

U.S. Regulation of the International Securities and Derivatives Markets, PREFACE

U.S. Regulation of the International Securities and Derivatives Markets
11th and 12th Editions

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U.S. Regulation of the International Securities and Derivatives Markets, Twelfth Edition, Securities Markets, describes in detail the U.S. regulatory regime applicable to foreign companies entering the U.S. capital markets, including the principal issues a foreign company should consider when deciding whether, and if so, how, to offer securities in the United States (*i.e.*, publicly or privately). It also analyzes how the U.S. regulatory regime applies to securities brokers and dealers, investment companies and investment advisers. Except where otherwise noted, this edition speaks as of January 1, 2017.

Prior editions of this treatise covered both U.S. regulation of the international securities markets and U.S. regulation of the international derivatives markets. With this Twelfth Edition, we have divided the topics into two separate volumes. For a detailed description of the U.S. regulatory regime governing international financial transactions involving derivatives, as well as the U.S. regulatory regime governing futures commission merchants, dealers in swaps and security-based swaps, major participants in swaps and security-based swaps, commodity pool operators and commodity trading advisors, please refer to *U.S. Regulation of the International Securities and Derivatives Markets, Twelfth Edition, Derivatives Markets*, forthcoming.

This book is divided into 16 chapters. In [Chapter 1](#), we provide an overview of the U.S. securities statutory and regulatory framework, introducing the key pieces of legislation discussed in detail throughout the book. We then, in an entirely new [Chapter 2](#), present the key issues for a foreign company considering offering securities in the United States for the first time, including whether to do so as a public offering or private placement. [Chapters 3](#) through [6](#) discuss the U.S. legal considerations involved in conducting a public offering of securities in the United States and becoming a U.S. public company, reorganized to more clearly divide the subject matter into the public offering process ([Chapter 3](#)), the ongoing reporting requirements of a public company ([Chapter 4](#)), the corporate governance requirements applicable to a public company ([Chapter 5](#)) and the requirements applicable to senior officers, directors and significant shareholders of U.S. public companies ([Chapter 6](#)). In [Chapter 7](#), we discuss private offerings, and in [Chapter 8](#) we discuss offerings outside the United States. [Chapter 9](#) describes the rules governing liability management transactions, tender and exchange offers, business combinations and other issues relating to the acquisition of significant interests in companies whose securities trade in the

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United States or that conduct business in the United States. [Chapter 10](#) discusses various practical issues related to global offerings as well as certain types of nontraditional offerings, such as continuous offerings, block trades, rights offerings, spin-offs and offerings of tracking stock. [Chapter 11](#) describes the risks and remedies for violations of the U.S. securities laws, and we analyze in [Chapter 12](#) whether particular instruments, including derivatives, are “securities” for the purposes of the U.S. securities laws. [Chapter 13](#) discusses the Multijurisdictional Disclosure System, or “MJDS,” which is applicable to certain U.S.-Canadian cross-border securities offerings and tender offers. The remaining three chapters of the book focus on the U.S. laws that apply to particular kinds of foreign financial institutions conducting operations in the United States directly or through U.S. affiliates—broker-dealers, investment companies and investment advisers.

A book covering the regulation of such a wide range of activities as this treatise must omit certain topics. As we prepared this Twelfth Edition we reconsidered our focus. As a result, we eliminated the chapter on the U.S. regulation of the securities activities of banks, a topic covered more thoroughly than we could in *GUIDE TO BANK*

UNDERWRITING, DEALING AND BROKERAGE ACTIVITIES (Robert L. Tortoriello, Derek M. Bush & Hugh C. Conroy eds., 21st Ed. Thompson, 2016), which is also published by our firm. We also refocused on specifically U.S. regulation of the securities markets, eliminating the chapter on EU regulation. Readers interested in EU regulation of the securities markets may wish to refer to another publication of our firm, EUROPEAN SECURITIES LAW (Raj Panasar & Philip Boechman eds., 2nd Ed., 2014). As in prior editions, we do not discuss in this edition the detail of U.S. state laws, many of which not only deal with the sale of securities to their residents but also regulate broker-dealers, investment advisers and corporate takeovers. We do, however, touch on these areas where they are most relevant.

In the *Guide to Locating Relevant Forms, Statutes, Rules and Regulations* that is now part of the front matter of the treatise, we describe where readers may locate electronic copies of a wide variety of the authorities cited in this book, including statutory provisions, rules, regulations, forms, cases and administrative decisions.

This book is the result of the efforts of many lawyers in the international law firm of Cleary Gottlieb Steen & Hamilton LLP, which has its principal office in New York and other offices in Washington, Paris, Brussels, London, Frankfurt, Cologne, Rome, Milan, Moscow, Hong Kong, Beijing, Buenos Aires, São Paulo, Abu Dhabi and Seoul. The firm owes a very special thanks to Andrea M. Basham, a senior attorney who revised several chapters in this Twelfth Edition and coordinated the revision and review of all chapters in this Twelfth Edition. The firm thanks paralegals Barbara Gaffney, Heidi Rasciner and Karen Simpson, without whose organizational and myriad other skills this book would not have been completed. The firm further thanks partners Robin M. Bergen, Craig B.

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