

## CHAPTER 2

### U.S. CAPITAL MARKETS

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Financing in the United States can take different forms. The most common are equity or debt offerings and commercial bank borrowings. Foreign issuers may choose to seek capital in public markets or private transactions. Public offerings are heavily regulated in the United States. The federal securities laws include the Securities Act of 1933 and the Securities Exchange Act of 1934.

All securities offerings in the United States must either be registered with the Securities and Exchange Commission (SEC) or completed in compliance with an exemption from the registration requirements of the Securities Act of 1933 and applicable state securities laws. Failure to comply with these requirements exposes the issuer and its officers and directors to potential liability.

Because of the cost and time required to complete a registered “public offering” of securities, most securities offerings are completed as “private placements” pursuant to an exemption from registration. Several exemptions are available, but it is essential that the issuer consult with U.S. legal counsel who specializes in securities matters before offering or selling securities in the United States. Regulation D and other commonly relied upon exemptions include several technical requirements, and failure to meet any of these requirements may result in loss of the exemptions.

In addition to satisfying the registration requirements, issuers planning to offer securities in the United States must also avoid liability under the disclosure and anti-fraud provisions of the federal and state securities laws. In general, these laws impose liability not only for misstatements of material facts in connection with a securities offering, but also for failure to disclose a material fact. This liability extends to the issuer and its officers and directors. Thus, when planning an offering in the United States, foreign issuers should consult with legal counsel concerning the disclosure plan for the offering.

Companies that complete a registered public offering of securities in the United States, or that list shares for trading in the United States, become subject to the reporting requirements of the federal securities laws. In 2002, the U.S. Congress enacted the Sarbanes-Oxley Act, which makes extensive reforms to corporate governance and disclosure requirements for public companies. Foreign issuers are also affected. Foreign issuers should consult professional advisors about the implications of these laws when considering a public offering or listing of shares.

In addition to the above federal laws, securities issuances in the United States are also governed by various administrative regulations and state securities laws (referred to as “blue sky” laws). Although states continue to seek greater uniformity in these blue sky laws from state to state, many inconsistencies exist and a foreign investor must be careful to comply with all applicable state and federal laws.

The New York Stock Exchange, the American Stock Exchange, and NASDAQ all have certain listing standards. These change from time to time, and the current standards can be confirmed by contacting the exchange or U.S. legal counsel.

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