreement. For example, in Europe and Asia, the agreement tends to be specifically negotiated while in the United States, there is an established market practice.

A deciding factor in choosing listing venue has often been the ability to maintain founder control over the company and a substantial economic interest after the IPO. The United States (i.e., the New York Stock Exchange and Nasdaq) has often been the venue of choice for technology and other growth companies as it permits a dual-class capital structure, giving greater voting power to founding shareholders and does not have a significant free float requirement. Amsterdam is another example of an exchange that permits listing of a company with a dual-class capital structure and in 2018, both the Hong Kong and Singapore Stock Exchanges revised their listing rules to permit listings of companies from emerging and innovative sectors including (in certain cases) those with dual-class voting structures, as discussed below. For further information on technology companies, see Technology Industry Guide for Capital Markets. By contrast, London (premium listings) does not permit the listing of companies with dual-class capital structures.

These developments illustrate an ongoing trend for exchanges to look for ways to tailor their listing rules and processes to attract more international companies and companies from emerging industries and such efforts can yield competitive success; the Hong Kong listing rule changes contributed to a record high for Hong Kong IPOs in 2018. In London in 2018, the Financial Conduct Authority, the EU National Competent Authority (i.e., securities regulator) for the United Kingdom (FCA), implemented reforms to the London IPO process (as discussed below) in response to investor demand for more disclosure earlier in the process and to ensure objectivity and fairness in the provision of research. London listings in 2018 were down on 2017 reflecting concerns about Brexit but issuance was only just behind Frankfurt. In 2018, the SEC also made a proposal to extend to all issuers its popular JOBS Act accommodation that currently permits only emerging growth companies to "test the waters" with prospective investors before deciding whether to launch an offering. This SEC proposal follows changes made in 2017 aimed at making the U.S. public markets more attractive; for example, by extending confidential initial review of IPOs to more issuers and increasing its scope to include listings (i.e., without a capital raise) and follow-on offerings conducted within a year of an IPO and reflects the SEC's policy aim of encouraging more companies to go public. For more information on the SEC confidential review process, see Understanding the SEC Review Process — Confidential Submission and Review Process. Exchanges are also collaborating to attract cross border listings. In October 2018, Shanghai-listed Chinese home appliances manufacturer Haier became the first company to list on the China Europe International Exchange (CEINEX) in Frankfurt when it raised $464 million in a so-called D-share offering. CEINEX is part of the EU-regulated market of the Frankfurt Stock Exchange. It was established in 2015 by the Shanghai Stock Exchange, Deutsche Boerse Group, and China Futures Exchange. Similarly, in London in December 2018, Shanghai and Hong Kong listed Huatai Securities announced its intention to conduct the first offering on the Shanghai-London Stock Connect programme that allows companies that are publicly traded in Shanghai or London to cross list on each other's exchange by issuing depositary receipts. However, while Chinese companies are allowed to raise new money on London by issuing global depositary receipts (GDRs) backed by newly issued so-called A shares, foreign companies listing on Shanghai can only issue Chinese depositary receipts for existing shares. The Huatai Securities offering was delayed because the London market went quiet but went ahead successfully in June 2019 when Huatai raised over $1.5 billion in its London listing of GDRs.

De-risking Trend

De-risking is where the parties in an offering take actions designed to ensure (as far as possible) that the deal is accomplished at the desired price, with the desired structure, and within the desired timeframe. The de-risking trend pushed the European markets to adopt a version of a pre-marketing strategy common in the Asian markets where key investors are approached early in the process as anchor investors. This trend has continued in 2018 with the more formal cornerstone investor approach becoming a feature in several IPOs and other capital raisings in different European markets; for example, by Funding Circle in London, Neoen

on Euronext Paris, and Haier on Frankfurt. In Asia, the practice is to sign up cornerstone investors in advance who may receive information ahead of the launch of the offering, execute non-disclosure and lock-up agreements, and who make a contractual commitment to invest at the IPO price. These arrangements are disclosed in the prospectus. In Europe until recently, the less formal anchor investor approach has been more common. This does not generally involve early contractual commitments but does involve educating potential anchor investors early in the process, bringing them into the book of demand early, and obtaining strong indications of interest from them. Ultimately, though, anchor investors participate in the actual offering in the same way as other investors whereas cornerstones offer more tangible support for the transaction and can form part of the marketing message for the deal. Another practice that has developed in Europe is earlier company engagement with a range of potential investors, particularly for IPOs, often initially taking place months before any offering and then at later stages thereafter.

Such pre-marketing when the company or a parent company already has securities listed in Europe raises a potential market abuse issue, and this difficulty has been exacerbated by MAR as discussed below. The question is what information can legally be given to potential investors earlier in the process, including about a potential transaction. For substantive information regarding the company, market participants are moving towards using a slide presentation of information about the company that could be publicly disclosed on the company website and used in the prospectus. However, there is pressure from investors for more detailed information to be delivered earlier as can be seen in the changes discussed below comprising the reformed London IPO process.

The market abuse concern is particularly acute in IPOs of businesses that are a spin-off or subsidiary of an existing public company. In that case, the parent entity will be very cautious about releasing material information other than publicly and only when such information has been properly subject to due diligence. For more information about pre-marketing in the U.S. context, see Market Trends 2018/19: Confidentially Marketed Public Offerings and Bought Deals.

Deal Terms

Deal terms have also evolved to reduce risk. For example, for a company that needs to raise equity capital for an acquisition but the regulator, the market, or the seller requires certain funds or a stronger balance sheet, a practice has developed where banks agree with the company to underwrite an amount of proceeds without specifying the number of shares to be issued or a price. Either a short form standby underwriting agreement or a full underwriting agreement with a pricing formula or pricing reset mechanism is entered into at the time of announcement and often before a prospectus has been prepared. Conditionality varies from deal to deal and market to market as well as upon the requirements of the relevant listing authority. In practice, once such an arrangement is in place, it is difficult for the banks to withdraw (although technically, depending upon the conditions to the agreement, they may have the right to do so).

In 2018, there were two developments that have had an impact on deal terms. Firstly, in May 2018, the United States withdrew from the Joint Comprehensive Plan of Action (the Iran Nuclear Deal) resulting in the phased "snap back" of U.S. secondary sanctions on Iran and the updated EU Blocking Regulation that came into force in August 2018 in response, prohibiting EU businesses from complying with U.S. secondary sanctions on Iran. This development had an impact on the negotiation of underwriting agreements as noted below. Secondly, at the end of 2018, global systemically important banking organizations (GSIBs) told their counterparties that they would be complying with the U.S. Qualified Financial Contract Stay Rules (the QFC Stay Rules) from January 1, 2019, which required QFC Stay language to be added to certain underwriting and similar agreements globally. The U.S. industry body, SIFMA (Securities Industry and Financial Markets Association) issued a rider of standard language to be added to in-scope underwriting and similar agreements where applicable to make them compliant. The same standard language has been adopted by ICMA (the European industry body, International Capital Markets Association) as amendments to its Agreement among Managers.

In brief, the U.S. QFC Stay Rules have a global reach because they apply to GSIBs in the U.S. and their subsidiaries worldwide and to U.S. subsidiaries, branches, and agencies of non-U.S. GSIBs. Broadly, the Rules require these "Covered Entities" to add contractual stay language to certain underwriting and similar agreements (including those with default rights or transfer restrictions) to recognise the U.S. special bank resolution regimes. The overall purpose is to avoid the "too big to fail" issue so the Rules aim to increase the resilience and resolvability of such GSIBs by preventing destabilising closeouts of in-scope qualified financial contracts, as seen, for example, in the Lehman Brothers bankruptcy. Article 55 of the EU Bank Recovery and Resolution Directive serves a similar purpose.

Broadly, the changes to documents required by the QFC Stay Rules have been accepted, whereas the implications of the EU Blocking Regulation have continued to cause difficulties in

the negotiation of representations and warranties concerning sanctions compliance and use of proceeds in underwriting and similar agreements.

Disclosure Trends

Market Risks – Brexit, Transition Away from LIBOR and Cybersecurity

In December 2018, the Chairman of the SEC, Jay Clayton, spoke about three market risks that the SEC is monitoring—Brexit, the transition away from LIBOR and cybersecurity—all of which have implications for disclosures by companies to investors.

Brexit

Clayton commented that the SEC was seeing a wide range of disclosures by companies, even within the same industry. He would like to see companies providing "more robust disclosure about how management is considering Brexit and the impact it may have on the company and its operations." His comments have been followed up by more detailed guidance from William Hinman, Director of the SEC's Division of Corporation Finance in a speech in March 2019 on how to disclose complex, uncertain, and evolving risks like Brexit under the SEC's principles-based disclosure rules. Hinman commented that companies should allow investors to understand risks like Brexit for each company the way that management sees them where such risks are material. There should not be material gaps between how management briefs the board about such risks and how shareholders are informed. Generic disclosure was insufficient to guide investors in any meaningful manner. Hinman suggested the following examples of risks to consider: (1) regulatory risk, (2) supply chain risk, (3) customer/revenue loss risk, (4) currency/other market risk, (5) contractual risk, and (6) financial statement implications.

Transition Away from LIBOR

LIBOR (London Interbank Offered Rate) is a measure of the average interest rate at which major global banks are able to borrow from each other and is the most commonly used benchmark for short-term interest rates for many types of financial and commercial contracts, including corporate bonds and loans and interest rate swaps and other derivatives. It is quoted in several currencies and time frames based on data reported by private sector banks. It is expected that LIBOR will be discontinued once the current reporting obligation of these private sector banks comes to an end after 2021. Regulators and market participants are working to develop and implement alternative risk-free reference rates (RFRs) to avoid the business and market disruption that could result from the discontinuation of LIBOR, for example, the proposed U.S. Dollar RFR, SOFR (Secured Overnight Financing Rate), and the Sterling RFR, SONIA (Sterling Overnight Index Average). The transition away from LIBOR may present material risks for some market participants, for example, public companies with floating rate obligations tied to LIBOR, particularly where the contracts concerned mature after 2021, and Chair Clayton encouraged such market participants to plan for the transition. As with Brexit, the SEC staff has followed up with more detailed guidance in a Staff Statement on LIBOR Transition on July 12, 2019. The statement indicates that the SEC is actively monitoring the extent to which participants are identifying and addressing such risks and expects companies to keep investors informed. Such disclosure is most common from large companies in the real estate, banking, and insurance sectors. The statement notes that such large companies all have counterparties who will likely be similarly affected and urges every company to begin planning for the LIBOR transition.

Cybersecurity

Outside of financial disclosure discussed below, there was a significant development in February 2018 when the SEC issued an interpretive release on cybersecurity disclosure, which reinforces and expands on the principles-based guidance from the staff of the SEC's Division of Corporate Finance in 2011 and Chair Clayton touches on this in his December 2018 speech. The interpretive release applies to SEC registrants, including non-U.S. companies, in their SEC filings, and is also relevant to disclosure in offerings by companies that are not SEC-reporting where that disclosure is subject to the Rule 10b-5 disclosure standard. Key points include the importance of cybersecurity policies and procedures, especially the role of disclosure controls and procedures; the application of insider trading and selective disclosure prohibitions in the context of cybersecurity including preventative measures or policies; and where cybersecurity risk is material, disclosure about the board's oversight role. Cybersecurity disclosure is topical given the recent difficulties experienced by the U.S. company Facebook over misuse of Facebook users' personal data by third parties and developments in European regulation with the entry into force in May 2018 of the EU General Data Protection Regulation (for more information, see https://www.eugdpr.org/). For a form of cybersecurity risk factor, see Cybersecurity Risk Factor.

Sustainability

Although not a market risk that the SEC is monitoring, the SEC has commented that the principles and guidance for disclosing complex, uncertain and evolving risks like Brexit also apply to disclosure about sustainability which is an

umbrella term for environmental, social, and governance issues. Sustainability is an emerging disclosure topic. In his March 2019 Brexit disclosure speech mentioned above, William Hinman also explained that a principles-based disclosure approach works better in this area than prescriptive rules because it allows for a market-driven evolution of the disclosure that investors find most useful. He also mentioned the SEC's 2010 interpretive release on climate change as a useful tool for evaluating sustainability disclosure. In 2018, the UK passed legislation establishing a new streamlined energy and carbon reporting regime. Under The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations, UK quoted companies, large unquoted companies, and large LLPs must make new energy and carbon related disclosures in their annual reports for financial years beginning on or after April 1, 2019. Given the current focus on climate change, as well as applying to a wider range of organisations (rather than just quoted companies) reporting obligations have now been expanded to cover, for example, a company's energy use from activities for which the company is responsible and from purchases for its own use, and action taken to increase its energy efficiency.

Alternative Performance Measures

Financial disclosure in the prospectus is at the heart of the offering process. During 2016, securities regulators across the world focused on the quality of disclosure of alternative performance measures (APMs), also called non-GAAP financial measures (NGFMs). Throughout 2017 and 2018, issuers and regulators continued to digest and develop this regulatory push. An NGFM is a numerical measure of financial performance that excludes (or includes) items that would be included (or excluded) in related generally accepted accounting principle (GAAP) line items and that do not appear on the face of the financial statements. The International Organization of Securities Commissions, the SEC, and the pan-EU regulator (the European Securities and Markets Authority or ESMA) all issued broadly consistent guidance on the topic and issuers have been adapting their disclosures to the new guidance. Common themes in the guidance include:

- Consistency in using an APM from period to period so no "cherry picking"
- Using a label that faithfully represents what the APM conveys
- Reconciling the APM to the nearest related GAAP measure
- Explaining why the APM is used
- Defining it –and–
- Not giving the APM more prominence than the related GAAP measure

Because the guidance relates to APMs used in all disclosures, companies are also reviewing their use of APMs in their ongoing reporting disclosure.

At first, European national regulators simply asked issuers to identify APMs in the prospectus and to confirm that they had complied with the ESMA guidance. By contrast, the SEC guidance is more detailed and proscriptive, and several of the SEC Compliance & Disclosure Interpretations on NGFMs were last updated in April 2018. The staff at the Division of Corporation Finance at the SEC also has the ability to implement the guidance through the established comment letter process as they review disclosure in SEC filings. Anecdotally, in 2018, there was a significant decline in the number of comments on NGFMs in comment letters when compared to 2016 and 2017. However, in December 2018, ADT Inc. was sanctioned, including a fine of $100,000, in an enforcement action by the SEC for a failure to comply with the "equal or greater prominence" requirement. The facts were that in the headlines to its earnings releases for the 2017 financial year and the first quarter (Q1) of 2018, ADT disclosed only adjusted EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) as well as percentage increases year-on-year, and not the comparable GAAP measure, namely net income or loss. In the Q1 earnings release, the Highlights section disclosed adjusted EBITDA and two other NGFMs and did not disclose the GAAP measures until later in the earnings release.

In 2018, ESMA issued a statement on European common enforcement priorities for 2018 annual financial reports reminding issuers of their obligations when using APMs. These include requirements that:

- Issuers disclose definitions of the APMs they use and their components, including the basis of any calculation adopted and the details of any material assumptions
- Issuers explain to investors the extent of and rationale for any changes to the APMs used as a result of new accounting standards
- Issuers explain why they believe an APM gives useful information on the company's financial position, cash flows, or financial performance, as well as the purposes for which they decided to use a particular APM –and–
- APMs used in ongoing reporting (i.e., management annual and half-year reports and in ad-hoc disclosures) should not be displayed with more prominence, emphasis, or authority than measures taken from the financial statements

The enforcement priorities statement followed ESMA's October 2017 update to its guidance on APMs with new questions covering constant currency, segment information, APMs that explain compliance with covenants/legislation, disclosure of "organic growth," the need for numeric reconciliation, and dealing with biased measures of performance.

In Europe, the regulatory focus on APMs has extended to the marketing phase of transactions, effectively imposing more disciplined use of APMs in that context. Article 16 of Commission Delegated Regulation (EU) 2019/979 requires any APM used outside the prospectus in marketing an offering to be included in the prospectus (this requirement was previously set out in Article 12 of a 2016 EU regulation called Omnibus II Directive RTS (Regulatory Technical Standards under Commission Delegated Regulation (EU) 2016/301)). Subsequent ESMA guidance on this obligation requires that any APMs given out orally in response to questions at a live presentation (such as a roadshow or interview), but not included in the prospectus, must be added to the prospectus. This would require amending a prospectus that is still subject to regulatory approval and supplementing a prospectus that has already been approved.

The developments on APMs point to a broader trend: investors want disclosure that enables them to understand the financial drivers of the business in the same way that company management does, including with more forward-looking information, such as profit forecasts. Broadly, for equity, current EU rules require profit forecasts to be disclosed in the prospectus and, until July 2019, any profit forecast (whether already outstanding or made in the context of the offering) to be reported on by the accountants. Historically, the report requirement has proved a disincentive to making profit forecasts because it can be difficult, time-consuming, and costly to obtain. The accountants' report requirement has been dropped in the new EU Prospectus Regulation that applies from July 2019 and is discussed below. In March 2018, ESMA issued guidance that takes a more expansive view as to what statements constitute a profit forecast than previously adopted by many regulators.

This trend to provide more APMs and forward-looking information poses diligence and comfort challenges for counsel and other market participants that have potential liability for statements made by the company in the offering process. In Europe, there is likely to be pressure and uncertainty among market participants until market practice has developed around how best to balance liability concerns and investors' desire for (and regulators' requirements for) this forward-looking information. Although APMs and forward-looking disclosure may be material to, and sought by, the investor, it is difficult for counsel and third-party market participants to diligence such disclosure or obtain comfort on it from the accountants. The comfort that accountants will provide to issuers and sponsors in relation to profit forecasts, in the absence of a requirement for a public accountants' opinion under the Prospectus Regulation, remains a matter for discussion. Deal participants continue to develop compliance and diligence methodology for APMs and forward-looking information. For example, participants are seeking comfort on components of APMs, finding ways to diligence a qualitative narrative, making use of management diligence, crafting assumptions and risk factors, and referring to comparable companies. For more information about APMs in the U.S. context, see SEC Regulation of Non-GAAP Financial Measures and Top 10 Practice Tips: Foreign Private Issuers.

Industry Insights

Different markets may focus on different sectors, and this focus can lead to development of rules, practices, and expertise tailored to particular sectors. For example, historically, Hong Kong has attracted companies in the consumer sector with strong brands while Nasdaq tends to attract technology companies. As noted above, the Hong Kong Stock Exchange has changed its listing rules to make it easier to list for biotech issuers that are developing or producing pharmaceuticals, biologics, and medical devices and that would otherwise not meet the financial eligibility tests required for listed companies. Canada, the United States, and London are attractive to issuers in the energy sector, and each market may apply its own rules tailored to that sector.

Specialized Extractive Industry Disclosure Requirements

An example of such rules is the EU Transparency Directive requirement that any company listed in a European jurisdiction that actually makes a payment to a host country government for commercial development of reserves must report the payment. Under the European rules, an issuer would not have to report payments made by equity-accounted investees that are not its subsidiaries. A similar U.S. rule for SEC-reporting companies, domestic, and non-U.S., was eliminated on February 14, 2017, when the president of the United States signed into law a joint resolution of Congress that had been passed under the 1996 Congressional Review Act (5 U.S.C. §§ 801–808) (which allows a new Congress to act quickly to invalidate recent rulemaking by governmental agencies). However, the SEC remains required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to establish such a

rule and the director of the SEC's Division of Corporation Finance publicly indicated in February 2018 that the staff is preparing recommendations for a rule proposal to implement this resource extraction issuer disclosure provision. For more information on extractive industry disclosure in the U.S. context, see SEC's Previously Adopted Resource Extraction Issuer Disclosure Rule.

Reserves Disclosure Requirements

Another example of specialized disclosure rules is the requirement for disclosure of oil and gas reserves. The UK rules require that a Competent Persons Report be included in the prospectus needed for listing of an oil and gas company. This report is similar to an expert's report in the United States but relates only to an expert reporting on reserves. For more information, see Oil and Gas Industry Guide for Capital Markets.

By contrast, SEC Regulation S-K Items 1201–1208 (17 C.F.R. §§ 229.1201–229.1208) and the definitions in SEC Rule 4-10(a) of Regulation S-X (17 C.F.R. § 210.4-10(a)) require specific reserve and resource disclosures for oil and gas companies. These rules do not permit the disclosure in a registration statement of estimates of oil and gas resources that do not qualify as reserves and do not permit a value to be attributed to such resources. The SEC definition of reserves is different from the definition applied by other international reporting standards, including the Petroleum Resources Management System (PRMS). Under the PRMS, to qualify for reserve treatment, the extractive project must be commercial rather than economically producible.

Legal and Regulatory Trends

Significant listing rule changes for Hong Kong and Singapore stock exchanges. In early May 2018, the Hong Kong Stock Exchange adopted new rules allowing the listing of the following three categories of company to its main board:

- Biotech companies that do not meet the financial eligibility tests currently required to list on the main board (provided that certain criteria are met)
- Companies that are both high growth and innovative and have weighted voting right structures (also known as dual-class capital structures) –and–
- Companies wishing to conduct a secondary listing in Hong Kong

In response to these rules, a substantial number of early stage biotech companies, including several with substantial operations outside of China including the United States, filed listing applications under the new regime and in 2018, Hong Kong was the leading exchange globally for IPOs. In addition, the Singapore Stock Exchange in June 2018, introduced rules allowing companies with dual-class share structures to list on its main board, provided that certain protective measures are implemented. Both initiatives were intended to increase the number of listings in Hong Kong and Singapore of so-called new economy and technologically focused companies.

Brexit. On March 29, 2017, the United Kingdom gave formal notice to leave the EU. This action started a two-year negotiation on the terms of its exit, culminating in a draft agreement with the EU for withdrawal which was scheduled to take effect on March 29, 2019 (the Withdrawal Agreement). However, in early 2019, the UK government, led by then Prime Minister, Theresa May, was unable to win approval of the UK Parliament for ratification of the Withdrawal Agreement, despite three attempts and Theresa May agreeing to step down as leader of her party and therefore, as Prime Minister. She was replaced by Boris Johnson on July 24, 2019. The EU (with the agreement of the UK) has twice extended the deadline for the UK's exit, most recently to October 31, 2019, to give the UK Parliament more time and has taken the position that the Withdrawal Agreement that had been endorsed by the leaders of the 27 remaining EU member states, is not open for renegotiation.

The unratified Withdrawal Agreement included arrangements for a transitional period after exit to December 31, 2020, with the option of an extension (to avoid the disruption expected if there were a so-called hard or cliff edge Brexit) during which key elements of EU membership (e.g., continued participation in the single market and customs union) would continue. The transitional period would allow more time for the future relationship between the United Kingdom and the EU to be worked out. The Withdrawal Agreement also provided for the so-called Irish backstop, which would come into effect if the UK and the EU were unable to reach agreement on their new relationship by the end of the transition period. The purpose of the backstop was to avoid a hard border (where border checks would be necessary) between the Irish Republic and Northern Ireland.

Despite the EU's position on the Withdrawal Agreement, new Prime Minister and Conservative party leader, Boris Johnson, campaigned for his post on the basis that he would renegotiate the Withdrawal Agreement including removing the Irish backstop or, if that proved not to be possible, he would lead the UK out of the EU without a deal on October 31, 2019. However, the UK Parliament has previously indicated that it does not support a no-deal Brexit. It is impossible to predict how political developments in the UK, the process of any further negotiations with the EU, or a hard

Brexit could affect market sentiment in the future where the only certainty is that the relationship of the United Kingdom and the EU remains uncertain. For more information, see Market Trends 2017/18: Brexit Disclosure.

London IPO reform. The financial services industry in the United Kingdom is likely to be considerably affected by Brexit in various ways. Market participants are seeking to ameliorate and, if possible, exploit the changes to protect or enhance London's competitiveness as a financial center and as a listing venue. Following a five-year study of primary market activities in the United Kingdom (ECM, DCM, and mergers and acquisitions) to consider ways to improve the London IPO process followed by a consultation on proposed reforms, in October 2017, the FCA published the final rules to implement the reforms. The final rules include (1) making certain disclosures about the company available earlier in the process (in a registration document approved by the regulator but containing no information about an offering, with the approved prospectus including details of the offering to follow, which is an approach similar to that used in France) and (2) providing access to company management for analysts who are not connected to the banks underwriting the IPO. Market participants are continuing to work out the implications of the new process that went into effect in July 2018.

New premium listing category for sovereign-controlled companies. In 2018, the London Stock Exchange began offering a new premium listing category for commercial companies controlled by a shareholder that is a sovereign country. The new category is available for both shares and GDRs and offers higher investor protection than would otherwise be available if such issuers used a standard listing (previously their only option). The new category benefits from relaxation of the controlling shareholder and related party transaction regimes otherwise applicable to premium listings (although all other premium listing eligibility requirements apply). Sovereign shareholders are exempt from the requirement to enter into a controlling shareholder agreement with the issuer but are subject to the requirement for the election of independent directors to be subject to separate approval by independent shareholders. The related party regime does not apply except for disclosing the details of a related party transaction as soon as possible after the terms are agreed—so there is no requirement for prior shareholder approval or a so-called fair and reasonable opinion from a sponsor for transactions with the sovereign (as a shareholder safeguard, premium-listed companies are required to seek sponsor guidance on the application of the related party regime where a proposed transaction is with a related party and the rules require the sponsor to confirm whether the terms of the proposed transaction are fair and reasonable as far as the shareholders are concerned). For more information about sovereign entities, see Sovereign Entities Guide for Capital Markets, Schedule B Foreign Sovereign Debt Offerings, Market Trends 2017/18: Sovereign Bonds, and Market Trends 2018/19: Sovereign Bonds.

MiFID II. A regulatory trend in 2018 was market participants adjusting to the recast Markets in Financial Instruments Directive (MiFID II). Although the greatest impact was on European entities engaged in financial services, MiFID II had a global impact as well. For example, the U.S. Securities and Exchange Commission (SEC) issued no action letters to deal with a potential conflict between U.S. rules and MiFID II including by providing temporary no-action assurances under the U.S. Investment Advisers Act of 1940 to broker-dealers receiving payments in hard dollars or through MiFID-governed research payment accounts from MiFID-affected clients. The assurances expire on July 3, 2020. In December 2018, the SEC staff issued a press release encouraging market participants and members of the public to continue to engage with the SEC about the effects of MiFID II's research provisions to assist the regulator as it seeks to formulate its regulatory response. The SEC particularly wants to have data and other information on how these research provisions are affecting intermediaries, investors and the range of issuers from small to large, including whether there has been any impact on the availability of research.

The Markets in Financial Instruments Directive (MiFID) is the EU legislation that regulates EU investment firms who provide services to clients linked to financial instruments (e.g., shares, bonds, units in collective investment schemes, and derivatives), and the venues where those instruments are traded. This directive was replaced effective January 2018 by MiFID II and a new Markets in Financial Instruments Regulation to introduce sweeping changes to the EU regime for financial services regulation. Of most interest in the context of capital markets transactions are the rules relating to transaction reporting and to investor protection. Broadly, the effect of the new regime is to extend obligations that previously applied only to equities to all financial instruments, including non-equity securities. This has an impact on the way financial institutions sell bonds in the primary markets because of new requirements that include transparency on allocation to investors, disclosure requirements on fees, transaction reporting requirements, and product governance obligations. On transaction reporting, the new regime increases both the scope of financial instruments covered by the requirement and the amount of data required. On investor protection, there are new rules on product governance that apply to the manufacture and distribution of financial products and MiFID II broadly

prohibits EU independent advisors and portfolio managers from taking inducements from product providers or third parties, which has implications for the provision of research services. Charges for third-party research (e.g., provided by investment banks / broker-dealers) must now be broken out separately by EU investment managers and no longer bundled up with the trading commissions that are passed on to investors, as had been the practice globally. The purpose of this requirement is to enable clients (investors) to understand clearly what they are being charged for. The requirement also caused a potential conflict with the regulatory regime in the United States, solved on a temporary basis in October 2017 by the SEC. See SEC Announces Measures to Facilitate Cross-Border Implementation of the European Union's MiFID II's Research Provisions (October 26, 2017). This is an example of how non-EU counterparties may be indirectly affected by MiFID II when dealing with EU counterparties even though MiFID II is intended only to apply to EU entities and activities undertaken in the EU.

PRIIPs. The Packaged Retail and Insurance-Based Investment Products (PRIIPs) Regulation is a piece of EU legislation in effect since January 1, 2018. It establishes a disclosure regime for PRIIPs and requires those who manufacture, advise on, or sell such products to provide retail investors with a key information document (KID) in the form prescribed. The regime applies where an investment product is a PRIIP and is being marketed to one or more investors in the European Economic Area. It applies to relevant new bonds issued after January 1, 2018, and to secondary trading of such bonds issued before that date. The PRIIPs regime complements the MiFID II regime and requires that retail investors in PRIIPs be provided with a KID a reasonable time before they are committed by any investment contract and that manufacturers (usually issuers) regularly review any KID and if necessary publish a revised KID.

Prospectus Regulation. As part of the EU Capital Markets Union Action Plan of September 2015, the European Commission announced proposals to modernize the EU Prospectus Directive, which is the regulatory regime governing the offering and disclosure process for capital markets transactions in the EU. In 2017, the new Prospectus Regulation was adopted that repeals and replaces the existing prospectus regime, although most of the new rules came into effective in July 2019. Key changes include:

- Risk factors must be specific, material, corroborated and concise, and grouped in a limited number of categories depending on their nature and ranked by materiality (i.e., judged on how likely the risk is to occur and how significant its impact would be) within each category. In March 2019, ESMA published final guidelines on how European securities regulators should review risk factors under the Prospectus Regulation.
- All issuers with securities admitted to trading on an EU-regulated market or MTF can draw up a universal registration document (URD), which can form part of any future equity or debt prospectus (somewhat similar to a shelf registration statement in the United States).
- There are new simplified disclosure regimes for certain secondary offerings and for offerings by smaller issuers viewed as growth companies.
- A new less onerous disclosure regime will apply to debt securities of any denomination that are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access.
- An independent accountants' report is no longer required in relation to a profit forecast or estimate (previously required where a profit forecast or estimate was included in an equity or retail debt prospectus).
- The advertisement regime has been amended and now applies to relevant "communications" (rather than being limited to "announcements" only).

Most of the technical changes needed to implement the new Prospectus Regulation are in place with some still working through the EC legislative process.

MAR. The EU Market Abuse Regulation that came into effect in July 2016, caused market participants to carefully consider the pre-marketing of deals. MAR replaced a similar regime but is broader in scope, expanding the prohibition of insider dealing, unlawful disclosure of inside information, and market manipulation to cover more trading venues. Issuers and other market participants both inside and outside Europe were concerned at first by this increased (but initially uncertain) scope and extraterritorial effect. Among other things, MAR also introduced a new regime for market soundings (i.e., gauging the interest of potential investors in a possible transaction and the conditions relating to it, such as its potential size/price before announcement of the transaction). The market soundings regime provides that disclosure of inside information during a market sounding is exempt from the prohibition on unlawful disclosure of inside information, as long as both parties to the sounding comply with their respective obligations under the market sounding regime. The obligations involve extensive recordkeeping, obtaining consents, and giving notice of prescribed details once the information ceases to be inside information. The requirements proved burdensome and unpopular with market participants, and the resulting and continuing trend is for deal participants to focus on ways to keep a deal

out of scope of MAR. Bank syndicates, financial services industry bodies, and EU regulators have all worked together successfully to find workable solutions so initial concerns have largely been resolved as market practice has developed. In December 2017, ESMA updated its guidance on MAR with new questions covering an issuer's obligations on delaying disclosure of inside information that subsequently ceases to be price sensitive, the obligation of an issuer's advisors to maintain their own insider lists, and the scope of the market soundings regime. See Questions and Answers on the Market Abuse Regulation (MAR).

Market Outlook

The first half of 2019 saw global ECM issuance at its lowest volume since 2012 with a slow start, following on from one of the weakest Decembers on record, influenced by macroeconomic factors such as trade tensions between the U.S. and China and ongoing Brexit uncertainty in Europe. The U.S. federal government shut down impacted the U.S. IPO market in the first quarter delaying pricing of the first IPOs of the year to the end of January. However, the second quarter of 2019 saw a sharp increase in global IPO activity including the largest IPO thus far in 2019 by Uber Technologies which raised $8.1 billion on the New York Stock Exchange. While the Uber IPO gave the biggest boost to U.S. IPOs, there were other unicorn technology IPOs in the U.S. including Pinterest (the online pin board company), Tradeweb Market (online fixed income financial services provider), Chewy (online pet store), and Zoom Video (cloud-based remote conferencing and communications services). Notably, as mentioned earlier, Slack Technologies made its debut in the public markets via a successful direct listing on the New York Stock Exchange, thereby offering its shareholders liquidity but without raising any capital.

In Asia, IPO activity was down compared to 2018 and China and Hong Kong were vying for the top spot in Asian listings with Hong Kong contending with the impact of political unrest and China launching its new Science and Technology Innovation Board in March 2019. In Europe, IPO activity was also down but jumped in the second quarter after a very slow start in the first quarter. Despite Brexit uncertainty, London was the leading European exchange for IPOs with 55% of EMEA IPO cross-border proceeds.

Globally, DCM activity showed a small decline compared to the first half of 2018 with activity in the U.S. and Europe declining 11% and 9%, respectively, while Asia increased by 9%.

The outlook for the remainder of 2019 is hard to read. There are many factors contributing to uncertainty including the following:

- Impact from the ongoing fraught trade relationship between the U.S. and China (especially in view of the tariffs on goods between the United States and China imposed by each country).
- Globally, central banks are cautious about raising interest rates and there are signs of economic slowdown if not recession.
- Increasing geopolitical uncertainty including Brexit uncertainty in Europe, the turbulent political situation in the UK, potential capital flight from Hong Kong due to ongoing unrest, and the prospect of the U.S. presidential election in 2020.

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David Ludwick is a US partner based in London with more than 25 years' experience who specializes in capital markets. He is a co-head of Freshfields' international capital markets group. He has extensive experience on a broad range of equity securities offerings (including IPOs, private placements, depositary receipts, rights issues and block trades) and debt transactions (including high yield, investment grade, convertible debt, hybrid securities and liability management transactions). He has broad global experience advising a wide range of companies seeking to access the US and international capital markets, as well advising investment banks and other financial intermediaries. David's clients come from various sectors including consumer, financial institutions, biotech and pharmaceuticals, energy and natural resources and real estate. David has advised on transactions in numerous countries including Australia, Belgium, Cambodia, China, Denmark, France, Germany, India, Indonesia, Israel, Italy, Luxembourg, Malaysia, the Netherlands, Philippines, Russia, Singapore, South Korea, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and the United States. He is recognized as a leading capital markets lawyer by Chambers, Legal 500 and IFLR1000.

David joined Freshfields in 2015. He previously worked at Linklaters (in London and Hong Kong -- where he headed their US practice in Asia) and Davis Polk & Wardwell (New York). He has practiced for a decade in each of London and Hong Kong, prior to which he spent several years practicing in New York. David clerked for Judge Francis Altimari on the U.S. Court of Appeals for the Second Circuit in New York. He received his J.D. from Cornell Law School (1993).

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Doug Smith is a US partner based in London with more than 17 years' experience in cross border capital markets.

Doug advises issuers, sponsors and underwriters on capital markets transactions ranging from initial public offerings, secondary offerings and private placements to high yield, emerging market and investment grade bond offerings, and debt issuance programs.

He also advises on the US aspects and financing of cross border acquisitions and mergers.

He has broad global experience advising international companies from various sectors including consumer and leisure, financial institutions and fintech, biotech and pharmaceuticals, energy and natural resources, telecoms, media and technology, and real estate.

Doug has advised on transactions in the UK, continental Europe including the Nordics, Russia and the CIS and CEE, sub-Saharan Africa, India and the United States.

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Virginia joined Freshfields as a knowledge lawyer in 1997. Previously she was at Pillsbury Winthrop Shaw Pittman LLP (San Francisco), at Nishimura & Asahi (Tokyo) and began her career as a trainee at Freshfields (London). In the corporate securities team at Pillsbury she acted for issuers and banks in capital markets and M&A transactions as well as advising US public companies on their ongoing SEC reporting obligations. In Tokyo she worked on global securities offerings and Tokyo Stock Exchange listings for non-Japanese clients.