CLEARY GOTTLIEB

London Capital Markets ECM and DCM

Execution Handbook (First Edition)

April 2026

Preface

What

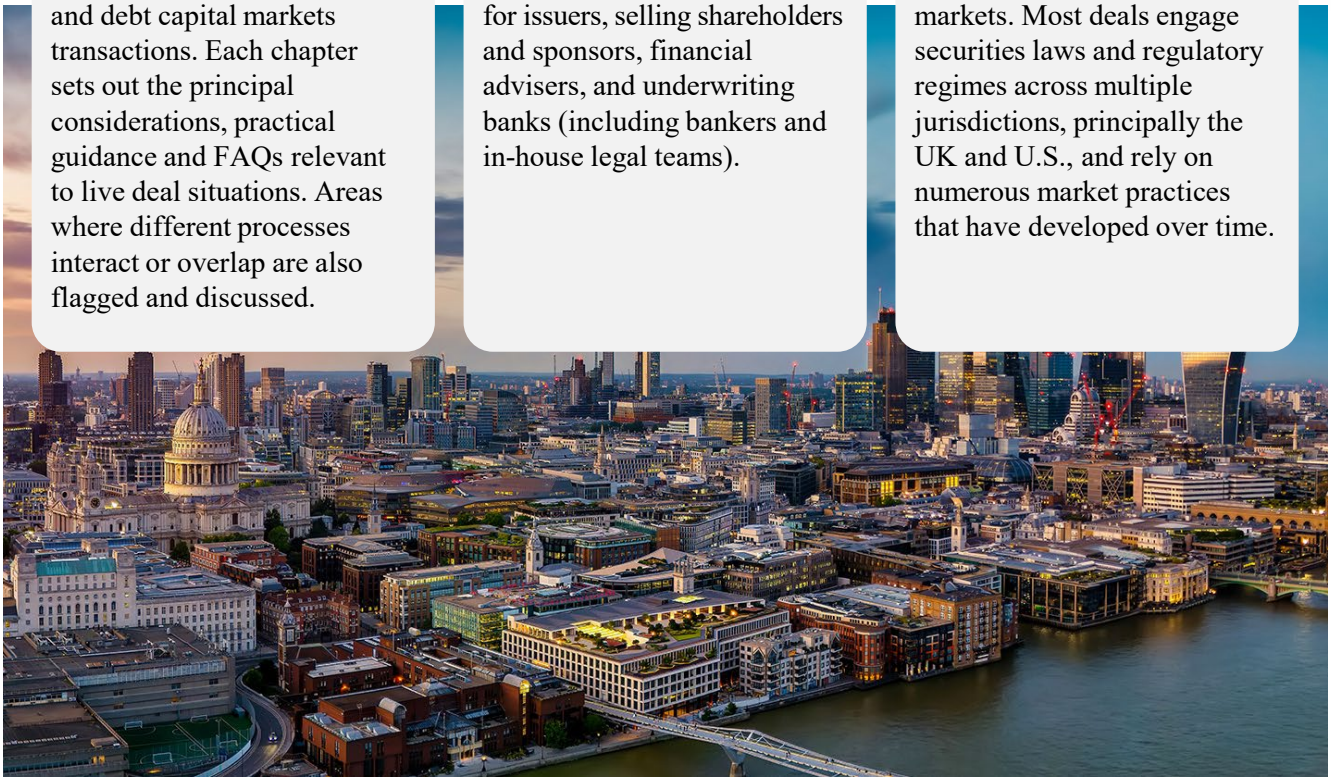
This Handbook summarizes key issues and workstreams that commonly arise in equity and debt capital markets transactions. Each chapter sets out the principal considerations, practical guidance and FAQs relevant to live deal situations. Areas where different processes interact or overlap are also flagged and discussed.

Who

It is intended for use across the transaction working group, serving as a practical reference for issuers, selling shareholders and sponsors, financial advisers, and underwriting banks (including bankers and in-house legal teams).

Why

Capital markets transactions sit at the intersection of business, law, and the financial markets. Most deals engage securities laws and regulatory regimes across multiple jurisdictions, principally the UK and U.S., and rely on numerous market practices that have developed over time.



About the Authors

This Handbook has been drafted by Cleary's London capital markets team.

In our experience, transactions are executed most effectively when individual issues are clearly identified and considered in the context of the broader transaction, informed by the underlying theory and rationale for each process.

To that end, this guide covers UK and U.S. securities law considerations issue-by-issue, for both equity and debt transactions.

This approach reflects the composition of our team: each member advises on both equity and debt transactions and is conversant in transatlantic securities law matters.

We believe that this dual capability provides us with unique perspectives, which we hope you find helpful.

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"Cleary has amazing depth and expertise in global capital markets - both equity and debt. Their experience in cross-border capital markets transactions and foreign listings cannot be matched."

Legal 500 UK, 2026

"Great teamwork and focus. Very collaborative and helpful beyond current/past projects. Invest time in building long-lasting professional relationships, becoming bankers' "go-to" counsel team."

Legal 500 UK, 2025

"Cleary Gottlieb offers specialized expertise, practical experience, a multidisciplinary and multi-jurisdictional approach, innovation and adaptability."

Chambers Europe, 2025

"Cleary are one of the strongest firms handling complex and sophisticated capital markets transactions both in the US and globally."

Chambers Global, 2026

"The Cleary team is incredibly responsive and thorough. Cleary manages inquiries from both legal and non-legal teams and communicates effectively with each. Cleary addresses all angles of a question, not just providing a legal, technical answer but overlaying it with macro considerations."

Legal 500 UK, 2026

"Cleary excels in managing unexpected situations, providing clear direction and exercising excellent judgement. The team provides holistic advice because of their experience in both equity and debt."

Chambers Europe, 2025

We are grateful for the contributions of the following members of our team to this publication: Bree Morgan-Davies, Ilya Nekrasov, Sanna Boeris, Samantha Grayman, Alexandre H. Pauwels, Paola Stratta, Annie Cowell, Chetna Beriwala, Ilaria Pizzi, Nikita Barysnikov, Mieka Loubser, Honora Verdone and Emma Roberts.

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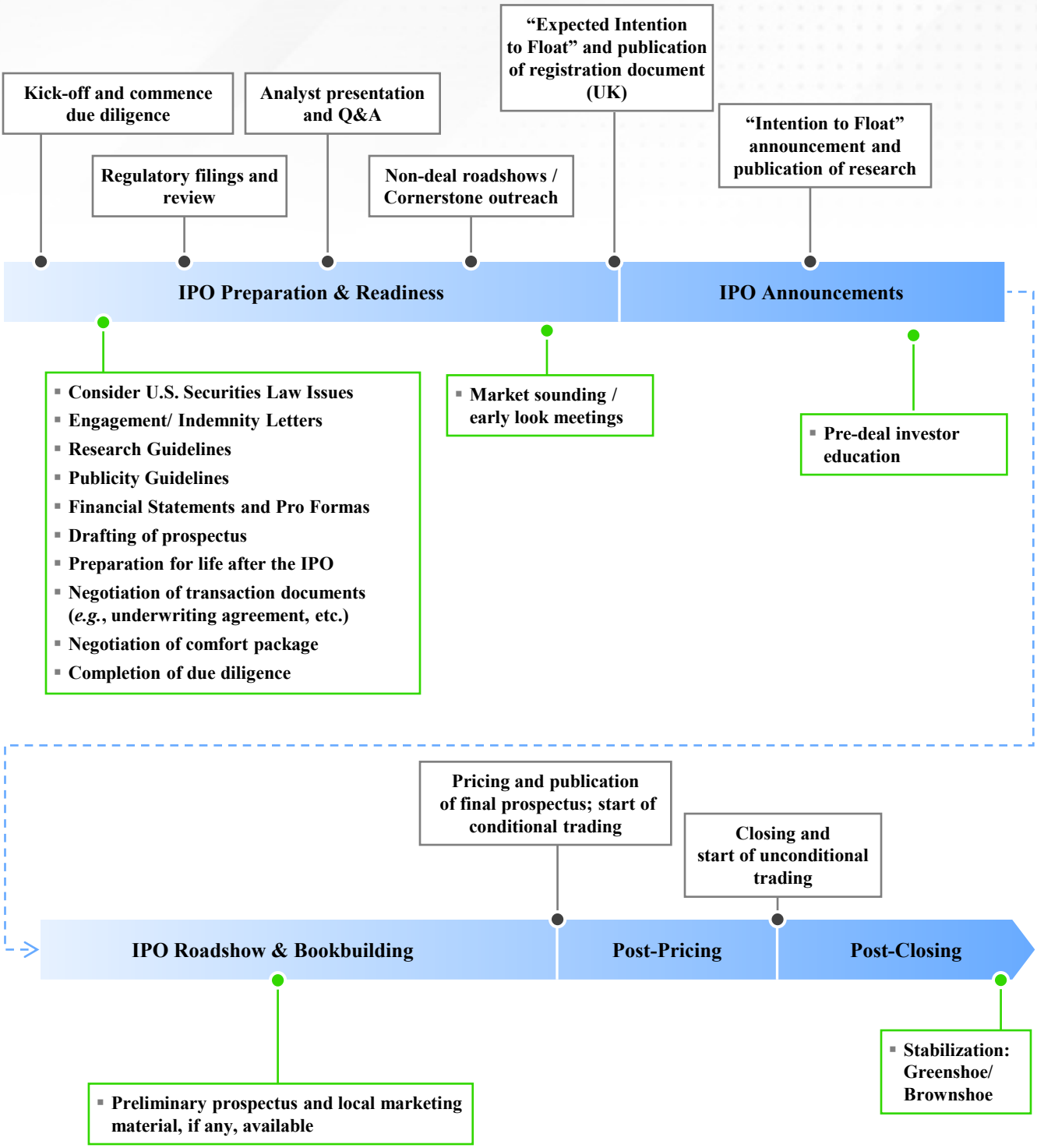
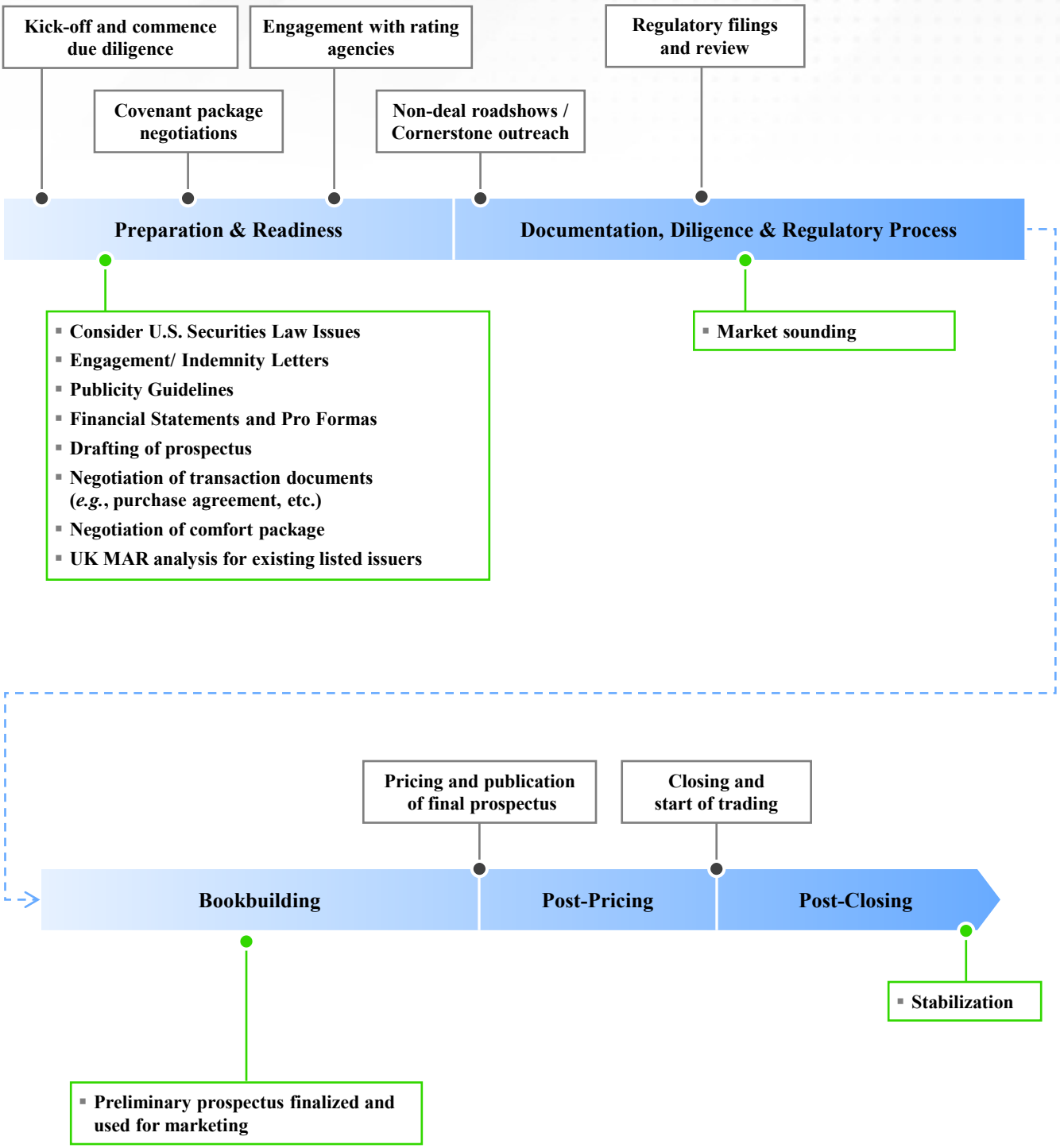


1. Overview – Typical Deal Timeline: Debt (standalone Reg S / 144A offering)



1. Overview – Transaction Types: Equity

1

Initial Public Offering ("IPO")

- The first widespread offering of shares of a company to investors (may be to institutional investors only, or with an additional offering to retail investors). May involve the issuance of new shares by the company ("primary offering") and/or sale of existing shares by a shareholder ("secondary offering").
- Following an IPO, the company's shares are listed and publicly traded on a stock exchange. The company becomes subject to a much broader array of rules and regulations which entail ongoing and periodic reporting and disclosure requirements.

2

Follow-On Primary Offering

- An offering of additional shares by the company, after the IPO.

3

Block Trade

- Sale of an existing stake in a (usually) listed company by a shareholder to one or more investors, without the preparation of a separate offering document.
- The seller enters into a standard form block trade agreement with investment banks ("dealers") who will market the deal (via wall-crossing). *See Chapter 4 (Market Sounding).*
- The dealers may guarantee a price (a "backstopped" deal) in which case they will be on risk until the deal prices.

4

Rights Offering

- An invitation to existing shareholders to purchase additional shares in the company on a pre-emptive basis. The rump of shares not taken up may be placed with third-party investors.

5

Direct Listing

- Process by which a company goes public by listing its shares (ordinary or common stock) on a stock exchange.
- Unlike an IPO, as no new shares are issued or sold, no capital is raised through the listing itself. As there are no underwriters involved to set the initial share price, this is determined by the market (usually based on an opening-day auction).

6

SPAC/De-SPAC

- A shell company (or "special purpose acquisition company") which is formed as a cash shell for purposes of making a future acquisition and publicly listed. Following its IPO, the SPAC will seek acquisition targets and to complete one or more mergers or "business combinations," after which it will continue the operations of the acquired company or companies as a public company.
- IPO investors typically receive warrants at IPO and have redemption rights with respect to their shares prior to the acquisition being consummated.

1. Overview – Transaction Types: Debt

1

Investment Grade

- A rating of Baa3 or higher by Moody's, BBB- or higher by Standard & Poor's ("S&P") or BBB- or higher by Fitch (the "rating agencies").
- Bonds with an investment grade rating traditionally have significantly fewer covenants than high yield bonds.

2

High Yield

- A comparatively high interest rate and yield on bonds (*i.e.*, as compared to investment grade bonds).
- High yield bonds are rated below investment grade by the rating agencies at the time of purchase.
- Given the perceived risk, such companies offer a higher interest rate and commit to more and/or stricter covenants to incentivize investors.

3

Regulatory Capital

- Capital requirements rules in the UK and elsewhere require regulated financial institutions including banks, building societies, and investment firms to fund a proportion of their activities through loss-absorbent forms of capital called "regulatory capital". This regulatory capital serves as a financial buffer, ensuring institutions can absorb losses and continue operating in periods of stress.
- Regulatory capital for banks is divided into three main categories:
  - Common equity Tier 1 ("CET1") capital, which includes paid-up capital, share premium accounts, retained earnings, and other reserves, represents the highest-quality capital and must be immediately available to absorb losses.
  - Additional Tier 1 ("AT1") capital comprises paid-up capital instruments (and their associated share premium account), which are typically issued as hybrid debt instruments (contingent convertibles, or "CoCos"), that may be written down or converted to CET1 instruments if a specified trigger event occurs.
  - Tier 2 capital consists of subordinated capital instruments and loans (and their associated premium accounts), the claims on which rank below those of all non-subordinated creditors.

1. Overview – Listing and Trading Venues (1)

Choice of Venue

- The listing venue determines the prospectus, transparency, market abuse and corporate law obligations that will apply to an issuer, and the cost and complexity of accessing the market.
- Key drivers for choice of listing venues (including whether to list in the UK or the U.S.) are liquidity, presence of industry peers, research analyst coverage, time and cost of listing, and indexation.

UK Regulated Markets

Regulatory Framework

- Regulated by the Financial Conduct Authority ("FCA") and Prudential Regulation Authority ("PRA"); governed in accordance with UK MiFID II and UK MiFIR.

Exchanges

- Key UK regulated markets include the London Stock Exchange plc ("LSE") Main Market and AQSE Main Market, which are operated by FCA-authorized recognized investment exchanges ("RIEs").
- The LSE Main Market's listed segment includes different categories for listed securities, *e.g.*, the equity shares (commercial companies) ("ESCC") for commercial companies seeking a UK share listing, and non-equity shares and non-voting equity shares categories.

Listing and Trading in the UK

- For admission to the LSE Main Market, companies must also be admitted to the FCA's Official List and comply with the LSE's Admission and Disclosure Standards.

Key Regulatory Requirements

- ✓ The Public Offers and Admissions to Trading Regulations 2024 ("POATRs") and the Prospectus Rules: Admission to Trading on a Regulated Market sourcebook apply where securities are listed and admitted to trading on a UK regulated market.
  - These have replaced the previous UK Prospectus Regulation and the UK Prospectus Regulation Rules, respectively.
- ✓ DTR transparency regime applies: periodic financial reporting, vote holder notifications, continuing obligations and access to information, audit committee requirements.
- ✓ UK Market Abuse Regulation ("UK MAR") applies.
- ✓ Compliance with the UK Listing Rules ("UKLRs"), the UK Corporate Governance Code (comply-or-explain), and traded company requirements under CA 2006.

For further information on UK listing reform, see the following Cleary alert memo:

- ✓ **Publication of Final UK Prospectus Regime Reforms**

1. Overview – Listing and Trading Venues (2)

FTSE UK Indexation

- Requirements for inclusion for UK-incorporated companies include:
  - FCA listing and trading on the ESCC or closed-ended investment fund categories;
  - minimum 10% free float; and
  - passing the FTSE UK Index Series liquidity test.
- Securities trading in Sterling, USD or EUR are eligible.
- From June 2026 onwards, the minimum free float requirement for non-UK incorporated companies will be reduced from 25% to 10%, in line with the requirement for UK-incorporated companies. However, non-UK incorporated companies must also satisfy additional criteria, including:
  - publicly acknowledged adherence to the principles of the UK Corporate Governance Code, pre-emption rights and the UK Takeover Code as far as practical; and
  - being incorporated in a "developed" or "low taxation" jurisdiction (in each case, as defined by FTSE rules).
- Note that additional considerations apply where the company is listed in multiple jurisdictions.

Listing on AIM

- The Alternative Investment Market ("AIM") is operated by the LSE as a UK SME growth market.
  - As a UK multilateral trading facility ("MTF"), it functions as an unregulated or "exchange regulated" market that is subject to a lighter degree of regulation than regulated markets.
  - AIM is a "primary MTF" under the POATRs (*i.e.*, admission falls within scope of the POATRs).

1. Overview – Listing and Trading Venues UK vs EU

Listing Requirements: Regulated Markets or MTFs?				
Requirements	**Regulated Market**		**MTF**	
	UK	**EU**	**UK**	**EU**
Public Offers and/or Admission to Trading	POATRs PRM	Prospectus Regulation	POATRs and PRM may apply to admissions to a primary MTF	Prospectus Regulation does not apply to admissions to an MTF (but may apply to offerings of MTF-listed securities)
Prospectus Requirements for Admission to Trading	FCA-approved prospectus for admission to trading (initial + large further issues)	Prospectus approved by relevant national competent authority for admission to trading	MTF admission prospectus on initial admission only; not required for further issuances. Qualified Investors-only primary MTFs have full discretion Offering may require a prospectus	None required for admission, but prospectus may be required for offering MTF rules may also require an admission document
Listing Rules	UKLRs	Prospectus Regulation MiFID/MiFIR Exchange rules	Driven by exchange rules (no UKLRs)	Driven by MTF rules
Transparency/ DTRs	Full DTR regime (periodic reporting, vote holder notifications, audit committees)	Accounting Directive and Regulation Shareholder Rights Directive II Transparency Directive	No DTRs or Transparency Directive governed by exchange operator's own rules, which may incorporate certain rules of the regulated market	Governed by laws of issuer's jurisdiction of incorporation and exchange rules
Governance	UKLRs, UK Corporate Governance Code apply	Member States' national corporate law apply Corporate governance codes apply or issuer generally adhere to one of them	UKLRs and UK Corporate Governance Code do not apply	Member States' national corporate law apply Issuer may adhere to corporate governance code
Market Abuse	UK MAR	EU MAR	UK MAR	EU MAR

2. U.S. Securities Law Issues – Summary

Do U.S. securities laws matter if I am outside the United States?

Yes, U.S. federal securities laws are often interpreted as extraterritorial in nature and often apply to transactions occurring outside the U.S., especially where the transactions target investors or can have an effect in the U.S.

Key Takeaway: Even outside the U.S., it is essential to analyze the impact of U.S. securities rules in all transactions and confirm that the relevant exemptions are available, particularly when there is an identified nexus to the U.S. financial markets or U.S. investors.

What U.S. federal securities laws should be on my radar and why?

Key Requirement:

Section 5 of the U.S. Securities Act of 1933 (the "Securities Act") requires the registration with the U.S. Securities and Exchange Commission ("SEC") of any offers or sales of a security unless an exemption applies.

- The SEC registration process is time-consuming and costly, usually involves, among other steps, filing a detailed prospectus with the SEC and, in most cases, will require SEC review.
- However, there are many exemptions from such registration requirements. Most commonly used are the following:
  - **Regulation S ("Reg S") – Offshore safe harbor:** an offering of securities occurring "outside the U.S." does not need to be registered with the SEC. This exemption requires, among other conditions, making any offers or sales in "offshore transactions" and that no "directed selling efforts" are made in the U.S.
  - **Rule 144A – Private resales to Qualified Institutional Buyers ("QIBs"):** subject to certain conditions, including publicity restrictions in the U.S., this exemption permits private resales to U.S. investors that qualify as "QIBs" (*i.e.*, institutional investors). This exemption is often paired with Reg S to structure global unregistered offerings.

Other Key U.S. Federal Securities Laws:

- The U.S. Securities Exchange Act of 1934 (the "Exchange Act"), which sets out ongoing disclosure requirements for SEC reporting offerors and key rules for liability management transactions.
- **Trap for the unwary**: The U.S. Investment Company Act of 1940 regulates entities whose primary business is investing or trading in securities, such as mutual funds and asset-management vehicles. Even foreign offerors that do not identify as investment funds may inadvertently be classified as "investment companies" if their balance sheet consists in significant part of passive investments rather than operating assets.
  - ! Being deemed an "investment company" without an exemption effectively bars foreign offerors from offering securities in the U.S. and can trigger significant regulatory consequences.

What other U.S. federal laws should I be mindful of?

These include the (i) U.S. Foreign Corrupt Practices Act ("FCPA"); (ii) U.S. sanctions programs; (iii) U.S. Hart-Scott-Rodino Act (a key U.S. antitrust federal statute); (iv) Regulation M under the Exchange Act; and (v) U.S. tax rules, including the rules governing passive foreign investment company (PFIC) status (relevant for ECM deals).

2. U.S. Securities Law Issues – In Practice (1)

Step 1

- Consider the format of the offering – what types of investors will be targeted (are they based in the U.S., overseas or are they a mixture of the two)? These questions will be crucial to determine what exemptions from Section 5 of the Securities Act may be available.

Tip Talk to internal and external counsel about structuring the transaction as soon as possible.

Step 2

- If it is clear that the securities will be offered only to investors outside the U.S., it is likely that the offering will be structured to rely solely on Reg S, which generally requires:
  - An "offshore transaction," meaning that the offers or sales will not be made to a person in the U.S. and, typically, that the buyer is outside the U.S. when the buy order is originated, or that the seller and any person acting on its behalf reasonably believe that the buyer is outside the U.S.
  - No "directed selling efforts" in or into the U.S. ***See Chapter 3 (U.S. Publicity Restrictions).***
  - Additional offering restrictions will apply depending on the Reg S category. As a general rule, the stronger the nexus with the U.S., the greater the risk of securities "flowback" into the U.S. after closing. The higher the "category," the greater the restrictions that need to be complied with.
    - **Category 1:** no substantial U.S. market interest (SUSMI; ***See "U.S. Securities Law Issues – Key Points")*** in the class of securities offered, with no additional restrictions.
    - **Category 2:** SUSMI in the class of securities offered exists (*e.g.,* SEC-reporting foreign offerors or certain debt offerors). As a result, additional requirements are imposed, including (i) no sales to "U.S. persons" (even if outside the U.S.), (ii) a 40-day "distribution compliance period" and (iii) certain offering restrictions relating to the conduct of distributors and legends for inclusion in offering materials.
    - **Category 3:** applies to all remaining cases with the strongest U.S. nexus, requiring the strictest transfer restrictions, purchaser certifications and compliance controls to prevent "flowback" into the U.S. **For these reasons, Reg S Category 3 offerings are often challenging to implement in practice.**

2. U.S. Securities Law Issues – In Practice (2)

Step 3

- If sales will be made to investors in the U.S., the offering will likely be structured to rely on the Rule 144A exemption, either as a Rule 144A standalone tranche or in addition to a Reg S tranche targeting investors outside of the U.S.
  - Rule 144A allows financial intermediaries (that have first purchased unregistered securities from an offeror for resale to investors) to resell such securities to certain institutional investors in the U.S., provided that certain conditions are met, including that: (i) the purchaser is a QIB, (ii) the securities not be "fungible" with, or of the same class as, a U.S.-listed security, (iii) the seller takes reasonable steps to ensure that purchasers are aware that the seller may be relying on Rule 144A, and (iv) in the case of issuers (other than foreign governmental issuers) that do not report or furnish information to the SEC under the Exchange Act, purchasers must have a right to obtain certain information concerning the issuer of the securities.
  - Since 2012, "general solicitation or general advertising" ("GS/GA") in the U.S. is permitted for Rule 144A deals. However, market practice is still to limit marketing to QIBs only (underwriters typically continue to require reps, warranties and undertakings from offerors that there has been no such GS/GA in transactions with a Rule 144A tranche).
- In cases where the requirements of Rule 144A are not met, other exemptions may be available *e.g.*, a private placement under Section 4(a)(2) of the Securities Act or a resale in what is commonly referred to as a "Section 4(1½)" transaction, which have different requirements.

Note Rule 144A deals are subject to U.S. liability standards under Rule 10b-5; Reg S-only deals are not.

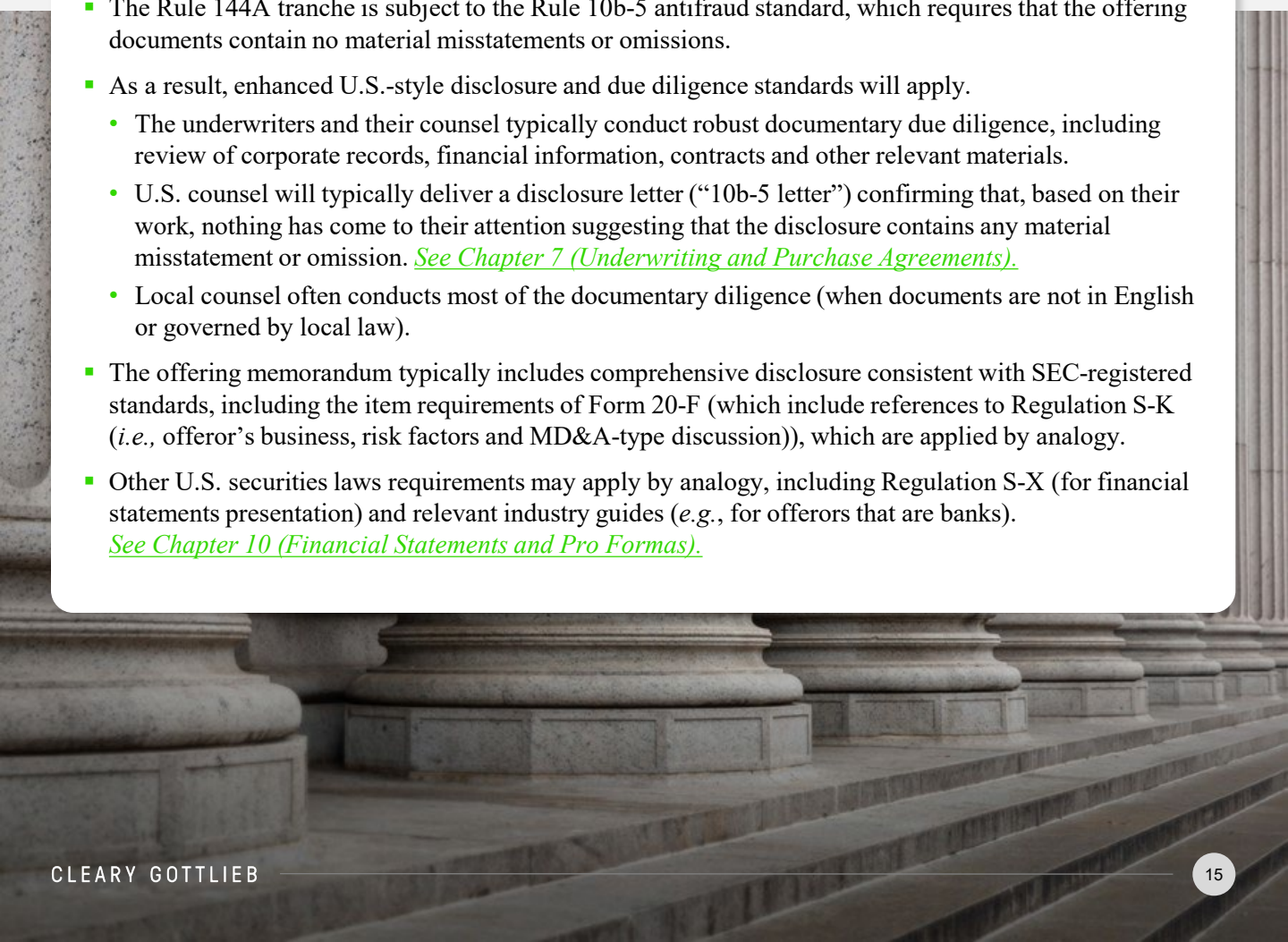
2. U.S. Securities Law Issues – Key Points (1)

Substantial U.S. Market Interest

- "Substantial U.S. market interest" or "SUSMI" is a key criterion used to determine whether an "offshore transaction" under Reg S qualifies as "Category 1," "Category 2" or "Category 3" (in the latter two cases, stricter requirements will apply).
- In practice, SUSMI exists with respect to a class of securities if:
  - for equity:
    - U.S. exchanges in the aggregate constituted the single largest market for the offeror's equity securities in the prior fiscal year; or
    - 20% or more of all trading in such equity securities took place on U.S. exchanges and less than 55% of such trading took place on securities markets of any other single country; or
  - for debt:
    - the offeror's debt securities are held by 300 or more U.S. persons,
    - such U.S. persons hold $1 billion or more in aggregate principal amount of its debt securities, and
    - such U.S. persons hold 20% or more of its debt securities.

Liability Considerations and Other Implications of a Rule 144A Tranche

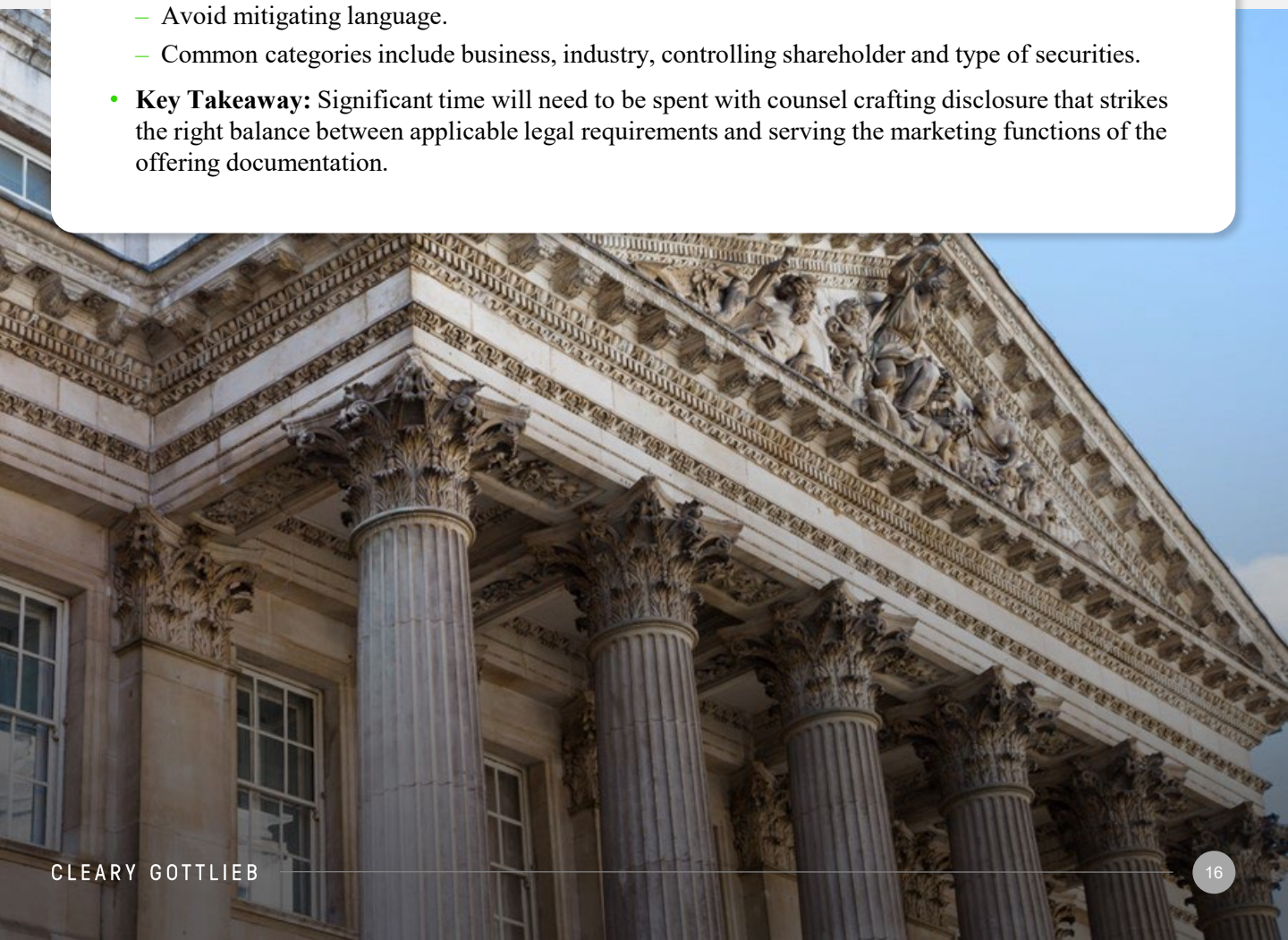
- The Rule 144A tranche is subject to the Rule 10b-5 antifraud standard, which requires that the offering documents contain no material misstatements or omissions.
- As a result, enhanced U.S.-style disclosure and due diligence standards will apply.
  - The underwriters and their counsel typically conduct robust documentary due diligence, including review of corporate records, financial information, contracts and other relevant materials.
  - U.S. counsel will typically deliver a disclosure letter ("10b-5 letter") confirming that, based on their work, nothing has come to their attention suggesting that the disclosure contains any material misstatement or omission. *See Chapter 7 (Underwriting and Purchase Agreements).*
  - Local counsel often conducts most of the documentary diligence (when documents are not in English or governed by local law).
- The offering memorandum typically includes comprehensive disclosure consistent with SEC-registered standards, including the item requirements of Form 20-F (which include references to Regulation S-K (*i.e.,* offeror's business, risk factors and MD&A-type discussion)), which are applied by analogy.
- Other U.S. securities laws requirements may apply by analogy, including Regulation S-X (for financial statements presentation) and relevant industry guides (*e.g.*, for offerors that are banks). *See Chapter 10 (Financial Statements and Pro Formas).*



2. U.S. Securities Law Issues – Key Points (2)

Disclosure Guidelines

- Disclosure must balance marketing needs with legal accuracy. Generally, avoid overstatements, unsupported claims or language that softens material risks.
  - **Business Section**
    - Provide a clear, supportable description of the offeror.
    - Benchmark competitive position only where objectively verifiable.
    - Avoid hyperbole.
  - **Strengths & Strategy**
    - Ensure statements are factual and measured, not overly promotional or involving corporate or industry jargon. Do not present unrealistic or unreasonably ambitious goals.
  - **MD&A – also known as Operating and Financial Review ("OFR")**
    - Discuss key factors affecting results of operations, including revenue and profitability.
    - Provide a narrative on trends from period to period and include a discussion of a measure of profitability by operating segment.
  - **Risk Factors**
    - Disclose material risks, including where they have previously materialized.
    - Avoid mitigating language.
    - Common categories include business, industry, controlling shareholder and type of securities.
  - **Key Takeaway:** Significant time will need to be spent with counsel crafting disclosure that strikes the right balance between applicable legal requirements and serving the marketing functions of the offering documentation.



2. U.S. Securities Law Issues – FAQ (1)

Tip U.S. counsel should be involved early in the process, particularly if there is any indication that the deal will be marketed to or will otherwise involve U.S. investors in any manner.

1

I am doing a Reg S/144A IPO – how do I make sure I don't accidentally engage in "directed selling efforts" into or in the U.S.?

- Marketing materials to be restricted to offshore investors and marketing to be conducted through controlled channels (private meetings, targeted communications and password-protected data sites, such that they are kept out of the U.S. entirely).
- Be careful about digital marketing: social media posts (*e.g.*, Instagram, Telegram, LinkedIn), websites and investor-relations pages can be easily accessed from the U.S. unless geo-blocking, blocking screens or other access controls are implemented.
- Ensure that deal teams, PR firms, local syndicates and any third-party service providers understand these restrictions to avoid accidental outreach to U.S. clients or distribution lists. ***See Chapter 3 (U.S. Publicity Restrictions).***

2

In a Rule 144A offering, what limits apply to my marketing, roadshows, emails and calls when U.S. investors might be involved?

- As a reminder, market practice is to limit marketing to QIBs only, with no "general solicitation or general advertising" into or in the U.S. in Rule 144A offerings.
- Attendance at roadshows or presentations in the U.S. must be restricted to QIBs only, typically through pre-screening, controlled invitations and secure access portals.
- Given the heightened liability risk, offerors must be particularly careful when describing the securities, their business or the offering in the context of Rule 144A offerings.

3

Early-look meetings are scheduled with investors, but the financial statements that will be included in the prospectus/offering memorandum are not yet ready. Can numbers extracted from financial statements for an earlier interim period be included in the presentation, even though these numbers or financials will not themselves be included in the offering documents or covered by a comfort letter?

- Yes, subject to answering the following questions satisfactorily:
  - Is the working group satisfied that these interim numbers are robust (ideally, they will have been subject to an ordinary course review by auditors)?
  - Could the disclosure of these interim numbers constitute disclosure of inside information (requiring wall-crossing of investors or other steps), or could it complicate any plans to use "private cleansing" should a transaction not ultimately proceed? ***See Chapter 4 (Market Sounding).***
  - Do these interim numbers illustrate any trends that will not otherwise be shown in the financial statements included in the prospectus/offering memorandum or discussed in the MD&A section (*e.g.*, in the "Key Factors Affecting Results of Operations")?
  - If not already included in the disclosure, a discussion of such trends should be added to ensure there is no differential treatment of investors.

2. U.S. Securities Law Issues – FAQ (2)

4

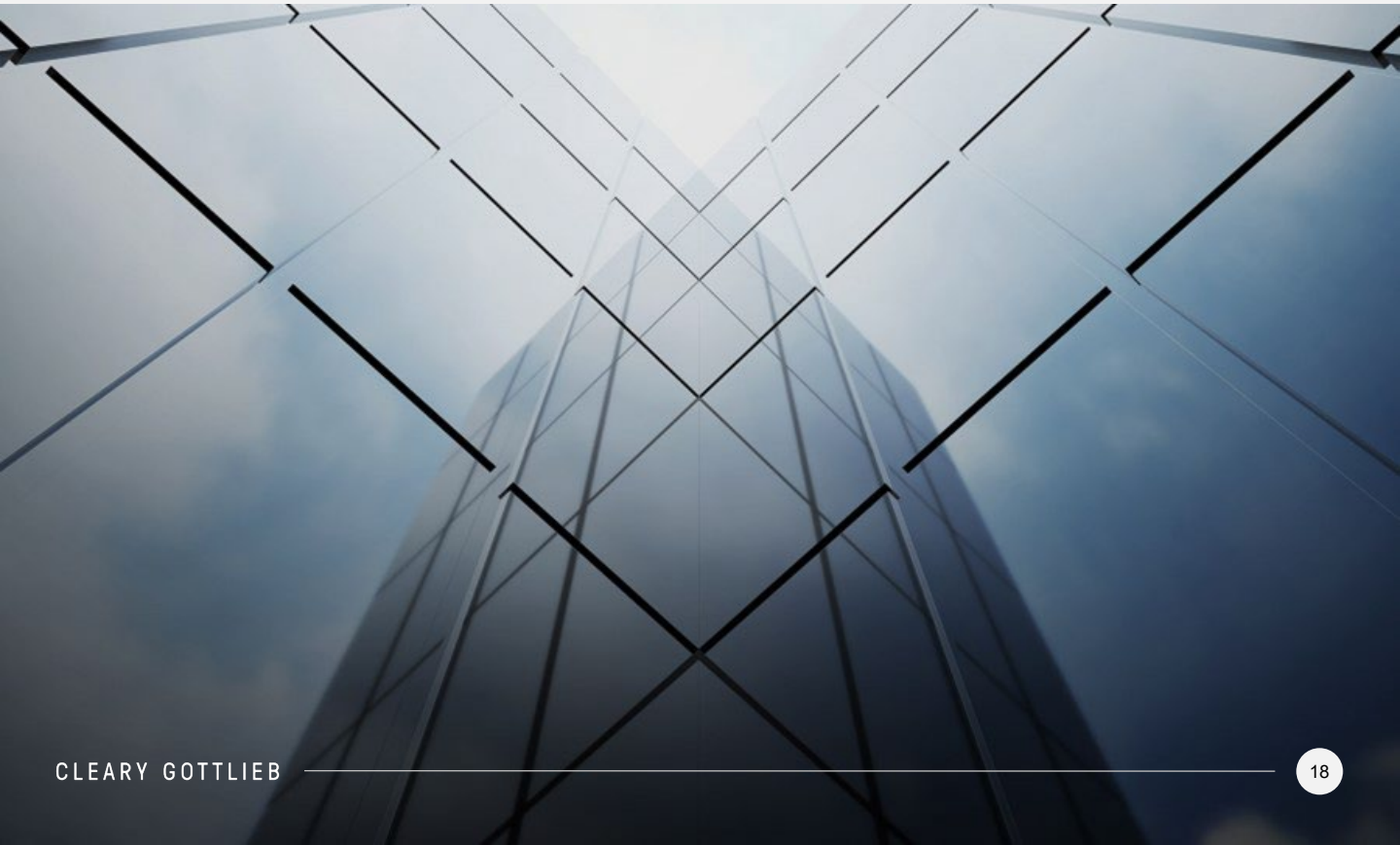
What are the consequences of failing to comply with Reg S or Rule 144A requirements?

- Absent reliance on another exemption, selling securities into the U.S. or to certain U.S. persons in violation of Reg S or Rule 144A constitutes an unregistered offering in breach of Section 5 of the U.S. Securities Act, which may trigger SEC enforcement actions, fines and rescission claims.
- Non-compliance can lead to heightened regulatory scrutiny, reputational damage and restrictions on future U.S. and cross-border capital markets transactions.
- Compliance is not optional – failure to observe restrictions can create immediate legal exposure and long-term reputational harm for the offeror, the banks and the deal team.

5

I am working on a "Eurobond" Reg S only deal with no Rule 144A tranche. How does this affect marketing and documentation?

- In a Reg S Eurobond offering with no Rule 144A tranche, the transaction becomes more streamlined and marketing-focused, as U.S.-style disclosure considerations will not apply.
- Practical consequences:
  - The offering document may be shorter, as disclosure standards are driven by the listing venue, investor expectations and bank policy rather than U.S. liability considerations.
  - Overall documentation requirements are reduced, reflecting the absence of U.S. investors and U.S. market norms.
  - A U.S. "no registration" opinion from issuer counsel may not be required.



3. U.S. Publicity Restrictions – Summary

What are U.S. publicity restrictions and why do they matter?

- U.S. securities laws restrict statements in connection with an offering of securities. *See Chapter 2 (U.S. Securities Law Issues).*
  - The Securities Act prohibits any offer or sale of securities in the U.S. unless a registration statement is filed or an exemption from registration applies.
  - The term "offer" includes virtually any perceived attempt to generate investor interest – any public-facing content, even routine publicity, can be problematic if it is not managed correctly.
- In cross-border offerings, two common exemptions with publicity-related requirements are:
  - **Reg S** (for offshore offers), which prohibits directed selling efforts in the U.S., meaning any communications that could reasonably be expected to condition the U.S. market for the offered securities.
  - **Rule 144A** (for offers to U.S. QIBs), which is generally treated as requiring communications in the U.S. to be limited to QIBs only, with no general solicitation or general advertising.
- Different limitations (and potential exemptions) apply in the context of SEC-registered transactions.

What information can be communicated?

- There are several Securities Act safe harbors that allow transaction participants to lawfully communicate certain information in Reg S/144A offerings, described further below.
- Each of these are subject to particular conditions being satisfied, and should be considered carefully each time they are sought to be used.

3. U.S. Publicity Restrictions – In Practice (Key Rules)

1

Offshore announcements (Rule 135e)

- Announcements can be made relating to offerings not solely conducted in the U.S. provided they include appropriate legends and are released offshore.
- Key requirements include:
  - **Legend at top:** Marked "not for distribution in the U.S. [and other restricted jurisdictions]."
  - **Legend at bottom:** Notes that securities have not been and will not be registered in the U.S. and may not be offered or sold in the U.S. absent registration or an applicable exemption.
  - **Offshore release:** If posted on offeror website, place behind a website filter.
  - **Content:** References to any 144A tranche should not be included unless confirmed with counsel.
  - **Dissemination via third-party service:** Should be either via regulatory announcement service in offshore jurisdiction (*e.g.*, London Stock Exchange RNS or equivalent) or via non-U.S. newswires (those without a substantial U.S. circulation. *See U.S. Publicity Restrictions FAQ #1 below).*

2

Public notices with limited content (Rule 135c)

- Certain issuers can make brief public notices of unregistered offerings provided the content meets certain requirements:
  - Include the correct legends (top and bottom), noting that securities have not been and will not be registered in the U.S. and may not be offered or sold in the U.S. absent registration or an applicable exemption.
  - Release: No requirements (can be published on offeror's open website).
  - Content is strictly limited: Only the following details may be disclosed, without naming the *underwriters*:
    - the issuer's name;
    - the title, amount and basic terms of the securities;
    - any selling shareholder component;
    - timing of the offering; and
    - a brief description of the manner and purpose of the offering.

    References to any 144A tranche should not be included unless confirmed with counsel, and any marketing-related language should be avoided.
  - Current reporting requirement: The issuer must be either (i) subject to the ongoing reporting requirements of the Exchange Act, or (ii) a foreign issuer meeting certain other requirements (including that it has a primary listing of the subject class of securities outside the U.S. and publishes periodic disclosures in English on its website).

    Note: Rule 135c may be available by analogy in certain circumstances.

3

Regularly issued, ordinary-course factual business information (Rule 168 and Rule 169 – by analogy)

- Permissible provided the content, tone and frequency are consistent with past practice and offering is not mentioned.

3. U.S. Publicity Restrictions – In Practice (Checklist)

1

Is the communication connected to, or likely to be viewed as connected to, the offering?

- Clear with counsel if the communication:
  - references the transaction or its securities;
  - contains financial results, key performance indicators ("KPIs"), growth metrics or forward-looking statements;
  - includes material information that is not already in the public domain; or
  - could "condition the market" and could be understood as promotional or intended to generate investor interest.

2

Is any press or media involved?

- Relevant actions include:
  - giving interviews (print, digital, broadcast);
  - participating in podcasts, webinars, conferences or panel events open to the public; and
  - issuing business-as-usual announcements that may be viewed as hype for the issuer.

3

Will information be posted online or appear on a public-facing platform?

- Consider carefully whether any information will be made publicly available through:
  - issuer or banker websites;
  - social media (LinkedIn, X, Facebook, Instagram); or
  - materials are proposed to be posted online.
- Confirm whether content should be removed, modified or put behind a gatepost/geo-blocker.

4

Is the offeror already engaged in ordinary-course publicity?

- Clear with counsel when the offeror:
  - plans to announce new products, partnerships, financings, expansion, or major hires during the offering period;
  - is already receiving heavy press attention (*e.g.*, tech or consumer companies);
  - plans analyst weeks, investor days or marketing events that overlap with the offering timeline; or
  - is revamping its website around the time of the offering.

5

Is disclosure consistent with prospectus/ offering memorandum?

- Particularly notable are:
  - metrics, statements or risk factors not aligned with the prospectus/offering memorandum;
  - descriptions of strategy, market size, regulatory matters or financial trends; and
  - claims about performance or projections not vetted by diligence.

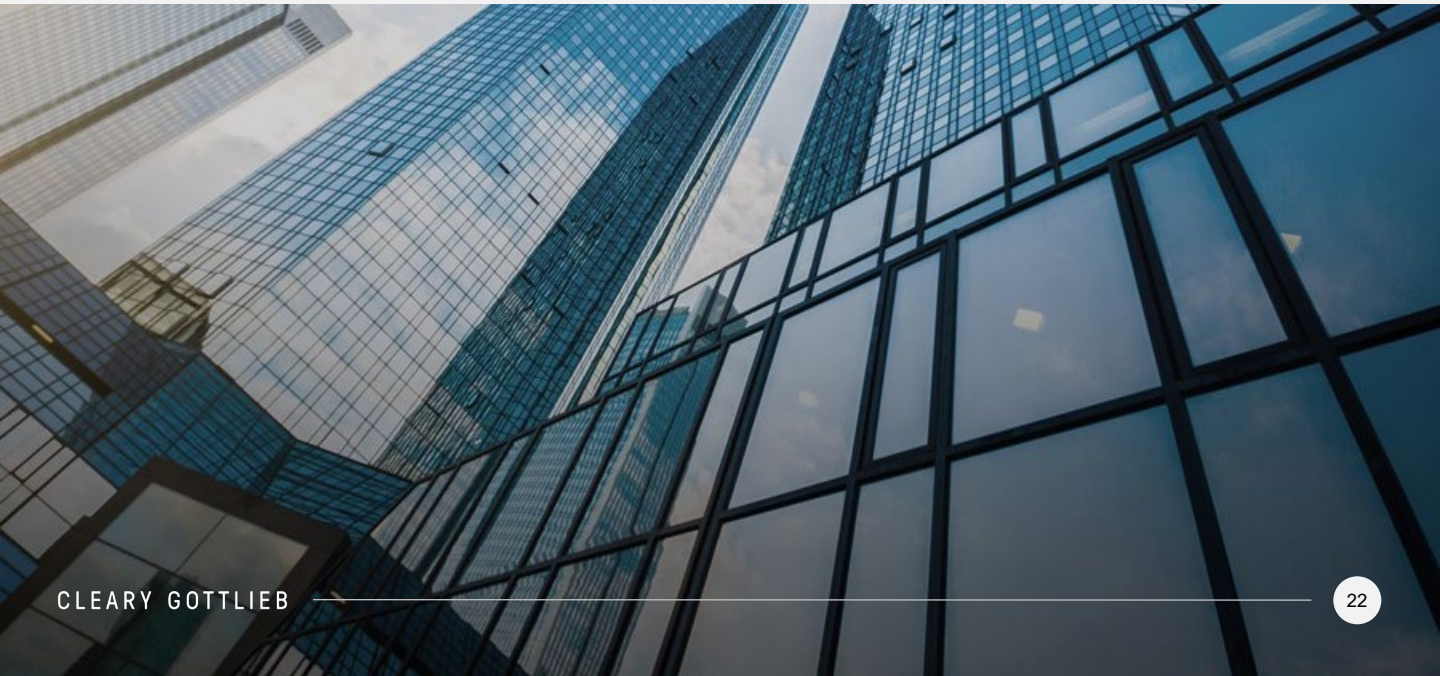
3. U.S. Publicity Restrictions – Key Issues (1)

Dealing With Press and Media

- No interviews, publicity tours or promotional press that could be viewed as offering-related hype. The offering announcement itself will be carefully vetted.
- Company press releases prior to announcement of the offering should be strictly factual, non-promotional and ideally tied to ordinary-course business.
- Deal teams should avoid statements about valuation, expected investor demand or deal size or timing.
- Offerors may continue ordinary-course product or service marketing during an offering if the content, tone and frequency are consistent with past practice and targeted at customers or suppliers (not investors) and the offering is not mentioned.
  - Approach with caution: the offeror should be able to show a track record of similar disclosures in the past.

Website and Social Media Controls

- Once company enters "offering mode," consider removing prior website content that may be inappropriate for an offering document (*e.g.*, forward-looking projections, outdated investor presentations, and promotional materials).
- Apply social media restrictions for executives and employees during the offering period.
- Each working group participant should also be mindful of its own firm's house rules on use of social media in relation to offerings.



3. U.S. Publicity Restrictions – Key Issues (2)

Roadshows

- All material information in the roadshow presentation should also be included in the prospectus/offering memorandum.
- Digital roadshows should be password-protected and only accessible by QIBs (no U.S. retail).
- Written and electronic materials for the roadshow must comply with Reg S/Rule 144A distribution restrictions.
- Avoid selective disclosure or providing information inconsistent with the prospectus/offering memorandum.
- As a practical matter, no copies of slides should be left behind to avoid the suggestion that investors relied on materials outside the OM/prospectus.

Non-Deal and Deal Roadshows in the UK

- UK securities laws (under UK MAR) generally do not prescribe a cooling-off period between a non-deal roadshow ("NDR") and a deal roadshow.
- However, banks may apply a voluntary cooling-off period between an NDR and deal roadshow to avoid any perception of soft marketing.
- Practice varies and should be considered on a case-by-case basis.

3. U.S. Publicity Restrictions – FAQ (1)

Tip If in doubt, treat any public communication as if it could reach investors, and clear it with counsel first.

1

For a Reg S/144A IPO, can the offeror publish an Intention-to-Float ("ITF") announcement on newswires and its website?

- Yes, but it should be released offshore in compliance with Rule 135e.
- **Key steps:**
  - **Use proper legends:** include a "not for distribution in the U.S." legend at the top and the Rule 135e disclaimer at the end of the release.
  - **Control website access:** place the release behind a jurisdiction filter.
  - **Disseminate only offshore:** use non-U.S. newswires (*e.g.,* LSE RNS or equivalent).
  - **Be cautious before relying on flexibility post-JOBS Act (allowing GS/GA in 144A deals):** banks will still require no-DSE/no-general-solicitation reps/warranties and undertakings in the underwriting agreement. *See Chapter 2 (U.S. Securities Law Issues).*
  - **If UK MAR applies:** the release will likely contain inside information and it must be clearly labeled as such, identify the person making the disclosure, state the date/time of release, and publish it through a channel ensuring fast and accurate public access (*e.g.*, London Stock Exchange's RNS).

2

Can the offeror briefly mention the contemplated offering in its upcoming earnings release?

- Yes, but only in a limited way and after the offering has been publicly announced.
  - The earnings release should not include any new offering information and should only reference what is already public, typically by making a brief, factual cross-reference to the previously published ITF announcement. Securities law legends may be required if such mentions are included.

3

Can the offeror publish on its website information it is legally required to release (*e.g.,* EGM results) if it contains a brief reference to the contemplated offering?

- Generally, yes, if the reference to the offering is strictly limited and not market-conditioning.
  - Securities law legends may be required if such mentions are included.

3. U.S. Publicity Restrictions – FAQ (2)

4

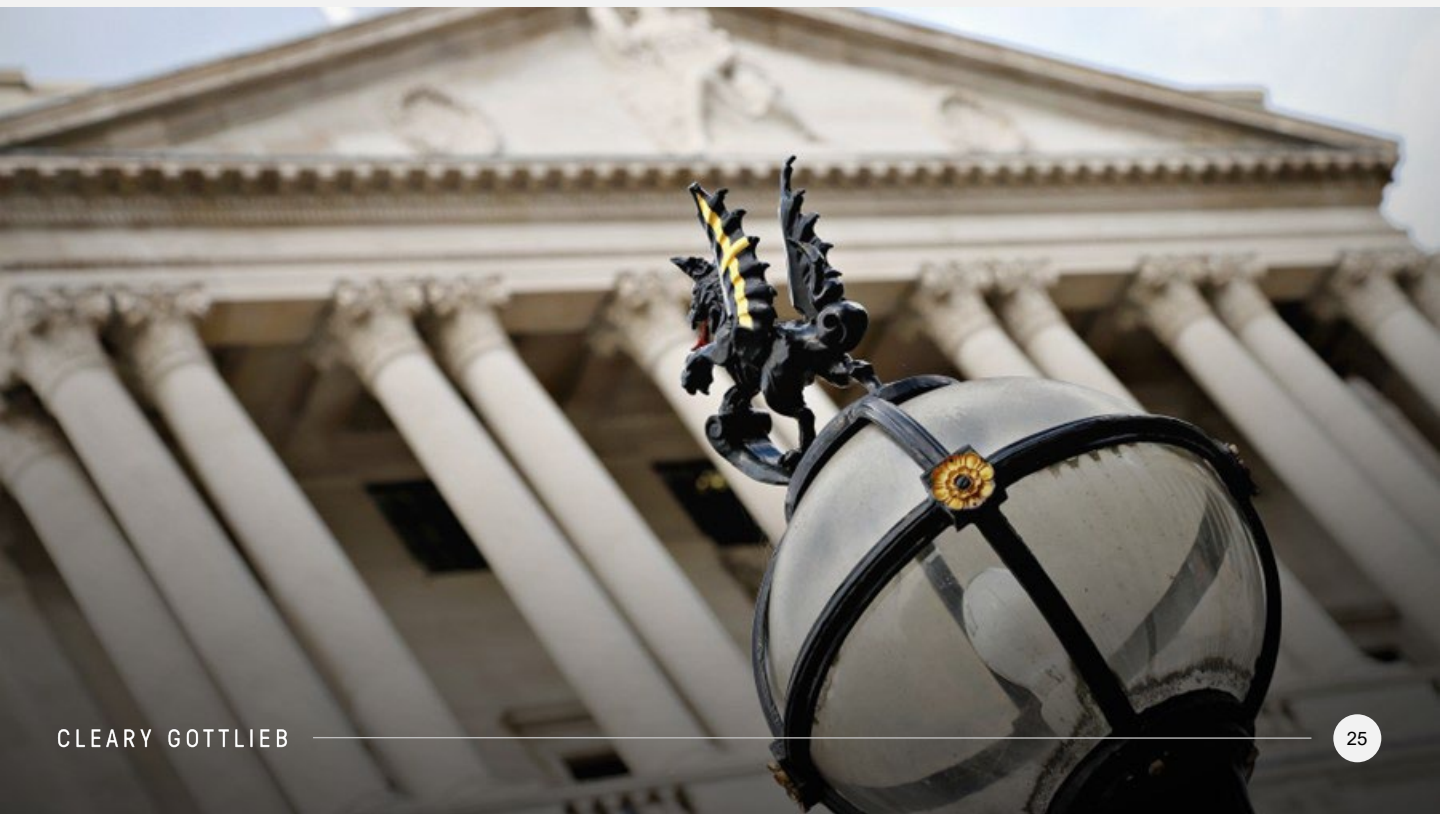
Can the CEO speak at an industry conference while the company is preparing an offering?

- Yes, if this is ordinary-course activity and the CEO does not mention the contemplated offering.
  - Attendance by the CEO at any conferences not previously attended should generally be avoided.
  - The remarks must be consistent with past practice and focused solely on the business/products, not investors.
  - Particular caution is warranted where a conference is taking place in the weeks leading up to the public announcement of an offering.
  - In such circumstances, the statements made by the CEO are more likely to be viewed, in hindsight, as part of the marketing for the offering, and so the more prudent course of action may well be to not attend.
  - Offering participants will likely seek to ensure that any statements made at such an event are tightly scripted in advance.

5

Can a recorded roadshow be shown to potential investors?

- Yes, in a Reg S/144A deal a recorded roadshow can be used, but the recording and slides should be view-only (not downloadable) and accessible only during the marketing period.
  - Check whether the recording falls within the definition of "supplemental offering materials" (often tied to the Securities Act Rule 405 definition of "written communications") in the underwriting agreement and is covered appropriately by representations, warranties and/or indemnities. ***See Chapter 7 (Underwriting and Purchase Agreements).***



4. Market Sounding – Summary

What is market sounding and why does it matter?

- "Market sounding" refers to any discussions with potential investors before a securities offering is formally announced. In typical securities offerings, "pilot fishing," "early-look" and "pre-sounding" meetings all constitute market soundings.
  - Market soundings which fall within scope of UK MAR must comply with certain formalities.
  - MAR regime applies to offerors and investment banks conducting market soundings on their behalf.
  - Where the regime applies, offering participants must make certain disclosures to investors, collect certain confirmations from them, and comply with certain record-keeping requirements. This can cause difficulties where investors are unused to such procedures (*e.g.,* in a U.S.-registered offering).
  - The relevant formalities apply regardless of whether investors are in the UK if the offered securities are within the scope of MAR (but see below on potential routes out of the regime).
  - Banks have internal procedures and scripts for conducting market soundings.

What financial instruments are within the scope of MAR?

- Generally, the MAR market sounding regime applies to the following two types of financial instruments:

1

Financial instruments admitted to trading in the UK

- For example, a follow-on offering of securities admitted to trading in the UK.

2

Financial instruments not of the 1st type, but whose price/value depends, or has an impact, on the price/value of the financial instruments of the 1st type

- For example, an offering of securities of a non-UK-listed offeror if (i) its parent/material subsidiary has UK-listed securities, and (ii) the announcement of the offering would likely have an impact on the price of such UK-listed parent/material subsidiary's securities.
  - The existence of the price/value relationship is a factual question and one where the precise test remains somewhat unclear.
  - There is no materiality threshold. If the announcement of an offering would likely have any impact (in either direction) on the price of the UK-listed parent/material subsidiary's securities, that would be sufficient.
  - Generally, in uncertain cases it is prudent to err on the side of caution and consider the transaction to be within the scope of MAR.

[*] See also "Mandatory vs. optional" on page 30.

4. Market Sounding – In Practice

What does market sounding entail?

The key stages of market sounding are outlined below. The procedures are similar irrespective of whether inside information is shared with investors.

Tip Banks' legal and compliance teams should be looped into the process as soon as possible, as banks often have standard procedures and scripts for market soundings.

1

Initial outreach to potential investors

- Ask if investors are willing to participate in market soundings and be subject to various resulting obligations.
- Aim is to provide sufficient information about the transaction to allow investors to decide whether to accept the wall-cross. The following information is typically shared:
  - geography, sector, type of transaction, offering size or offeror's market capitalization; and
  - method and timing of cleansing ***(see Step 4)***.
- During the initial outreach, investors may request additional information before confirming their interest. If there are multiple banks involved, it is prudent to align on the common approach before providing any further details.
- Do not share any inside information at this stage (such as any information that may reveal the identity of the offeror).

2

Confirmation from potential investors that they are willing to proceed

3

Communication of inside or confidential information

- If private cleansing is contemplated ***(see Step 4)***, the information shared can only relate to:
  - the transaction itself (generally, this kind of information can go stale by passage of time), and
  - offeror-specific information which is already public.

4

Cleansing

- Notify investors when the information provided ceases to be inside information:
  - **If the transaction goes ahead:** by virtue of the public announcement of the transaction proceeding.
  - **If the transaction does not go ahead:** by passage of time ("private cleansing"), or public announcement of "no deal" proceeding (very uncommon).

Tip When making use of external sources for data points in market-sounding material (*e.g.*, early-look presentations), cite these external sources for each point as far as possible to limit your responsibility (and corresponding liability) for the accuracy of that data point.

4. Market Sounding – Key Issues (1)

Syndicates with Multiple Banks

- Coordinating market soundings across a syndicate of banks may present a challenge, as each will usually have its own standard form for the procedures to be followed.
- Banks' standard scripts typically have different architecture (*e.g.,* providing for varying mechanics or means of the initial outreach (e-mails vs. calls) and different template language), and so often do not lend themselves to being consolidated.
- It is often most efficient for banks to use their respective forms. In such a case, it is advisable to align on the key steps – in particular, on the method of cleansing if the transaction does not go ahead.

Cross-Border Issues

- If the transaction is launched after New York market close (which would typically be the case where the offeror is listed in the U.S.), but the affected financial instruments are traded in the UK (for example, securities of the offeror's parent), the relevant companies would need to make public announcements very late in the evening (and in any event before the market opens) in the UK.
- MAR requires that inside information be disseminated throughout the UK in a specific manner (requirements vary by jurisdiction).
- Deal teams should ensure that the relevant parties' in-house legal teams coordinate and agree on a process for the relevant press releases to be published at the appropriate time.

4. Market Sounding – Key Issues (2)

Private Cleansing

- If private cleansing is proposed, inside information should not be shared as part of the wall-crossing (unless such information will go stale by passage of time – typically limited to the fact that the transaction in question is being contemplated and nothing else).
- Consider:
  - whether any formal confirmation from the offeror is required as to its conclusion that the information shared with investors no longer constitutes inside information; and
  - what form this will take, *e.g.*, an email or verbal undertaking from the offeror to not conduct a similar transaction until a stated date in the future or until the publication of the next set of annual or interim results.

Mandatory vs. Optional

- EU MAR was recently amended to clarify that the EU market sounding regime is an optional safe harbor and not a mandatory regime, but how this may affect cross-EU/UK market soundings remains uncertain.
- The FCA's position in respect of UK MAR is not certain.
- The London market tends to apply the regime systematically as a matter of compliance or caution, and it is unclear if this practice will change given the recent amendments to the EU MAR.
- **Note**: **Even if practitioners start treating the regime as optional only, under EU MAR (as amended) they would still need to, prior to conducting a market sounding, consider whether the market sounding will involve the disclosure of inside information and make a written record of their conclusion and the reasons for this.**

4. Market Sounding – FAQ

1

Does the regime apply to a "true" debut offeror?

- For a "true" debut offeror with no UK-listed parent/material subsidiary, MAR market sounding regime is unlikely to apply.
- However, it may apply if such offeror makes a request for admission to trading in the UK and market soundings occur after such request (but before the announcement of the transaction).

2

Does the regime apply to an equity-listed offeror planning a debt issuance?

- There are good arguments that the regime does not apply, on the basis that the price/value at which the debt is offered is unlikely to depend on or have an impact on the price/value of the offeror's equity (but fact-specific analysis still needed).

3

Does the regime apply to involuntary listings?

- There is no clear answer to this in MAR. This should be checked with each investment bank's internal legal and compliance teams.
- Practitioners' views on this range from:
  - considering the instruments outside the scope of MAR; to
  - applying the regime to investors differently depending on their location (with MAR market sounding procedures applying only in the case of outreach to UK-based investors); to
  - applying the regime in full.

4

Does the regime apply to a debt-listed offeror planning an IPO?

- Highly fact-specific. It may not apply in the case of an investment grade offeror, the price/value of whose debt primarily responds to interest rate movements and is unlikely to be impacted by the price/value of the equity offered in the IPO.
- More likely to apply in the case of a sub-investment grade offeror for whom the IPO might be credit-positive (*e.g.,* due to use of proceeds raised in a primary offering).

5

When multiple banks participate in market soundings, do they have to use the exact same procedures?

- No. Banks can use their respective scripts for conducting market soundings, provided the banks are aligned on the key steps (including procedures for cleansing investors if the transaction is aborted).

6

Do banks need any confirmation from the offeror for cleansing investors if the deal is aborted?

- Practice varies. Banks may require a confirmation from the offeror that the information shared with investors no longer constitutes inside information in the private cleansing context, to support the conclusion that the "fact of the transaction being contemplated" has gone stale.
- For example, an email undertaking to not conduct a similar transaction until a stated date in the future or until the publication of the next set of annual or interim results or verbal confirmation pre-launch.

5. Investment Bank Engagement and Indemnity Letters – Summary

What are Engagement and Indemnity Letters?

Engagement Letters

- Engagement Letters ("ELs") are contracts between offerors and the investment banks.
- They govern the pre-offering phase of a transaction, typically running from the appointment of the banks until the execution of the underwriting agreement ("UWA") or purchase agreement ("PA").
- An indemnity in favor of the banks will be included.

Indemnity Letters

- Indemnity Letters ("ILs") are short form contracts where the offerors agree to indemnify the banks for potential financial losses, damages and liabilities (*i.e.*, usually contains an indemnity and nothing else).

Timing

- These documents allocate risk, define scope, and protect the banks before long-form documentation becomes effective.
- An EL is usually required to be in place before investor outreach commences. If an EL is not executed by such time, the banks will typically require an IL to be in place.

Why do ELs matter?

- Protect banks against pre-offering liability.
- Clarify fees and economics, including aborted deals.
- Control process and exclusivity.
- Provide that each bank is liable only for its own actions.
- Set commercial expectations for underwriting agreement.

What do Engagement Letters typically cover?

- **Appointment & Role:** which banks are engaged, and in what capacity; each acts on a several (not joint) basis; what services the banks will (and won't) provide, including structuring input, diligence coordination, investor education, marketing strategy, bookbuilding and transaction management.
- **Fees & Expenses:** base fees; discretionary fees; abort/tail fees (fees payable if engagement terminated and a similar transaction consummated within a certain period); any success-based components; allocation of expenses; caps; and any specific calculation or allocation mechanics.
- **Liability & Indemnity:** indemnity from the offeror in favor of the banks; limits on bank liability; disclaimers of fiduciary duties; and restrictions on responsibility for other advisors' work.
- **Information & Access:** offeror obligations to provide complete, accurate and timely information; ongoing updates (including material changes); and access to company management.
- **Conduct of the Relationship:** parties' obligations regarding confidentiality; publicity controls; clear market and exclusivity; conflicts of interest; and compliance with laws and regulations.
- **Exit Terms:** termination rights and survival of key protections after termination.
- **Additional Information:** ELs may also include heads of terms for the underwriting agreement.

5. Investment Bank Engagement and Indemnity Letters – ELs In Practice

There is a market-standard approach to ELs (each investment bank typically has its own form of agreement). Consider these legal and commercial tips when reviewing or drafting:

1

Description of the Proposed Transaction

- Overly detailed descriptions can reduce flexibility if deal parameters change (*e.g.*, an upsize or change in security type).
- Deal description should be sufficiently broad to capture the transaction that ultimately proceeds, as well as any alternatives under consideration.
- A more detailed description may also unintentionally limit the scope of a clear market provision ***(see below)***.

2

Appointment and Role

- Specification of any lead roles of banks (sponsor in UK IPOs, joint global or lead coordinator, settlement bank) and whether the offeror retains discretion to appoint other banks in the future.
- If not, exclusivity language can be added.

3

Fees and Expenses

- Are fees discretionary or fixed? Should an abort fee apply if the deal is pulled, or fee tail if the offeror terminates early but completes a similar transaction shortly thereafter?
- Agree expense caps and the allocation of typical expenses (*e.g.*, counsel fees, roadshow materials, travel).
- Ensure success fee criteria and calculation mechanics are tightly defined, including treatment of VAT and other taxes.

4

Indemnity

- Broad indemnity for banks for any losses arising from engagement.
- Exclusion of liability for banks subject to very limited exclusions (stemming from fraud, gross negligence or willful misconduct).

5

Information Flow and Accuracy

- Offeror will typically agree to provide ongoing access to material information and management attention to ensure accurate and timely flow of information. It will also often give representations that information provided is accurate, not misleading and does not omit material facts.
- Include an acknowledgment that the banks will be entitled to rely on the information without verification and will not be liable to the offeror for the banks' use of such information.

6

Clear Market and Participation Rights

- Clear market language restricts the offeror from launching competing transactions before completion (and sometimes for a period thereafter). Participation language provides a right of first refusal in respect of future or similar transactions. Consider whether these provisions are appropriate.
- Clear market and participation language should align with any fee tail.
- Where the offering includes a U.S.-registered component, be aware of FINRA rules placing limits on the nature and scope of fee tails.
- Consider whether lock-ups (for offeror and/or management) are appropriate.

7

Publicity

- It is typical to restrict the naming of banks in announcements, save for ordinary course disclosure.
- Consider rights to review or approve offeror communications that reference the banks or the transaction.
- Ensure reference is made to publicity guidelines, if applicable. ***See Chapter 3 (U.S. Publicity Restrictions).***

5. Investment Bank Engagement and Indemnity Letters – Key Issues (1)

Liability Considerations

Merits Advice

- Banks typically avoid language implying responsibility for assessing whether a transaction is fair, reasonable, or in the offeror's best interests. Responsibility for these determinations typically remains with the offeror.

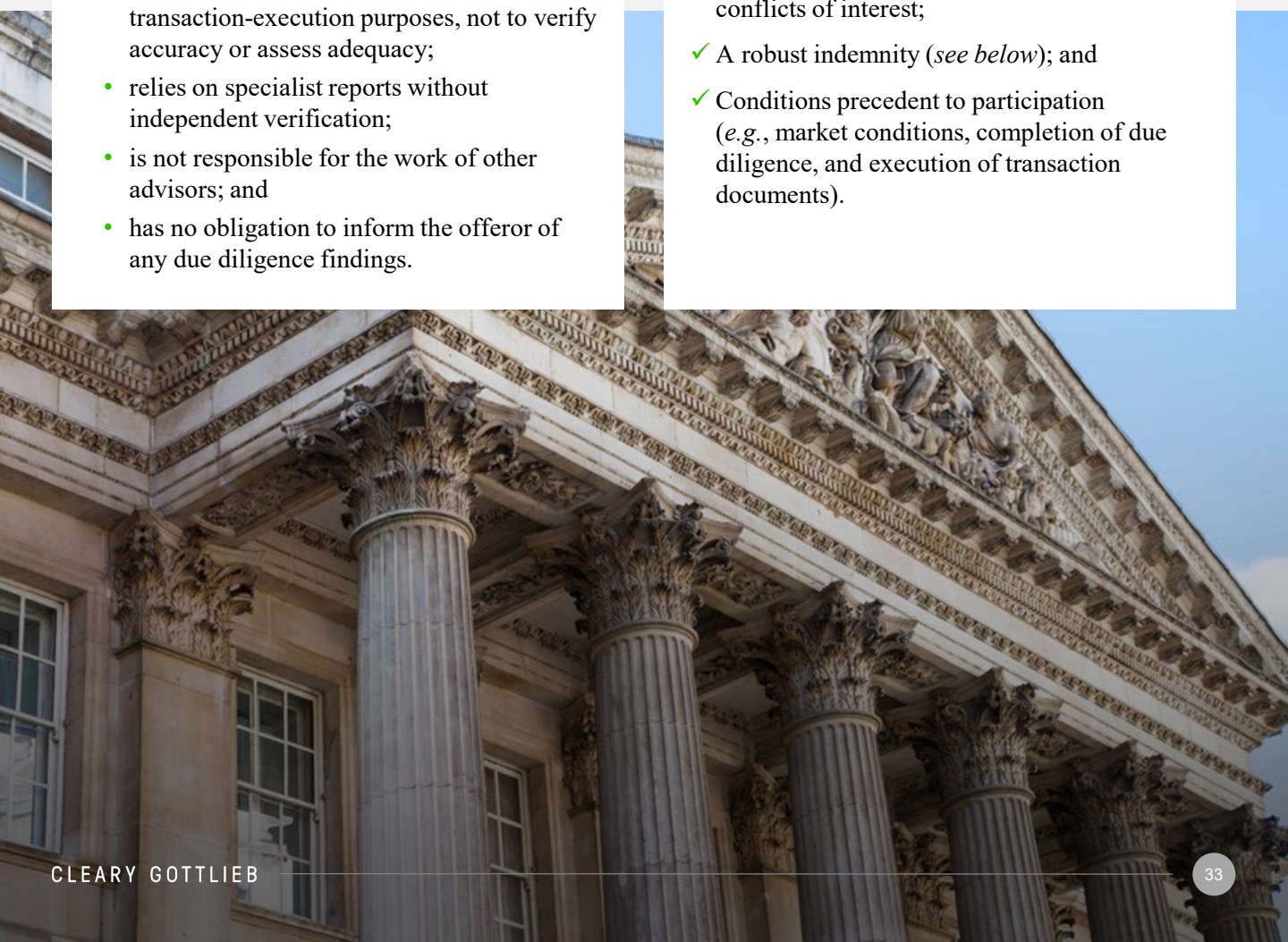
Due Diligence (Coordination vs. Responsibility)

- Where a bank coordinates due diligence, language may be included to avoid implying responsibility for matters outside its expertise. In particular, the bank will state that it:
  - does not conduct legal, tax, or accounting due diligence;
  - reviews diligence materials solely for transaction-execution purposes, not to verify accuracy or assess adequacy;
  - relies on specialist reports without independent verification;
  - is not responsible for the work of other advisors; and
  - has no obligation to inform the offeror of any due diligence findings.

Limiting Liability

Typical EL Language (for banks):

- ✓ No authorization of, or responsibility for, disclosure documents or financial promotions (absent written consent);
- ✓ Confirmation that the bank acts solely on an arm's-length contractual basis;
- ✓ Express exclusion of any fiduciary or financial advisory role;
- ✓ Several (not joint or joint and several) liability among banks;
- ✓ A governing law and jurisdiction clause with a predictable body of law (such as English law);
- ✓ Exclusion of third-party rights (except for indemnified persons);
- ✓ Acknowledgment of actual and potential conflicts of interest;
- ✓ A robust indemnity (*see below*); and
- ✓ Conditions precedent to participation (*e.g.*, market conditions, completion of due diligence, and execution of transaction documents).



5. Investment Bank Engagement and Indemnity Letters – Key Issues (2)

Bank Compensation

Base Fees

- Are these based on agreed percentages ("fixed economics") or underwriting commitments?
- In dual-tranche offerings where certain banks are only involved in one limb (*e.g.,* the institutional tranche of an IPO with a domestic offering to retail investors), does the size of each tranche impact the fees?
- How are fees on option shares (greenshoe or brownshoe) treated, and stabilization profits (if any) shared? ***See Chapter 8 (IPO Stabilization Structures).***

Discretionary Fees

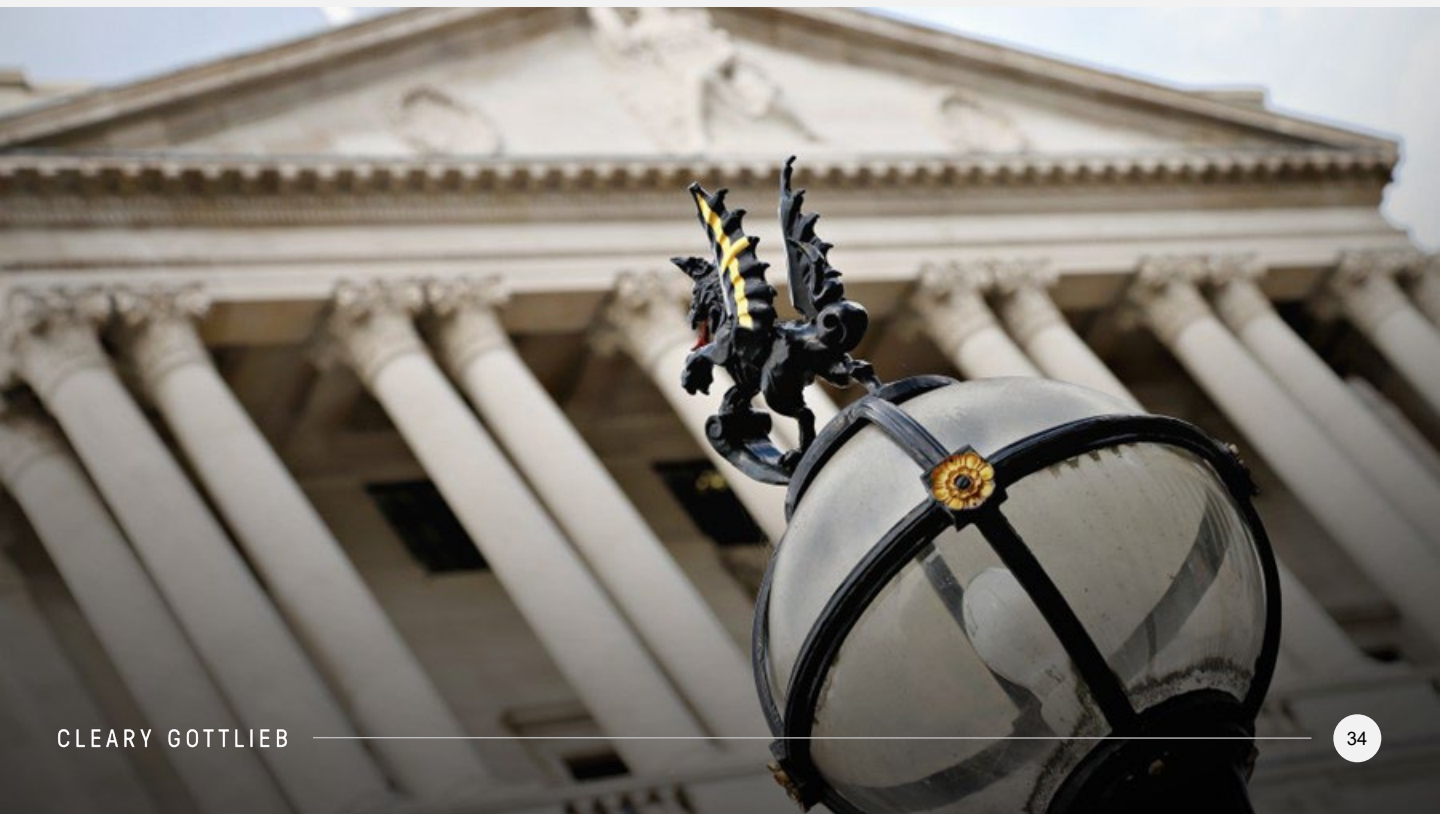
- Are these discretionary as to both amount and allocation?

Tail Fees

- Will these apply? If so, for how long a period, and in what circumstances?

Indemnity Structure

- The indemnity, in either the EL or IL, usually extends to cover all connected persons to the bank, including directors and officers.
- Banks released from liability subject to very limited carve-outs for gross negligence, fraud and willful default.
- Superseded by the indemnity in the UWA/PA. ***See Chapter 7 (Underwriting and Purchase Agreements).***
- EL/IL indemnity provisions usually survive termination to cover aborted / failed transactions and pre-offering liabilities.
- Conduct of claims and related provisions to ensure no settlement with admissions of fault without indemnifying parties' consent (subject to limited exceptions where there has been a failure to pay counsel fees within a specific timeframe for claims run by indemnified persons).



5. Investment Bank Engagement and Indemnity Letters – FAQ

Tips

- Banks typically have standard form engagement letters, but the important content for different transaction types can vary.
- Banks often include wording that services under the EL can be provided by affiliates (typically acceptable to offerors provided that the bank signing the EL remains ultimately responsible for such affiliates' actions).

1

When does an EL or IL need to be signed?

- Usually in banks' interests to get a signed EL in place as soon as possible on any transaction to cover pre-offering activities.
- Some form of indemnity is usually required before any deal-specific investor outreach takes place.
  - Pre-marketing phase (*i.e.,* market sounding, early-look meetings):
    - Focus on getting the EL signed as soon as possible.
    - If the EL is not yet agreed, put an IL in place before any interaction with market participants begins.
  - Launch and marketing phase (*i.e.*, deal is publicly announced, preliminary offering documents are shared with potential investors, book-building begins):
    - EL is typically signed before this begins.

2

Does signing an EL commit the banks to underwrite the deal?

- No. ELs govern preparatory work only, and it is typical to expressly disclaim underwriting commitments.
- These commitments should be included in the more comprehensive deal documentation.
- ELs should be clear on any obligations which are not contingent on consummation of the offering or signing of UWA/PA (*e.g.*, payment of banks' out-of-pocket expenses up to a cap; fees of legal counsel).

3

When will the EL terminate, and what are the parties' rights after termination?

- Typically, all parties to an EL or IL will have the right to terminate by giving written notice, although certain provisions will be drafted to survive termination (and some survive as a matter of law).
- Automatic termination language is sometimes included so that the EL/IL falls away if the transaction does not launch within a certain timeframe (a longstop date), or after closing.
- There are circumstances where a party can still sue (or be sued) under a terminated agreement, so it is important to ensure the agreement is robust before signing.

What if the deal is aborted or proceeds without the banks?

- In these circumstances, abort fees or tail fees may be triggered, although may be negotiated to apply only where engagement was terminated by:
  - offeror other than for cause, or
  - the banks for cause.
- Exclusivity language (right to participate in future or similar transactions) may also apply in such cases.

4

Can an EL and IL exist at the same time?

- Yes, but preferable to avoid overlapping provisions.
- On occasion (*e.g.*, where time does not permit a full EL), an "extended" IL will be signed with certain commercial terms (*e.g.*, fees and expenses provisions).

6. Auditor Comfort Letters – Summary (1)

What is a comfort letter?

- A comfort letter is a letter issued by the offeror's independent accountants/auditors to the underwriters/initial purchasers in a capital markets transaction, typically at pricing and closing.
- Its main purpose is to give its recipient additional "comfort" about the financial information included (or incorporated by reference) in the prospectus or offering memorandum used to sell the securities offered to the market.
  - How? Mainly by confirming that all such financial information has been correctly extracted from the corresponding financial statements/management accounts (and confirming the absence of changes).
- **Key Takeaway**: Comfort letters are all about diligence.

For what deals is it needed?

- Comfort letters are usually required in all transactions where new securities are being issued.
- Comfort letters are customarily obtained in Rule 144A offerings and typically cover the same topics as in U.S. public offerings, subject to a few exceptions.
- In Reg S/144A deals, there is often a "SAS 72" standard comfort letter and an identical "SAS 72 lookalike" letter for the Reg S tranche.
- In non-U.S. offerings, applicable local law governs underwriters' potential liability to investors, but underwriters typically also request a comfort letter as matter of practice.
  - These letters sometimes follow a different format, established by the International Capital Markets Association ("ICMA").
- In Reg S/144A deals, underwriters will also have to sign a representation letter stating that they are familiar with the level of diligence required in an SEC-registered transaction and that they have performed substantially equivalent diligence in the relevant deal.

6. Auditor Comfort Letters – Summary (2)

Why does it matter?

- Comfort letters help underwriters/initial purchasers establish their "due diligence defense" against disclosure liability claims by evidencing a reasonable investigation into the offeror's financial statements – in other words, it is a liability management tool.
- Due diligence is also desirable for reputational reasons independent of liability concerns.
- In addition to comfort letters, an auditor due diligence call is also typically held, during which the underwriters ask the auditors questions on their role and the work they have done for the offeror.

What does it include?

A typical comfort letter can cover up to six essential topics, depending on available financial information, as follows:

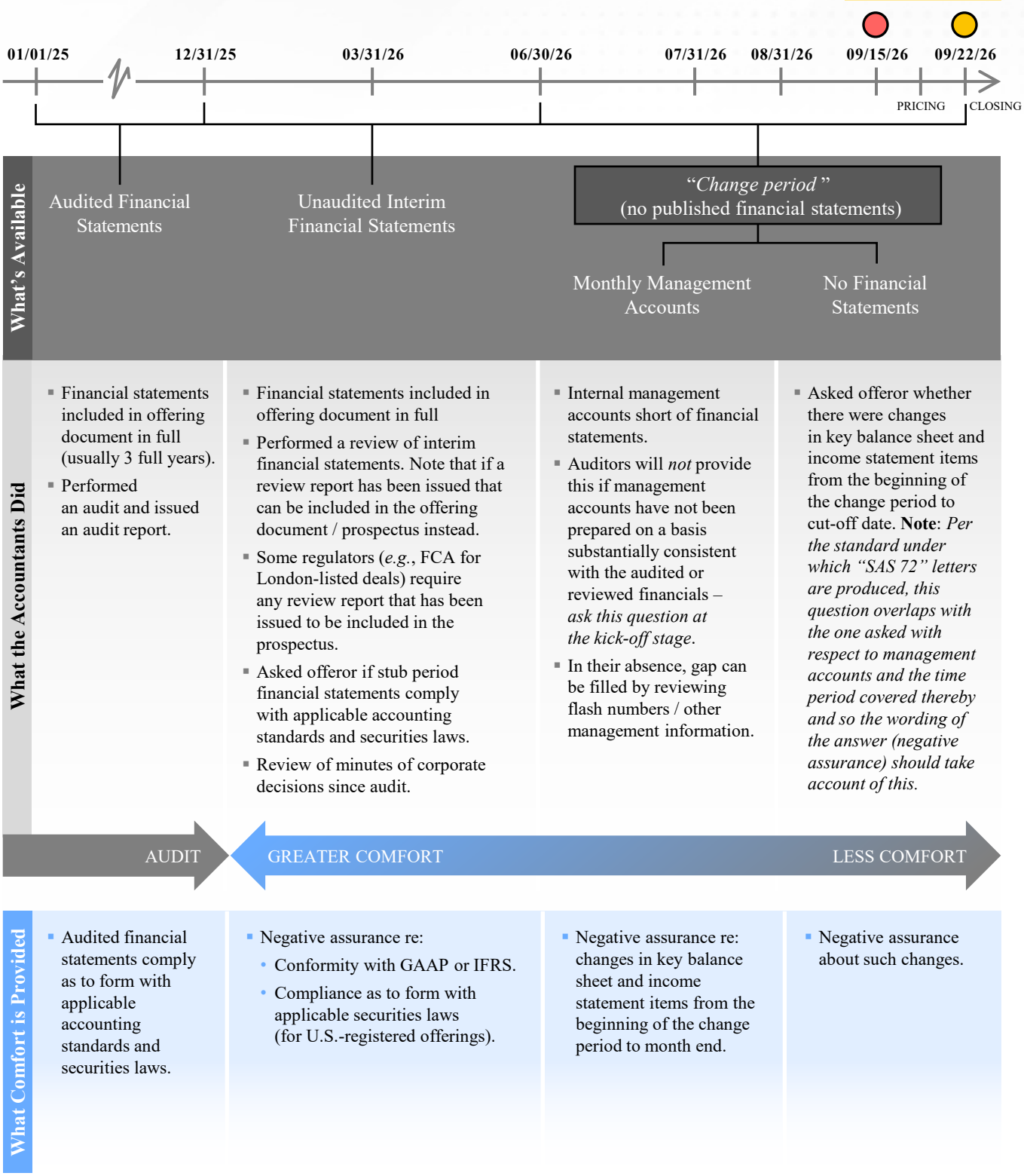
Auditor Independence	Audited Financial Statements	Unaudited Interim Financial Statements
▪ A statement of auditor's independence from the offeror ▪ Made by reference to the applicable independence requirements	▪ Acknowledgement that the auditors have audited the offeror's audited financial statements included in the offering document and issued an audit opinion	▪ Description of procedures performed and negative assurance

Monthly Management Accounts	"Stub Period"[1]	Financial Information in Prospectus
▪ More limited review ▪ Description of procedures performed and negative assurance statement	▪ Very limited comfort ▪ Description of procedures performed and negative assurance statement	▪ "Circle-up" comfort on information derived from financial statements or accounting records ▪ Comfort may also be provided on pro forma financials. *See Chapter 10: Financial Statements and Pro Formas.*

[1] The "stub period" is the period between the date from the most recently prepared financial statements (including monthly accounts if so prepared) to the cut-off date that will be used in the comfort letter (typically 3-5 business days before pricing/closing).

6. Auditor Comfort Letters – In Practice

Worked example for a deal using June 30, 2026 (H1) financial statements:



6. Auditor Comfort Letters – Key Issues (1)

135-Day Rule

- Auditors can only provide "negative assurance" on unaudited financial information as of a cut-off date less than 135 calendar days from the end of the most recent period for which they have performed an audit or review.
- Past these 135 days, such financial information is "stale" for comfort purposes.
- This may delay or complicate a deal if financials go stale before pricing or closing and generally informs capital markets "windows" to price and close deals.
- **Takeaway**: Always check the financial statement dates early in the process – if the deal timetable slips past 135 days, it can directly affect whether the auditors can issue (or bring-down) their comfort letter. In limited cases, it may be possible to extend the 135-day period by obtaining a special purpose review of recent monthly financial statements, but this is uncommon (time/cost + lack of availability of appropriate monthly financials).

Closing a Deal Around the Cut-off Date

- The cut-off date is the latest date up to which the auditors perform procedures for purposes of the comfort letter (internal bank procedures require this to be no more than 3-5 business days before the date of the comfort letter).
- Where the cut-off date for a bring-down comfort letter (3-5 days before closing date) falls on day 134 or earlier, auditors may still agree to provide such letter (*i.e.*, closing date and delivery of the comfort letter no later than day 139).
- **Takeaway**: Track the cut-off date carefully when managing the deal timetable – delays can affect the auditors' ability to provide up-to-date comfort and may require extra audit work or revised documentation.

A time-sensitive deliverable: "circle-ups"

Auditors "tie" certain financial information included in the offering document to financials or accounting records (known as "circle-up" or "tick-mark" comfort)

What is covered?

- Monetary amounts obtained from accounting records subject to the offeror's internal control over financial reporting.
- Information derived directly from the offeror's accounting records by analysis or computation.
- Other information obtained from accounting records subject to the same controls over financial reporting.

What is not covered?

- "Information subject to legal interpretation," including industry and economic data.
- "Backup" typically sought for this type of data (offeror operational information).

6. Auditor Comfort Letters – Key Issues (2)

Relationship between Comfort Letter and Disclosure

- Obtaining a comfort letter is a key part of the due diligence process and informs the disclosure.
- Information obtained in respect of the change period will feed directly into the current trading and prospects disclosed in the prospectus (*e.g.,* in both the summary box and OFR).
- For this reason, it is key to identify early any material trends throughout the change period that require actual financial information to be disclosed in the prospectus (vs. narrative/ qualitative disclosure only).
- **Takeaway**: Review any change period financials early and speak to the offeror/counsel to identify any material trends.

Information Not Covered

- Comfort letters only cover specific financial information that can be traced directly to the offeror's accounting records.
- Items outside this scope are not covered – for example: general industry or market data related numbers, estimates, ranges, non-GAAP metrics, operational or other KPIs (*e.g.*, contracted, but not yet realized, revenues) or metrics that have both financial and non-financial elements (*e.g.,* ARPU in telecoms transactions and cash costs in mining deals; only the financial element can be comforted).
- Information not covered by way of tick-mark comfort is often circled and appended to a CFO certificate; however, remember that a certificate has limited utility on its own. Preferable to obtain documentary backup for such numbers (based on offeror's internal records). Investment banks may, depending on internal policy, nevertheless require information considered financial in nature (*e.g.*, non-IFRS measures) to be appended to the CFO certificate circle-up.
- **Takeaway**: Track which numbers are covered and the type of comfort given.

6. Auditor Comfort Letters – FAQ (1)

Tip Engage early with auditors, the offeror and their advisors as a group focusing on expectations for timeline and comfort package.

1

I have a deal kick-off call with the auditors – what should I ask them?

- What financials are expected to be available at the time of expected closing/pricing?
- How many auditors has the offeror had in the last three years?
  - Note: If more than one, speak to counsel (more than one comfort letter may be needed).
- What is the expectation in terms of the duration of the change period and the stub period; what management accounts will be available?
- Have the auditors already considered the level of comfort they expect to be able to give?
- Were the audited/reviewed financial statements approved by the board of the offeror in English? **(See Tip 4).**

2

I am doing a deal off Q1 numbers. Timing slips from a June (Q2) pricing and closing to July (Q3) – what does it change?

- This puts greater pressure on the change period and stub period diligence given deal is now closing after the end of Q2, even if the latest financials (Q1) in the disclosure remain unchanged.
- Offeror should re-confirm when management accounts for Q2 will be available which, in turn, will impact the level of comfort from auditors.
- Offeror to confirm any material trends identified during quarter/month and if need for any flash/capsule figures to be included in disclosure.
- Case-by-case discussion with auditors on comfort that can be provided on these flash/capsule figures – underwriters will need to diligence these numbers in any event.

3

My deal slips further, now expecting pricing/closing in Q1 of the following year – what does it change, apart from needing to include 9M financial statements in the disclosure?

- There are limits (so-called "White Paper issues") as to the type of comfort that auditors will provide on Q4/FY financial information after the end of the financial year, but prior to the delivery of the audit report for the annual financial statements.
- Level of comfort depends on whether audit fieldwork is "substantially complete," which is left to the auditors' professional judgment.
- If "substantially complete," Q4 negative assurance is possible if Q4 statements are attached to letter or included in offering document.
- If not, auditors can only read/report on the first two months of the Q4 unaudited monthly financials and provide limited comfort generally.

4

The financial statements were approved by the company's board, only in a foreign language – what should I do?

- The difficulty here is that auditors will likely only refer in the comfort letter to the foreign language financials, not the English translation included in the offering document.
- Solutions:
  - See if board can approve the English translations.
  - If not, obtain a notarial certificate confirming the accuracy of the English version of the financials included in the offering memorandum. That ties together the foreign financials referenced in the comfort letter with the version included in the disclosure.

6. Auditor Comfort Letters – FAQ (2)

5

The auditor wants the underwriters to sign an arrangement letter – is that OK?

- Not used in the context of public U.S.-registered deals but will be expected in connection with Reg S/144A transactions where there are separate comfort letters for the U.S. and non-U.S. portions of the transaction.
- Preferable from banks' perspective to avoid this if possible (resist this where there is only one comfort letter for both tranches, *e.g.*, Israel).
- Arrangement letters will be reviewed by counsel in detail, in particular:
  - Any express cap on auditor liability should be resisted.
  - Any proposal to have the governing law be anything other than New York law or English law should be flagged as certain local laws have implied limitations on auditor liability.

6

The auditor wants the underwriters to sign a hold-harmless letter – is that OK?

- For public U.S.-registered transactions, this should not be needed as there is a broader hold harmless arrangement in place between the major audit firms and U.S. arms of investment banks.
- In Reg S/144A transactions, auditors may on occasion request a "hold-harmless letter," particularly in advance of participating in an auditor DD call or when underwriters/initial purchasers seek access to due diligence or other IPO readiness reports prepared by auditors.
  - Underwriters' counsel may seek to amend to read more like a "non-reliance letter".
  - Email exchange affirming no liability of auditors is a possible compromise.

7. Underwriting and Purchase Agreements – Summary (1)

What are underwriting agreements ("UWAs") and purchase agreements ("PAs")?

- A UWA is the key contract governing the relationship between an offeror of securities (*i.e.,* the company issuing the securities or a selling shareholder) and the investment banks (the "underwriters") involved in marketing the transaction, whereby the underwriters commit either to purchase the securities (for resale to investors) or undertake to procure investors for the offering (failing which the underwriters will purchase the securities themselves).
- A PA is similar but used for unregistered debt deals (where the deal is styled as an initial purchase by investment banks ("initial purchasers") for resale to end investors); the term may also be used for equity.
- Both of these agreements cover:
  - **Commercial terms**: pricing, size, settlement, disclosure package (including representations and warranties), termination rights and closing deliverables.
  - Risk allocation between offeror and banks through representations, warranties, covenants and closing conditions.
  - Ultimately, the agreements are similar in purpose, but with different nomenclature depending on their use. We use the terms "UWA" and "PA" interchangeably in this section.

Why do they matter?

These agreements serve several core purposes:

- Document offeror's representations and warranties and undertakings to the investment banks.
- Provide indemnity and contribution protections, allocating risk and liability.
- Set out the offeror's obligations before and after closing (*e.g.,* information delivery, stabilization cooperation and publicity parameters).
- Formalize investment banks' commitment to buy/underwrite the securities at closing, subject to customary conditions.

7. Underwriting and Purchase Agreements – Summary (2)

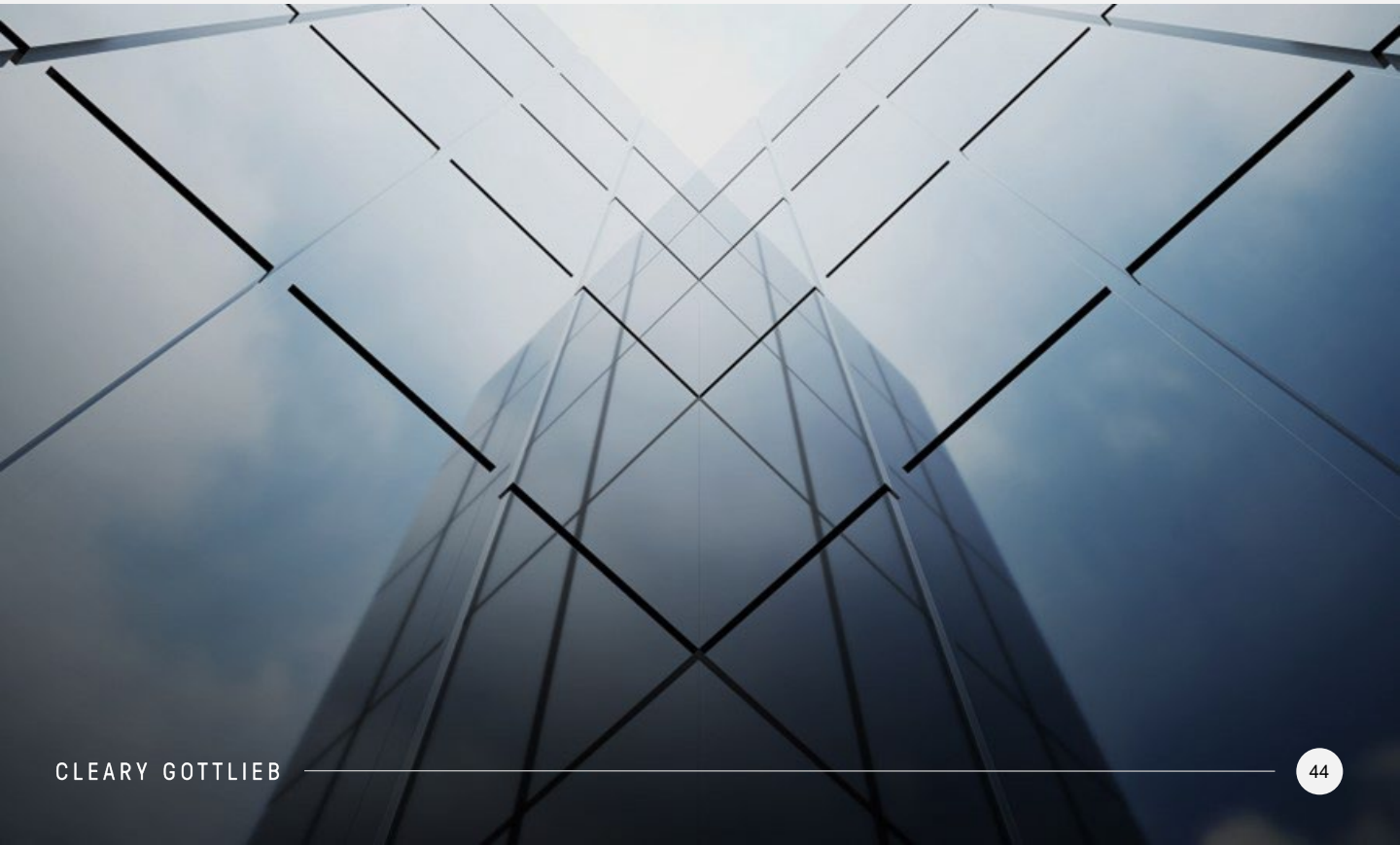
When are these signed?

Timing depends on the type of offering (and subject to variation in limited cases):

- **Equity (institutional-only)**: Signed at pricing (date of final / black prospectus). Banks take "soft" or "settlement-only" risk (*i.e.*, the risk that investors to whom securities were allocated do not follow through with their orders).
- **Equity (institutional and retail)**: Typically signed at launch (date of price range prospectus) so that underwriters have the benefit of representations, warranties, undertakings and indemnity in the UWA, though practice may vary by market. UWA will contain no underwriting commitment – that will instead be included in a "pricing supplement," signed at pricing.
  Again, settlement risk is "soft"/"settlement-only".
- **Debt**: PA signed at pricing (assuming U.S.-style transaction execution). ***See Chapter 1 (Typical Deal Timeline).***

Tip

In offerings with more than one tranche (*e.g.*, domestic retail and international institutional) where not all investment banks are involved in both tranches, there will likely be separate UWAs/PAs (or other intermediation agreement, where one tranche is not underwritten) governing each tranche, and an inter-syndicate agreement governing the relationship between the two. ***See FAQ #4 below.***



7. Underwriting and Purchase Agreements – Key Areas of Focus (1)

Representations and Warranties

Typical categories include the following:

- **Organization and authority of the offeror:** good standing, requisite board/shareholder approvals, authorization of transaction documents.
- **Valid issuance**: authorization of securities, valid issuance/fully paid (equity), enforceability/terms (debt).
- **Disclosure documents:**
  - Offering memorandum or prospectus:
    - **UK**: truth/accuracy under applicable prospectus disclosure rules.
    - **U.S.**: 10b-5 rep (no material misstatement or omission) on disclosure package (preliminary prospectus taken together with the pricing notification) at time of sale and final prospectus as of its date and as of the closing date. *See also Chapter 2 (U.S. Securities Law Issues).*
  - Supplemental offering materials:
    - Not appropriate to hold these to the same standard as the offering memorandum/prospectus (*e.g.*, investor decks do not contain risk factors); instead, reps should be given on such materials "when taken together with the disclosure package/prospectus."
  - Financial statements: compliance with applicable accounting standards, no undisclosed liabilities, no conflicts (breach of documents, contracts, or law); required consents obtained.
  - Offeror not in possession of inside information/material non-public information.
  - Compliance matters: anti-money laundering, bribery and corruption; corporate and securities laws (including stock exchange rules); sector-specific regulatory matters.
  - Offering restrictions (Reg S/144A deals): investor eligibility, QIBs/Reg S framework, transfer restrictions.
    - **Note: Required by U.S. counsel from parties to UWA/PA as representations / warranties and undertakings to support delivery of their U.S. no registration opinions.**
- These should be tailored to the specific transaction/offeror and qualified where appropriate. Qualifiers can include:
  - Reference to knowledge (after due and careful enquiry), disclosed matters or materiality ("except as would not otherwise, individually or in the aggregate, have a material adverse effect"). These qualifiers are often heavily negotiated.
  - Two qualifiers in the same provision ("double-dipping") are generally not acceptable to investment banks and should be avoided.

Representations and warranties should be made as of the date of the agreement, the time of sale, the final prospectus or offering memorandum and any supplement thereto, initial closing and any shoe closing. *See Chapter 8 (IPO Stabilization Structures).*

7. Underwriting and Purchase Agreements – Key Areas of Focus (2)

Undertakings

- Lock-ups for the company, selling shareholders and key directors or officers (typically lasting for 180-365 days post-transaction).
- Notification of underwriters of material events and preparation of supplementary disclosure.
- Use of proceeds.

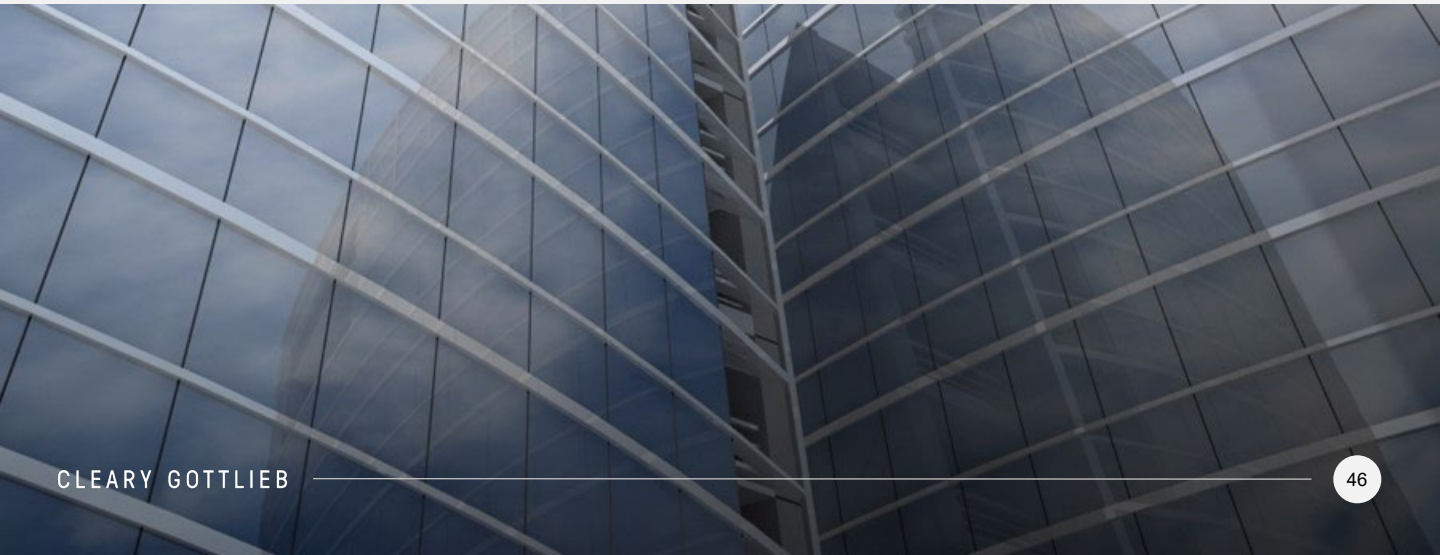
Fees and Expenses

- See ***Chapter 5 (Investment Bank Engagement and Indemnity Letters)*** *and* ***Chapter 8 (IPO Stabilization Structures).***

Closing Conditions

Customary conditions (to initial and shoe closing) include:

- Delivery of legal opinions, 10b-5 negative assurance letter and comfort letters. Delivery of comfort letters at shoe closing and related cut-off date should be discussed with investment banks where 135-day rule is implicated. ***See Chapter 6 (Auditor Comfort Letters).***
- Bring-down of representations and warranties.
- Delivery of officers' certificates, any CFO certificates, and good standing certificates (or equivalent).
- No termination event having arisen (***see below***).



7. Underwriting and Purchase Agreements – Key Areas of Focus (3)

Indemnity and Contribution

- The offeror agrees to indemnify the banks for losses arising out of any material misstatements or omissions in the disclosure package, roadshow presentation, offering documents, and any written test-the-waters communications.
- In English law or UK-style agreements, customary for transaction indemnity (for losses arising out of engagement generally) to be included, with additional (inclusive but not exhaustive) list of matters in respect of which liability could arise (*e.g.,* breaches of representations/warranties, material misstatements or omissions in the disclosure).
- Carve-outs for fraud, gross negligence and willful misconduct of the indemnified persons are often included in agreements with a transaction indemnity, only with respect thereto.
- Further carve-outs for information provided by the investment banks are common, but this is highly limited (usually to the names of banks or stabilization-related disclosure).

Termination Events

- Breach of representation/warranty and undertaking.
  - **Note**: It is generally not appropriate to limit this to "material" breaches – representations/warranties and undertakings themselves should already contain relevant qualifiers (to do otherwise would constitute inappropriate double-dipping).
- Material adverse effect in business of the offeror.
- Market disruption (material adverse change in relevant financial markets).
- Force majeure events.

Entire Agreement

- Typically expressed to supersede prior agreements (including engagement letter or indemnity letter) except for matters arising prior to the date of its execution.

7. Underwriting and Purchase Agreements – FAQs (1)

1

What is the link between the reps and warranties in the agreement and the due diligence being carried out during the deal?

- Due diligence seeks to verify that the offeror's reps and warranties are true.
- Due diligence findings may trigger the need to negotiate additional reps, narrow certain reps or require additional disclosure before signing.
- Ultimately, reps and due diligence work together: reps provide the contractual protection, while due diligence assists in the background helping to understand whether such reps are grounded in fact.

2

When is it appropriate to include a qualifier to representations and warranties?

- Certain matters – typically corporate items and compliance with law – are not qualified at all and will receive strong resistance from the investment banks. Sanctions and compliance matters will also receive close scrutiny.
- It may be more appropriate to qualify representations/warranties as to certain operational matters. Even where "knowledge" may on its face be a reasonable qualification, the key question is whether, as a matter of risk allocation, the existence of matters excluded by the qualification (*e.g.*, "unknown items") is properly borne by the offeror or the investment banks.
- If qualifiers relating to disclosure in the offering documents are included, counsel should confirm that such disclosure is in fact included in the disclosure.
- Where other qualifiers are sought, banks' counsel should always seek to understand the rationale or concern underlying the request.

3

What does "refreshing the shoe" mean? What are the implications?

- "Refreshing the shoe" refers to underwriters buying shares in the market to reset their ability to use the overallotment option.
- According to ESMA guidance (published prior to Brexit and so of continued relevance for the UK), such transactions cannot be subject to the exemption provided by Article 5 of MAR.
  - The purpose of this exemption is to allow the price of the security to be supported, and this is achieved by the purchase, rather than the sale of securities.
  - ESMA's view is therefore that selling securities that have been acquired through stabilizing purchases, including selling in order to facilitate subsequent stabilizing activity, cannot be characterized as price supportive behavior.
- **Note: Additional considerations arise for "refreshing the shoe" in U.S.-registered transactions (pursuant to Regulation M under the Exchange Act).**
- Being outside the safe harbor does not automatically mean the activity is abusive, but any such sales should be carried out carefully, with minimal market impact and taking market conditions into account.
- ***See also*** ***Chapter 8 (IPO Stabilization Structures).***

7. Underwriting and Purchase Agreements – FAQs (2)

4

How does a dual-tranche offering structure impact the UWA?

- Whether two UWAs are needed should be considered at the outset. This will turn on any differences between the two tranches (*e.g.*, involving different sets of banks; one underwriting and the other only intermediating; variations in fee structures).
- Underwriters should consider entering into an inter-syndicate agreement (*i.e.,* an agreement among all banks involved across all tranches) to coordinate the offering of the two tranches, covering:
  - selling restrictions;
  - settlement procedures;
  - the allocation of commissions;
  - stabilization of the shares offered in each tranche;
  - the re-allocation of shares from one offering to the other; and
  - the inter-conditionality of both offerings.

5

What counsel opinions or letters are customarily delivered?

- English law opinions (where transaction documents or securities are governed by English law and/or securities are to be listed in the UK) confirming (i) valid, binding and enforceable obligations; (ii) no registration in UK (save for prospectus where UK listing); and (iii) fair summary opinion on UK tax disclosure.
- **U.S. opinion and disclosure letter (for 144A deals or U.S. (typically NY) law-governed securities):**
  - opinion confirming:
    - no registration of securities is required under the Securities Act,
    - no registration is required under U.S. Investment Company Act of 1940,
    - no qualification is required under U.S. Trust Indenture Act of 1939 (for debt),
    - due execution and delivery/valid, binding and enforceable nature of applicable transaction documents/securities issued (see * below), and
  - fair summary opinion on U.S. tax disclosure; and
  - 10b-5 disclosure letters. ***See Chapter 2 (U.S. Securities Law Issues).***

  *** There is uncertainty about the enforceability of indemnities in UWAs/PAs under NY law and so counsel typically excludes this from its opinion**.
- **Local legal opinions (matching offeror's jurisdiction of incorporation):** covering (i) corporate matters (due organization of offeror and validity of securities issued); (ii) authority to enter the transaction; (iii) validity of foreign choice of law for transaction documents or securities; (iv) enforceability of judgments; (v) tax matters; and (vi) fair summary opinion on local tax disclosure.

8. IPO Stabilization Structures (1)

Stabilization is aimed at mitigating post-IPO volatility (typically, for a period of up to 30 days under UK rules, starting on the date of commencement of trading (*i.e.*, closing) or the date of conditional dealing (*i.e.*, pricing) where that is permitted by the relevant exchange. It is structured either as a "greenshoe" or a "brownshoe".

Fees

- Fee constructs in shoe contexts (particularly brownshoe) can cause confusion.
- The easiest way to conceptualize this is to consider the shares that ultimately end up in the hands of investors at the end of the stabilization period.
  - In a greenshoe, fees are only paid on shares in respect of which the call option is exercised.
  - In a brownshoe, the economic equivalent is for fees to be paid only for shares in respect of which the put option is not exercised.
- Sharing of stabilization profits and losses, if any, should also be dealt with in the transaction documentation.

Greenshoe

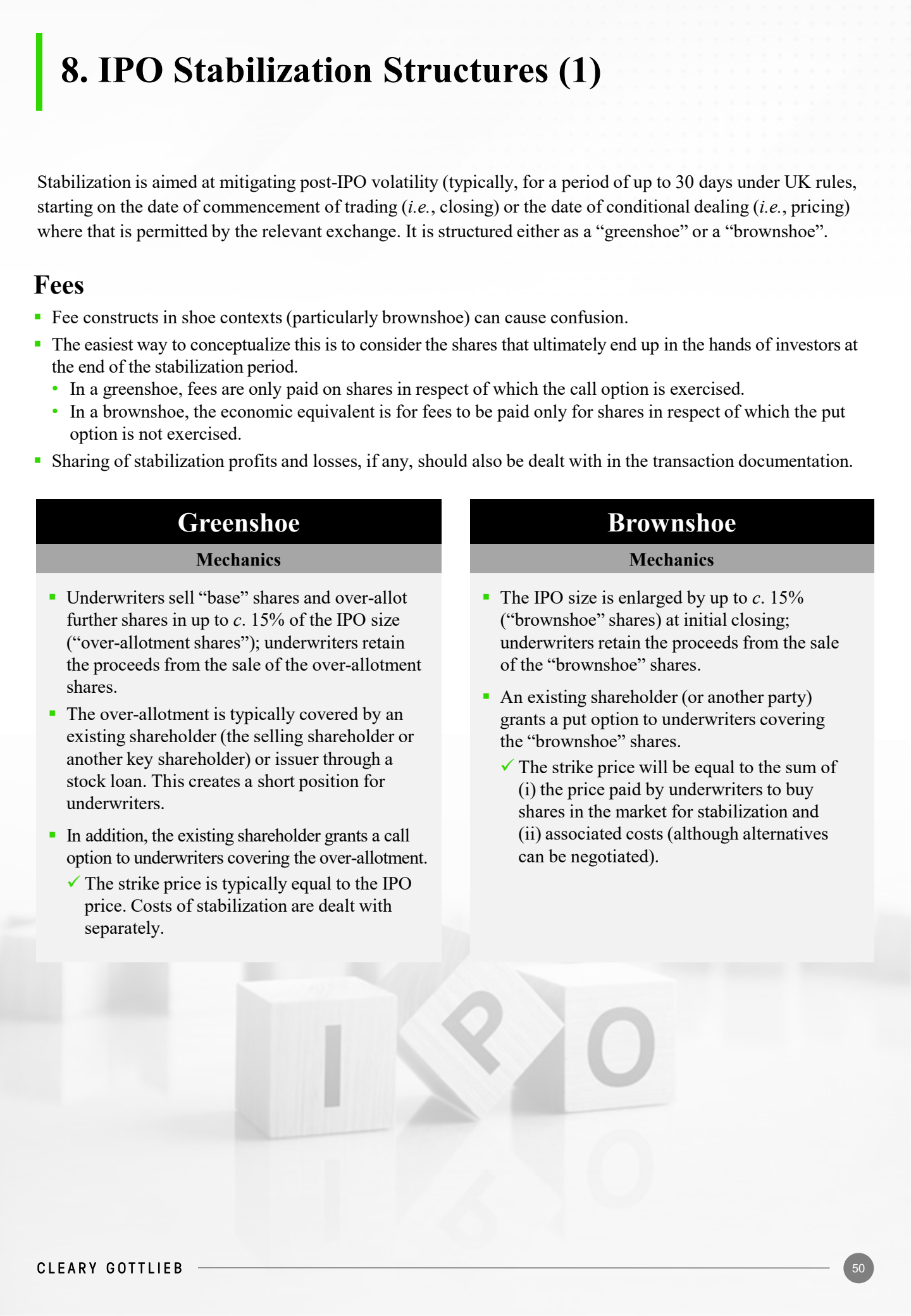
Mechanics

- Underwriters sell "base" shares and over-allot further shares in up to *c*. 15% of the IPO size ("over-allotment shares"); underwriters retain the proceeds from the sale of the over-allotment shares.
- The over-allotment is typically covered by an existing shareholder (the selling shareholder or another key shareholder) or issuer through a stock loan. This creates a short position for underwriters.
- In addition, the existing shareholder grants a call option to underwriters covering the over-allotment.
  - ✓ The strike price is typically equal to the IPO price. Costs of stabilization are dealt with separately.

Brownshoe

Mechanics

- The IPO size is enlarged by up to *c*. 15% ("brownshoe" shares) at initial closing; underwriters retain the proceeds from the sale of the "brownshoe" shares.
- An existing shareholder (or another party) grants a put option to underwriters covering the "brownshoe" shares.
  - ✓ The strike price will be equal to the sum of (i) the price paid by underwriters to buy shares in the market for stabilization and (ii) associated costs (although alternatives can be negotiated).



8. IPO Stabilization Structures (2)

Greenshoe

Scenarios post-IPO:

- ✓ If the share price performs positively → no stabilization takes place; to cover the short position under the stock loan, underwriters exercise the call option in full (typically through a set-off without any actual delivery of shares) → both the "base" and "over-allotment" shares remain in the hands of investors and proceeds of the offering (and related fees) increase to the extent of the option exercise.
- ✓ If the share price performs negatively → underwriters buy shares in the market (supporting the price) and return those shares to the shareholder (under the stock loan) → the "base" shares remain in the hands of investors, whereas the "over-allotment" shares are effectively returned to the shareholder under the stock loan → the call option is unused or used only in part.

Tips

- The call option may be provided by the issuer (through newly issued shares) – however, this may not be feasible in practice due to complexity of the issuance process and timing considerations under local law.
- The greenshoe may not be feasible in a privatization context, as governments are typically restricted under local laws from lending shares.

Agreements

- ✓ Stock Loan Agreement
- ✓ Call Option (typically embedded in the UWA)

Brownshoe

Scenarios post-IPO:

- ✓ If the share price performs positively → no stabilization takes place; the put option expires → underwriters release the retained proceeds from the sale of the "brownshoe" shares → the full IPO size remains in the hands of investors.
- ✓ If the share price performs negatively → underwriters buy shares in the market (supporting the price) and return those shares to the shareholder using the put option → the IPO size is effectively reduced only in part.

Tips

- The issuer may be restricted under local laws from buying its own shares.
- Consider using a shareholder or subsidiary.

Agreements

- ✓ Put Option Agreement

9. Role of a Sponsor in UK IPOs

Sponsor: Role and Scope of Work

- On certain transactions involving a UK listing (including IPOs with admission to the equity shares (commercial companies) category and reverse takeovers), a sponsor is required to be appointed.
- A sponsor's role will include the following:
  - ✓ familiarize themselves with the business, operations, financial condition and prospects of the issuer;
  - ✓ assist in advising the issuer on preparations for the transaction;
  - ✓ coordinate the drafting of all relevant documentation;
  - ✓ participate in drafting and reviewing the prospectus;
  - ✓ participate in management due diligence (preparation and review of questionnaires, and bring-down discussions);
  - ✓ assist in advising the issuer on compliance with relevant aspects of the UKLRs, UK MAR and DTRs;
  - ✓ draft the eligibility letter to be submitted to the FCA;
  - ✓ liaise, on the issuer's behalf, with the FCA and the LSE, on matters affecting the transaction;
  - ✓ consider and review the working capital report and the long-form report prepared by the issuer's accountants and based thereon, the working capital statement for the issuer contained in the prospectus for the transaction;
  - ✓ review the financial position and prospects procedures report prepared by issuer's accountants with input from management;
  - ✓ sign a sponsor's declaration addressed to the FCA that the issuer's responsibilities under the UKLRs, UK MAR and DTRs have been understood and complied with (sponsor will require, as support for this, comfort letters from the issuer and issuer's legal counsel);
  - ✓ undertake any necessary duties to fulfil the sponsor's responsibilities, as sponsor, to the FCA pursuant to the UKLRs;
  - ✓ assist in educating the board and management on ongoing obligations; and
  - ✓ provide any other services as agreed in writing between the issuer and the sponsor.
- A sponsor will sign an engagement letter and, if no underwriting agreement is in place, a sponsor's agreement with similar provisions to an underwriting agreement.

10. Financial Statements and Pro Formas – Summary (1)

Types of financial information included in an offering document

A prospectus or other offering document typically requires the inclusion of historical financial statements. ***See Chapter 6 (Auditor Comfort Letters).***

- ***Audited historical financial information*** must be included (typically for the last three years for 144A deals), or such shorter period as the issuer has been in operation, together with the associated audit reports for each year.
- ***Interim financial information*** must be included either for purposes of applicable prospectus or listing rules (*e.g.*, in the UK, if the prospectus is dated more than 9 months after the date of the issuer's last audited financials, or due to comfort letter constraints (135-day rule)). ***See Chapter 6 (Auditor Comfort Letters).***

It may be the case that the offeror's own financial information is not sufficiently representative of the business or prospects of the issuer entity.

This situation typically arises where an offeror has made, or has committed to undertake, a material acquisition or disposition.

Multiple securities law regimes address this type of situation:

- ***UK***: where there has been or will be a significant gross change or significant financial commitment, material at the 25% level (the "complex financial history" rules).
- ***U.S.***: where a significant acquisition or disposition has occurred or is probable and is material at the 20% level or above (by application of Regulation S-X under the U.S. Securities Act).

These rules may require the inclusion of additional financial (and non-financial) information, for example:

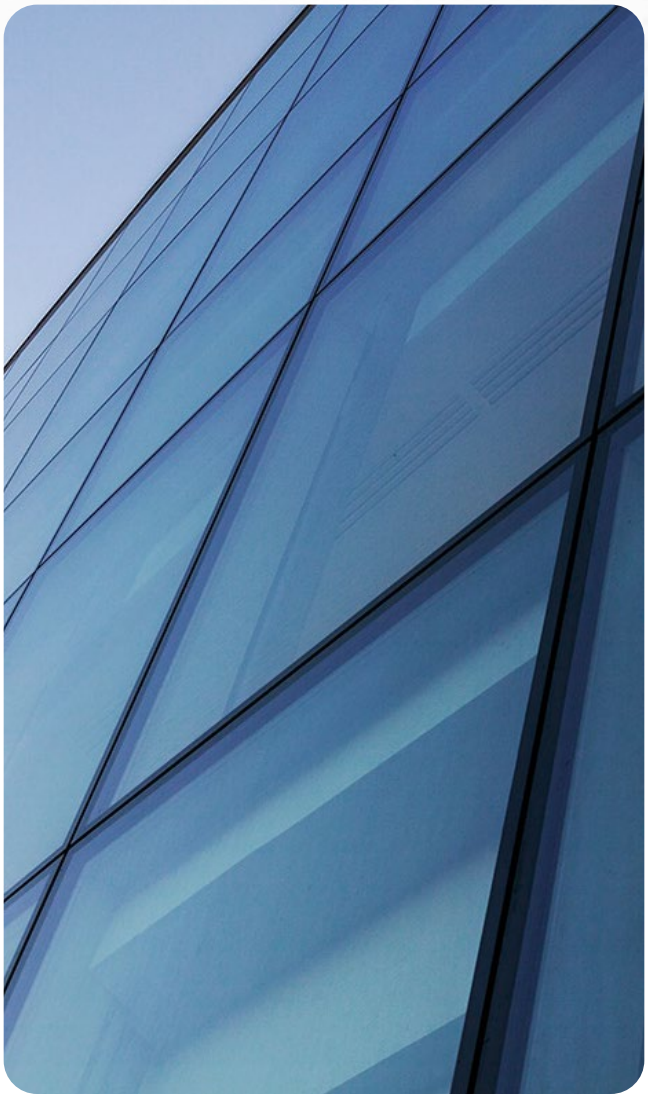
- ***Pro forma financial information****, i.e.,* hypothetical illustration of the acquisition or disposition on the historical financial information of the issuer as if it had occurred at an earlier point in time.
  - Where pro formas are included for any historical period, they should be prepared on the basis that:
    - in the case of the income statement, the transaction was effected on the first day of the period (such that the impact on results of operations for the whole period is reflected); and
    - in the case of the balance sheet, the transaction was effected on the balance sheet date.
  - In all cases, pro forma financial information should <u>not</u> be included for more than the most recent full year and any subsequent interim period.
- ***Target financial information****, i.e.*, separate audited annual and interim financial statements of an entity to be acquired (to the extent discussed further below).
- ***Other information on the target,*** as if it were the issuer (*e.g.*, business and risk factor disclosure). Note that wherever target financial statements are included, a related MD&A of those financial statements should also be included.

The foregoing information may also be included voluntarily, although this is not common in the equity context. If pro forma or target financial statements are required, or are voluntarily included, they will need to comply with the national competent authorities' preparation and presentation requirements (including the requirement for an auditor's report).

10. Financial Statements and Pro Formas – Summary (2)

Why does this matter?

- Additional financial information requires cooperation and alignment across multiple workstreams and can present a significant gating item, affecting the following workstreams:
  - **Disclosure:**
    - Inclusion of target financial statements (and related MD&A) as well as pro formas can be extremely time-consuming and require the cooperation of management of the target.
    - Where a target is material for purposes of the applicable rules, separate descriptions of the business (and related risk factors) are likely to be required as well.
  - **Regulatory:**
    - Ensure the regulator agrees with the proposed approach to inclusion (or omission) of pro forma and target financials.
  - **Comfort:**
    - Any pro forma financial information and/or target financial statements included in an offering document will need to be covered by an accountant's report or comfort letter, plus consent from the auditors to include audit/review reports relating to those financial statements in the offering document.
    - Early accountant involvement is essential to confirm feasibility, scope, costs and timing.



10. Financial Statements and Pro Formas – Key Issues (1)

What is a complex financial history?

- An offeror is treated as having a complex financial history when:
  - standard historical information does not accurately represent the issuer's business;
  - this inaccuracy is likely to affect the ability of an investor to make an informed assessment; and
  - extra information on another entity is needed for investors to be able to make such an assessment.
- **Assessment criteria**: Consider the size (in aggregate) and timing of all the acquisitions that the offeror has entered into during its financial track record period. Consideration must also be given to any acquisitions or material transactions that have been signed but not closed at the date of the prospectus (significant financial commitments).
- **Issuer responsibility**: Prospectuses must contain all material information necessary for investors to make an informed decision.

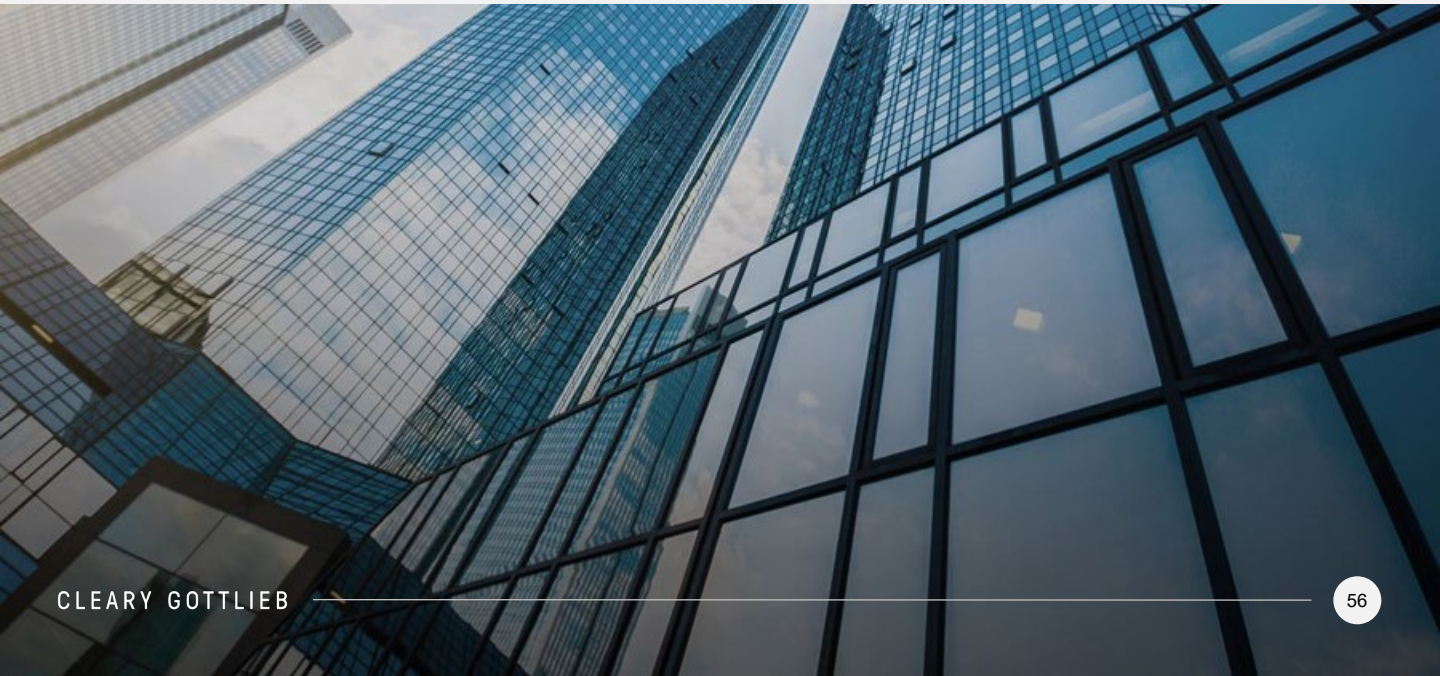
What is a significant gross change, and what is a significant financial commitment?

- Applicable guidance for assessing whether a transaction (or series of transactions) constitutes a significant gross change, or a significant financial commitment, is the same. These terms are used interchangeably here, for ease of reference.
- A significant gross change results in a variation of more than 25% to one or more indicators of the size of the issuer's business.
- Indicators of size will generally be either (i) total assets, (ii) revenue or (iii) profit or loss.
- Other indicators may be used instead, if more relevant to the offeror's business.
- The calculation of the 25% threshold should be based on the size of the transaction relative to the historical financial information of the issuer before the transaction took place.

10. Financial Statements and Pro Formas – Key Issues (2)

What is the relevance of Regulation S-X?

- If there is an offering to U.S. investors under Rule 144A, counsel teams should consider the application of Regulation S-X by analogy.
- Like the UK regime, these rules involve the determination of whether an acquisition or disposition is "significant" to that offeror.
- There are three separate tests to determine significance (asset, income (assessing revenue and pre-tax income) and investment tests) and the threshold for significance is more than 20%, with additional requirements if significant at the 40% level.
- The most recent set of audited financial statements of the issuer and the target prior to the acquisition should be used to measure significance.
- Regulation S-X is more detailed than the equivalent UK rules for calculating significance as well as the content and form of pro formas and will typically be determinative of the approach to be taken.
- When an acquisition is "significant," separate audited financial statements of the target will be required in addition to pro forma financial statements.
- The offeror must include:
  - one (if 20% significant) or two (if 40% significant) years of target audited historical financial statements;
  - in all cases of significance, unaudited interim financial statements for the most recent interim period where applicable; and
  - only in cases exceeding the 40% significance level, unaudited interim financial statements for the corresponding interim period of the prior year.



10. Financial Statements and Pro Formas – In Practice

1 **Decision Tree: Are Pro Forma Financial Statements Needed?**

Has the issuer undertaken (or committed to undertake), in the period covered by the historical financial statements, or is it likely to make such a commitment in the near-term, a significant transaction (acquisition, disposal, carve-out, reorganization, financing) which is not already reflected in its most recent set of audited financial statements?

YES ↓

NO → Pro forma financial information unlikely to be required, subject to overall completeness of the disclosure

2 **Is a UK Prospectus Rule-compliant prospectus being published for an equity offering?**

YES ↓

NO → Go to Q4

3 **Is the transaction significant to the offeror's business at the 25% level or more (based on UK tests)?**

YES → Pro formas complying with complex financial history rules will be required (and go to Q4)

NO → Go to Q4

4 **Is there an offering to U.S. investors in reliance upon Rule 144A?**

YES ↓

NO → No further requirements

5 **Is the transaction material at the 20% level or more (based on Regulation S-X tests)?**

YES → Pro formas complying with Regulation S-X will be required

NO → No further requirements

What additional information may need to be included in a prospectus?

- ✓ Additional historical financial information on the acquired or underlying entity (or entities) other than the issuer, *e.g.*, audited accounts of the target business and associated audit reports for the relevant period prior to acquisition. This would consist of a minimum of one year of pre-acquisition audited financial statements on the target (two years may be required depending on significance).
- ✓ Non-financial information business, risk factors, operating, and financial review.
- ✓ Additional information relating to the target may be required under UK rules (prospectus content rules are applied "as if" target were the offeror, to the extent material).

10. Financial Statements and Pro Formas – FAQ

Tip Considerations relating to pro forma financials require specialist review from legal and accounting experts. The key is to assess early whether pro forma financials may be relevant, so that the planning, accounting, management, and legal work can be frontloaded.

1

How should a meaningful acquisition falling short of 20% significance be approached?

- Pro forma financial information or target financials will not be required as a matter of applicable UK or U.S. securities laws.
- Nevertheless, where the acquisition has strategic significance or is otherwise of particular interest to investors, some sort of illustrative information may be desirable to include.
- Where a UK prospectus is being filed with a regulator in the context of an equity offering, consider whether any such information constitutes "voluntary" pro forma financial information under UK securities laws (in which case the rules relating to preparation and coverage by way of accountant's report will apply to such voluntary information).
- In other circumstances, broader disclosure considerations will need to be considered (comparability of information, meaningfulness of adjustments and similar).

2

Do UK and U.S. rules always need to be considered?

- No. UK rules only apply (i) in the case of equity offerings; and (ii) where there is a prospectus being prepared in accordance with the UK Prospectus Rules (PRM).
- U.S. rules need to be considered wherever there is a 144A debt or equity offering and apply by analogy and so there is some scope for counsel to apply judgment as to the strict requirements of Regulation S-X.
- As such, for a debt offering not listing on a UK regulated market, but with a 144A offering, only U.S. rules need to be considered.

3

What if the issuer and target's financial years and/or accounting policies are not consistent?

- If additional historical financial information on a target is included in a prospectus, the relevant target financials typically need to be adjusted to enable a like-for-like comparison, where the discrepancies are material.
- This should be raised with counsel early in the process, as should instances in which the issuer and target have different financial year ends. Depending on the circumstances (including the views of the regulator, where applicable), it may be necessary to align these.

4

What if the offeror cannot access the financial information of the target?

- There is an exemption for hostile situations in the UK: where the issuer does not have access to the relevant target information, regulators may not require the inclusion of pro formas or target financial statements, on the basis that it is not possible for the offeror to prepare meaningful pro formas (prepared on a basis consistent with the accounting policies of the issuer) nor produce disclosure on the target business more generally.
- In such circumstances, a narrative description of the acquisition may suffice, together with simple (arithmetic) illustration of the combination on key income statement and balance sheet items.
- Where the target has publicly available financial statements, it may be possible to refer or incorporate by reference instead.
- For U.S. purposes, counsel may also consider alternative information in the context of a 144A transaction.

11. Research – Summary

What are research reports and research guidelines in capital markets transactions?

- Research reports are analytical documents prepared by connected analysts that may focus on a stock or an industry, generally with the goal of providing guidance to investors, though in an offering context the prospectus or other offering document (not the research report) remains the basis for investment decisions.
- Research reports serve critical functions, including pre-deal investor education, and facilitating price discussions, which help establish an efficient price range for the offering.
- Research guidelines outline when and how analysts can publish reports about a company going public or involved in a rights offering.
- Research guidelines address two U.S. federal securities law issues, namely:
  - Section 5 compliance, which refers to adherence to Section 5 of the Securities Act of 1933 governing the registration process and restrictions on offers and sales of securities during the pre-effective period; and
  - that such research will not be deemed a "prospectus" (and therefore a source of liability for the issuer and banks).
- Research guidelines restrict projections, recommendations, and other forward-looking statements in research materials, particularly during sensitive periods when such content could be viewed as improperly conditioning the market or influencing investment decisions that should be based solely on the prospectus.

Why does it matter?

- Independence matters. Following high-profile corporate scandals and the tech bubble burst in the 1990s, regulators increased scrutiny of research practices. Enforcement actions, especially in the U.S., highlighted significant conflicts of interest, including allegations that analysts issued favorable ratings to win investment banking mandates.
- There are strict compliance and timing requirements to be aware of when preparing and distributing research reports.
- Offering participants should avoid inadvertently triggering U.S. securities laws issues under Section 5 of the Securities Act. Research reports must not be considered an "offer" of securities in the U.S. (Section 5 issue) or a prospectus (liability issue), which means no distribution of pre-offering research in the U.S.

For what deals do research guidelines apply?

- Research guidelines are used primarily in IPOs, rights offerings and other equity transactions (*e.g.*, spin-offs) involving pre-deal investor education.

11. Research – Key Issues

1

Distribution Restrictions

- Research reports must not be considered an "offer" of securities in the U.S. (Section 5 issue) or a prospectus (liability issue), which means no distribution of pre-offering research in the U.S.
- For 144A tranches, U.S. distribution is restricted until 40 days after pricing (or longer if unsold allotments remain), as reports may constitute an "offer".
- During the restricted period, there is no distribution in the U.S., Canada or Japan, and no distribution by U.S. syndicate members anywhere.
- Analysts must not share non-public company information with institutional investors that is not available to retail investors.
- **Takeaway:** Strict distribution controls are essential to maintain compliance and avoid Section 5 or prospectus liability issues.

2

UK Considerations: Connected and Unconnected Analysts – FCA's Conduct of Business Sourcebook

- Two options with different implications on the deal timeline:
  - **Option A – Staggered approach (most common):** Unconnected analysts don't receive access to management or to the same information as connected analysts until a later time. In this case, connected analysts have to wait at least seven days after publication of the registration document to disseminate their research reports.
  - **Option B – Simultaneous approach:** Unconnected analysts receive simultaneous access to information and to management as connected analysts. Connected analysts can disseminate their research one day after the registration document publication.
- The company must ensure UK MAR compliance when disclosing inside information to analysts before public release under the COBS provisions.
- **Takeaway:** Connected and unconnected analysts must both have the same opportunity to communicate with the offeror's management or receive the same information as connected analysts. UK-specific items have been marked * on the following page.

3

Research Content Requirements

- Research must be produced independently, with analysts' views free from influence by their firm's transactional role or relationship with the issuer.
- Research must be fair, contain clear source identification, distinguish opinion from fact, avoid misleading omissions, include no buy/sell recommendation, and include appropriate risk presentation with clear assumptions and methods disclosed.
- **Takeaway**: Ensure all research reports meet content and independence requirements before submission for factual review.

4

Factual Review Process

- Research reports are submitted to the company and lead managers for initial factual review, followed by a second factual review.
- Review is limited to factual accuracy only.
- Information given to analysts during presentation is strictly personal and cannot be distributed to anyone, except on a need-to-know basis to persons directly involved in the preparation of the report.
- **Takeaway**: The company and lead managers can only comment on factual accuracy. They cannot influence the analyst's independent views or recommendations.

11. Research – In Practice

Phase	Timing	Key Activity	Analyst Action
Pre-presentation	T-60	Restricted period begins - no distribution of research reports in the U.S.	Connected analysts acknowledge compliance with research procedures and guidelines
Connected analyst presentation	T-55	Management presentation to connected analysts following acknowledgment of procedures	Connected analysts attend presentation and prepare research notes
Q&A	T-50	Q&A between company and connected analysts to gather information for research report	Submit Q&A via legal teams, join management call, assess additional information to be included
First draft submission	T-45	Analysts submit research reports to company and lead managers for initial factual review	–
Second draft submission	T-37	Connected analyst research reports submitted to company and lead managers for second factual review	–
EITF announcement and publication of registration document or prospectus*	T-30	Announcement of expected intention to float and publication of an FCA-approved registration document or prospectus	–
Unconnected analyst access*	T-29	Unconnected analysts are given access to management and information	Unconnected analysts to receive the same materials and briefing as connected analysts
ITF announcement & research publication	T-23	ITF (Intention to Float) announcement published	Research published
Blackout period begins	T-22	–	No distribution of research anywhere until end of blackout period
Pre-Deal Investor Education	T-22 to T-13	Pre-deal investor education	–
Roadshow	T-12 to T	Marketing	–
Pricing	T (pricing day)	–	Wait for lead managers to confirm restricted period end date
End of blackout and restricted periods	40 days after pricing or at completion of offering	U.S. distribution may resume	Resume distribution of research reports once end date confirmed and publish updates as needed in ordinary course

* **UK-specific items**. This presumes that unconnected analysts are given access to management and information at a later time than connected timeline analysts. Note also that connected analysts can only disseminate research seven days after publication of approved registration document.

11. Research – FAQ

Tip Working group should consider carefully the relevant restricted periods and blackout periods. Pay close attention to the distribution restrictions outlined in your research guidelines.

1

What should be done at the outset of an IPO with respect to research?

- Arrange for underwriters to sign and return acknowledgement form to legal counsel confirming you will abide by research procedures and guidelines.
- Understand that the restricted period begins immediately – no distribution of research reports in the U.S.
- Coordinate with legal counsel on research timeline and related research guidelines.

2

What do research guidelines typically include?

- Description of confidential information and confidentiality requirements.
- Timeline with key dates/times including analyst presentation, review schedule, registration statement publication, restricted period, and blackout period.
- Procedures for research review with detailed timeline, content restrictions, and publication process.
- Legends to be used in research reports.
- Cover letter for sharing research reports.
- Acknowledgement/waiver for attending analyst presentations.

3

What are the key distribution restrictions?

- No distribution anywhere in the world during the "blackout period".
- No distribution in the U.S., Canada or Japan, and no distribution by U.S. syndicate members anywhere, during the "restricted period".
- Typical pre-deal investor education lasts one-to-two weeks (market practice, not legally required).

4

How can research reports be distributed when permitted?

- Physical distribution only (until after end of the "restricted period"), although use of certain electronic distribution platforms, such as ResearchFN, may be allowed in compliance with bank internal policy and subject to additional disclaimers.
- No distribution to press or to retail investors, and no distribution at roadshows or investor meetings.
- No mailing to investors under the same cover as the prospectus or marketing materials.
- Keep a log of addressees of reports.

5

Procedures for attendance at analyst presentation

- Access to the presentation will be conditional upon acknowledgment of established procedures.
- Any information given to analysts is strictly for their own use and may not be distributed to anyone else, except on a need-to-know basis to persons directly involved in the preparation of the report.
- Analysts generally cannot discuss or disclose any non-public information, or any estimates or other personal views, with potential investors or with sales and trading personnel.

6

How do research guidelines in rights offerings differ from those in IPOs?

- Listed companies are followed by analysts who publish reports periodically.
- Rights offering guidelines enable continued ordinary course publication by analysts previously covering the company under specific conditions to comply with Rule 139.
- Pursuant to Rule 139, ordinary course research on well-known listed companies meeting certain conditions does not constitute an "offer" and may be distributed during or before an offering, including in the U.S.

Appendix – Rules, Regulations and Guidance

Chapter 1 – Transaction Types and Timelines

1. UK Capital Requirements Regulation
2. UK Markets in Financial Instruments Regulation (UK MiFIR)
3. LSE Admission and Disclosure Standards (January 2026)
4. Public Offers and Admissions to Trading Regulations 2024 (POATRs)
5. Prospectus Rules: Admission to Trading on a Regulated Market sourcebook (PRM) (See FCA Handbook / Listing, Prospectus and Disclosure / PRM)
6. Disclosure Guidance and Transparency Rules sourcebook (See FCA Handbook / Listing, Prospectus and Disclosure / DTR)
7. UK Market Abuse Regulation (UK MAR)
8. UK Listing Rules (See FCA Handbook / Listing, Prospectus and Disclosure / UKLR)
9. UK Corporate Governance Code
10. Companies Act 2006
11. UK Takeover Code
12. https://www.clearygottlieb.com/news-and-insights/publication-listing/publication-of-final-uk-prospectus-regime-reforms

Chapter 2 – U.S. Securities Law Issues

1. U.S. Securities Act of 1933, 15 USC §§ 77a–77aa
2. Regulation S, 17 CFR §§ 230.901–230.905
3. Rule 144A, 17 CFR § 230.144A
4. U.S. Securities Exchange Act of 1934, 15 USC §§ 78a–78qq
5. Investment Company Act of 1940, 15 USC §§ 80a–1–80a–64
6. Foreign Corrupt Practices Act of 1977, 15 USC §§ 78dd–1–78dd–3
7. Hart–Scott–Rodino Antitrust Improvements Act of 1976, 15 USC § 18a
8. Regulation M, 17 CFR §§ 242.100–242.105
9. Form 20-F
10. Regulation S-K, 17 CFR pt 229
11. Regulation S-X, 17 CFR pt 210

Chapter 3 – U.S. Publicity Restrictions

1. Rule 135e, 17 CFR § 230.135e
2. Rule 135c, 17 CFR § 230.135c
3. U.S. Securities Act of 1933, 17 CFR § 230.168
4. U.S. Securities Act of 1933, 17 CFR § 230.169
5. Market Abuse Regulation (UK) 596/2014 and FCA Technical Standards relating to UK MAR
6. Regulation S, 17 CFR § 230.902(c)(3)
7. U.S. Securities Act of 1933, 17 CFR § 230.405

Chapter 7 – Underwriting and Purchase Agreements

1. ESMA Consultation Paper 2014/809, Draft technical standards on the Market Abuse Regulation
2. Investment Company Act of 1940, 15 USC §§ 80a–1–80a–64
3. Trust Indenture Act of 1939, 15 USC §§ 77aaa–77bbbb

Chapter 10 – Financial Statements and Pro Formas

1. Regulation S-K, 17 CFR pt 229
2. UK Prospectus Rules (PRM)
3. FCA Primary Market Technical Note (prospectus disclosure requirements)
4. FCA Primary Market Technical Note (pro forma financial information)

Chapter 11 – Research

1. Securities Act of 1933, 15 USC §§ 77a–77aa
2. Rule 139, 17 CFR § 230.139

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