

# Issuing Corporate Securities

## INTRODUCTION

The Securities Act of 1933 was the first major piece of securities industry regulation that was brought about largely as a result of the stock market crash of 1929. Other major laws were also enacted to help prevent another meltdown of the nation's financial system, such as the Securities Exchange Act of 1934, but we will start our review with the Securities Act of 1933 as it regulates the issuance of corporate securities.

The Securities Act of 1933 was the first major piece of securities industry legislation and it regulates the primary market. The primary market consists exclusively of transactions between issuers of securities and investors. In a primary market transaction, the issuer of the securities receives the proceeds from the sale of the securities. The Securities Act of 1933 requires nonexempt issuers (typically corporate issuers) to file a registration statement with the Securities Exchange Commission (SEC).

The Registration statement, formally known as an S-1, is the issuer's full disclosure document for the government. The registration statement must contain detailed information relating to the issuer's operations and financial condition and must include:

- A balance sheet dated within 90 days of the filing of the registration statement.

- Profit and loss statements for the last 3 years
- Company's capitalization
- Use of proceeds
- Shareholders owning more than 10% of the company's securities
- Biographical information on the officers and directors

The registration statement will be under review by the SEC for a minimum of 20 days. During this time, known as the *cooling off* period, no sales of securities may take place. If the SEC requires additional information regarding the offering, the SEC may issue a deficiency letter or a stop order that will extend the cooling off period beyond the original 20 days. The cooling off period will continue until the SEC has received all of the information it had requested. If the SEC has issued a stop order, the 20-day cooling off period will begin again once the re-submission of the registration statement has been completed. A registered representative may only begin to discuss the potential offering with customers after the filing date.

## THE PROSPECTUS

---

While the SEC is reviewing the securities' registration statement, a registered representative is very limited as to what they may do with regard to the new issue. During the cooling off period, the only thing that a registered representative may do is obtain indications of interest from clients by providing them with a preliminary prospectus, also known as a *red herring*. The term red herring originated from the fact that all preliminary prospectus must have a statement printed in red ink on the front cover stating: "these securities have not yet become registered with the SEC and therefore may not be sold." An indication of interest is an investor's or broker-dealer's statement that they might be interested in purchasing the securities being offered. The preliminary prospectus contains most of the same information that will be contained in the final prospectus, except the offering price, the effective date, and the proceeds to the issuer. The preliminary prospectus will usually contain a price range for the initial offering of the security. All information contained in a preliminary prospectus is subject to change or revision. The preliminary prospectus must be given to expected purchasers at least 48 hours before the sale is confirmed if the company has not been a reporting company under The Securities Exchange Act of 1934. This is

done to ensure that the final prospectus is not the first piece of information forwarded to the purchaser.

In addition to the preliminary prospectus, all issuers may send a free writing prospectus to potential investors once the registration statement has been filed. A free writing prospectus is any written communication that conveys an offer to sell or an offer to buy the securities that are the subject of the registration statement currently filed. A free writing prospectus must be accompanied by a prospectus and is filed with the SEC before use.

## THE FINAL PROSPECTUS

---

All purchasers of new issues must be given a final prospectus before any sales may be allowed. The final prospectus serves as the issuer's full disclosure document for the purchaser of the securities. If the issuer has filed a prospectus with the SEC and the final prospectus can be viewed on the SEC's web site a prospectus will be deemed to have been provided to the investor through the *access equals delivery* rule. The access equals delivery rule only applies to the final prospectus during the offering and during any after market delivery requirements. A preliminary prospectus must be physically sent to potential purchasers. Once the issuer's registration statement becomes effective, the final prospectus must include:

- Type and description of the securities
- Price of the security
- Use of the proceeds
- Underwriter's discount
- Date of offering
- Type and description of underwriting
- Business history of issuer
- Biographical data for company officers and directors
- Information regarding large stockholders
- Company financial data
- Risks to purchaser
- Legal matters concerning the company
- SEC disclaimer

## PROSPECTUS TO BE PROVIDED TO AFTERMARKET PURCHASERS

---

Certain investors who purchase securities in the secondary market just after a distribution must also be provided with the final prospectus. The term for which a prospectus must be provided depends largely on the type of offering and where the issue will be traded in the after market. If the security has an after-market delivery requirement, a prospectus must be provided by all firms that execute a purchase order for the security during the term. The prospectus delivery requirements are as follows:

- For IPOs: 90 days after being issued for securities quoted on the OTC BB or in the pink sheets, 25 days for listed or Nasdaq securities
- Additional offerings: 40 days for securities quoted on the OTC BB or in the pink sheets. No after-market requirement for listed or Nasdaq securities

## SEC DISCLAIMER

---

The SEC reviews the issuer's registration statement and the prospectus, but does not guarantee the accuracy or adequacy of the information. The SEC disclaimer must appear on the cover of all prospectuses and states: "These securities have not been approved or disapproved by the SEC nor have any representations been made about the accuracy of the adequacy of the information."

## MISREPRESENTATIONS

---

Financial relief for misrepresentations made under the Securities Act of 1933 is available for purchasers of any security that is sold under a prospectus that is found to contain false or misleading statements. Purchasers of the security may be entitled to seek financial relief from any or all of the following:

- The issuer
- The underwriters
- Officers and directors
- All parties who signed the registration statement
- Accountants and attorneys who helped prepare the registration statement

A due diligence meeting will be held during the cooling off period to ensure that the information contained in the prospectus is accurate.

## TOMBSTONE ADS

---

SEC Rule 134 allows certain types of advertisements to be run relating to a new issue. Tombstone ads are the only form of advertising that is allowed during the cooling off period. A tombstone ad is an announcement and description of the securities to be offered. A tombstone ad lists the names of the underwriters, where a prospectus may be obtained, and a statement that the tombstone ad does not constitute an offer to sell the securities and that the offer may only be made by a prospectus. Tombstone ads are traditionally run to announce the new issue, but they are not required and do not need to be filed with the SEC. Tombstone ads may also include:

- The amount of the security to be offered
- The date of sale
- A general description of the issuer's business
- The price of the security

## FREE RIDING AND WITHHOLDING/FINRA RULE 5130

---

A broker-dealer underwriting a new issue must make a complete and bona fide offering of all securities being issued to the public and may not withhold any of the securities for:

- The account of underwriters
- The account of another broker-dealer
- The account of a firm employee or the account of those who are financially dependent on the employee
- The account of employees of other National Association of Securities Dealers members



### TAKENOTE!

An exception to FINRA Rule 5130 applies to employees of limited broker-dealers who engage solely in the purchase and sale of investment company products or DPPs. Employees of limited broker-dealers may purchase new issues. This exemption applies only to the employees of the limited broker-dealer, not to the firm itself.

These rules are in effect for all new issues, but are especially prevalent when dealing with a *hot issue*. A hot issue is one that trades at an immediate premium to its offering price in the secondary market. A broker-dealer may not free ride by withholding securities for its own account or for the accounts of those listed above. FINRA Rule 5130 has replaced the freeriding and withholding rule. FINRA Rule 5130 requires that a broker-dealer obtain an eligibility statement from all account owners who purchase a new issue of stock within 12 months prior to the purchase. There are some people who may purchase hot issues so long as the amount is not substantial and they have a history of purchasing new issues. These conditionally approved people are:

- Officers and employees of financial institutions
- Nonsupported family members
- Accountants, attorneys, and finders associated with the underwriting
- Accounts where restricted persons' interest is limited to 10% or less

The agreement among the underwriters must clearly state how the syndicate will handle the repurchase of shares trading at a premium. If a client "flips" the hot issue in the secondary market and the shares are repurchased by the book running lead underwriter, those shares must be used to cover any syndicate short position. If no syndicate short position exists, the shares may be used to cover unfilled qualified customer orders at the offering price. Any account to receive these shares must receive the shares through a random allocation process. In the extremely unlikely event that no unfilled orders exist, the syndicate may sell the shares in the market and anonymously donate the profits to an unaffiliated charity. If a purchaser sells the stock (flips) within 30 days of the offering, the syndicate may not seek to reclaim any sales credit earned by the agent or member unless the stock was sold back to the syndicate's penalty bid.

 **TAKENOTE!**

Syndicate members may not allocate shares of hot issue to the accounts of individuals who are in a position to direct business to the firm. This includes portfolio managers who may direct execution business to the member as well as officers and directors of companies who have been an investment banking client in the last 12 months or when the company is an anticipated investment banking client. Doing so is a violation known as spinning.

## UNDERWRITING CORPORATE SECURITIES

---

Once a business has decided that it needs to raise capital to meet its organizational objectives, it must determine how to raise the needed capital. Most corporations at this point will hire an investment banker, also known as an underwriter, to advise them. The underwriter works for the issuer and it is their job to advise the client about what type of securities to offer. The issuer and the underwriter together determine whether stocks or bonds should be issued and what the terms will be. The underwriter is responsible for trying to obtain the financing at the best possible terms for the issuer. The underwriter will:

- Market the issue to investors
- Assist in the determination of the terms of the offering
- Purchase the securities directly from the issuer to resell to investors

The issuer is responsible for:

- Filing a registration statement with the SEC
- Registering the securities in the states in which they will be sold, also known as blueskying the issue
- Negotiating the underwriter's compensation and obligations to the issuer

## TYPES OF UNDERWRITING COMMITMENTS

---

The agreement between the issuer and the underwriter spells out the underwriter's responsibilities to the issuer. The agreement may take a variety of forms and may include:

- Firm commitment
- Best efforts
- Mini-maxi
- All or none
- Standby

## MARKET OUT CLAUSE

---

An underwriter offering securities for an issuer on a firm commitment basis is assuming a substantial amount of risk. As a result, the underwriter

will insist on having a market out clause in the underwriting agreement. A market out clause would free the underwriter from their obligation to purchase all of the securities in the event of a development that impairs the quality of the securities or that adversely affects the issuer. Poor market conditions are not a reason to invoke the market out clause. If a syndicate was underwriting a new issue for a biotech company with a drug in clinical trials and the FDA rejected the drug for use, the underwriters could invoke the market out clause.

## TYPES OF OFFERINGS

---

Securities that are being sold under a prospectus may include securities that are part of different types of offerings. The different types of offerings include initial public offerings, subsequent primary offerings, and registered secondary offerings.

### INITIAL PUBLIC OFFERING (IPO)/NEW ISSUE

An initial public offering is the first time that a company has sold its stock to the public. The issuing company receives the proceeds from the sale minus the underwriter's compensation.

### SUBSEQUENT PRIMARY/ADDITIONAL ISSUES

In a subsequent primary offering, the corporation is already publicly owned and the company is selling additional shares to raise new financing. The shares being sold under a subsequent primary distribution may be offered at a stated price or the shares may be sold at the market price once the issue is effective. If the issue is an at the market offering the shares may be sold at different prices in the market place.

### PRIMARY OFFERING VS. SECONDARY OFFERING

In a primary offering, the issuing company receives the proceeds from the sale minus the underwriter's compensation. In a secondary offering, a group of selling shareholders receives the proceeds from the sale minus the underwriter's compensation. A combined offering has elements of both the primary offering and the secondary offering or split. Part of the proceeds goes to the company and part of the proceeds goes to a group of selling shareholders.



## AWARDING THE ISSUE

---

There are two ways in which the corporation may select an underwriter. A corporation may elect to have multiple underwriters submit bids and choose the underwriter with the best bid. This is known as a competitive bid underwriting. A company may elect to select one firm to sell the issue and negotiate the terms of the offering with them. This is known as a negotiated underwriting. Most corporate offerings are awarded on a negotiated basis, while municipal bond offerings are usually awarded through competitive bidding.

## THE UNDERWRITING SYNDICATE

---

Because most corporate offerings involve a large number of shares and a very large dollar amount, they will be offered through several underwriters known as the underwriting syndicate. The syndicate is a group of investment banks that have agreed to share the responsibility of marketing the issue. The managing underwriter, also known as the lead underwriter, leads the syndicate.

### SELLING GROUP

The syndicate may form a selling group in an effort to help market the issue. Members of the selling group have no underwriting responsibility and may only sell the shares to investors for a fee known as the selling concession. Occasionally the employees of the issuer may assist in selling the securities of the issuer. This is allowed with the permission of the managing underwriter so long as the employees are not paid based on the sales and are not disqualified from or registered as agents of any broker dealer.

## EXEMPT SECURITIES

---

Certain securities are exempt from the registration provisions of the Securities Act of 1933 because of the issuer or the nature of the security. While the securities may be exempt from the registration and prospectus requirements of the Act, none are exempt from the anti-fraud provisions of the Act. Examples of exempt securities are:

- Debt securities with maturities of less than 270 days and sold in denominations of \$50,000 or more
- Employee benefit plans
- Option contracts, both puts and calls on stocks and indexes

Examples of exempt issuers are:

- U.S. government
- State and municipal governments
- Foreign national governments
- Canadian federal and municipal governments
- Insurance companies
- Banks and trusts
- Credit unions and savings and loans
- Religious and charitable organizations



### **TAKENOTE!**

Insurance and bank holding companies are not exempt issuers.

## **EXEMPT TRANSACTIONS**

---

Sometimes a security that would otherwise have to register is exempt from the registration requirements of the Securities Act of 1933 because of the type of transaction that is involved. The following are all exempt transactions:

- Private Placements/Regulation D Offerings
- Rule 144
- Regulation S Offerings
- Regulation A Offerings
- Rule 145
- Rule 147 Intrastate Offerings

### **PRIVATE PLACEMENTS/ REGULATION D OFFERINGS**

A private placement is a sale of securities that is made to a group of accredited investors where the securities are not offered to the general public. Accredited investors include institutional investors and individuals who:

- Earn at least \$200,000 per year if single, or
- Earn at least \$300,000 jointly with a spouse, or
- Have a net worth of at least \$1,000,000

Sales to nonaccredited investors for private placements exceeding \$1 million are limited to 35 in any 12-month period. No commission may be paid to representatives who sell a private placement to a nonaccredited investor. All investors in private placements must hold the securities fully paid for at least six months and sign a letter stating that they are purchasing the securities for investment purposes. Stock purchased through a private placement is known as lettered stock, legend stock, or restricted stock, because there is a legend on the stock certificate that limits the ability of the owner to transfer or sell the securities. There is no limit as to the amount of money that may be raised through a Regulation D offering and there is no limit as to how many accredited investors may purchase the securities.

### **PURCHASER REPRESENTATIVE**

A purchaser's representative is an individual designated in writing by the prospective purchaser to represent them when evaluating the suitability of a private placement. A purchaser's representative may not:

- Receive a blanket appointment to represent the investor for all private placements
- Own more than 10% of the issuer's stock
- Be an officer, director, employee, or affiliate of the issuer, unless they are a close relative of the prospective purchaser

For private placements exceeding \$5 million the offering will be limited to institutional, accredited, and nonaccredited investors who together with their purchaser's representative have the financial and business knowledge to evaluate the offering. The issuer in a private placement may not advertise the issue or hold a seminar open to the general public. Private placements may not be advertised in the media and may not be offered for sale at investment seminars open to the general public. An investment seminar limited to qualified prospective purchasers and their representatives would be allowed.

### **RULE 144**

Rule 144 regulates how control or restricted securities may be sold. Rule 144 designates:

- The holding period for the security
- The amount of the security that may be sold
- Filing procedures
- Method of sale

Control securities are owned by officers, directors, and owners of 10% or more of the company's outstanding stock. Control stock may be obtained by insiders through open market purchases or through the exercise of company stock options. There is no holding period for control securities. However, insiders are not allowed to earn a short swing profit through the purchase and sale of control stock in the open market. If the securities were held less than six months, the insider must return any profit to the company.

Restricted securities may be purchased by both insiders and investors through a private placement or be obtained through an offering other than a public sale. Securities obtained through a private placement or other non-public means need to be sold under Rule 144 in order to allow the transfer of ownership. Restricted stock must be held fully paid for, for six months. After six months the securities may be sold freely by noninsiders so long as the seller has not been affiliated with the issuer in the last three months. Rule 144 sets the following volume limits for both restricted and control stock during any 90-day period. The seller must file Form 144 at the time the order is entered and for NYSE- and Nasdaq-listed securities the sale is limited to the greater of the average weekly trading volume for the preceding four weeks or 1% of the issuer's total outstanding stock.

Under Rule 144 the volume limitation for nonNasdaq securities is 1% of the issuer's outstanding stock. All sales under Rule 144 require that the issuer have adequate financial information publicly available and is filing reports with the SEC. Form 144 does not need to be filed for orders for 5000 shares or less and that do not exceed \$50,000.

#### **BROKER TRANSACTIONS UNDER RULE 144**

A firm handling a customer's sale under Rule 144 except for very limited circumstances must execute the orders on an agency basis for the customer. The broker-dealer may execute the order with a market maker or may inquire with customers who have expressed an unsolicited interest in the securities in the last 10 days or with a broker-dealer who has expressed interest in the securities in the last 60 days.

#### **RULE 144A**

Rule 144A permits the resale of restricted stock to Qualified Institutional Buyers (QIBs). A QIB is defined as a company that owns investments worth at least \$100 million and includes:

- Corporations
- Partnerships

- Insurance companies
- Investment companies
- Banks
- Trust funds
- Pension plans
- Registered investment advisors
- Small business development companies

 **TAKENOTE!**

A broker-dealer will be considered a QIB if it owns \$10 million worth of securities or they engage in riskless principal transactions for other QIBS.

To qualify for the exemption provided under Rule 144A the QIB must be purchasing the securities for its own account or for the account of other QIBs. Not all securities will be eligible for an exemption under Rule 144A. Ineligible securities include:

- Securities of registered investment companies
- Securities of the same class as those listed on an exchange or Nasdaq
- Certain warrants and convertible securities

All purchasers of securities under Rule 144A must be informed that the seller is relying on the exemption provided under Rule 144A and the issuer of the securities must be willing to provide financial information to owners and prospective purchasers. The Portal Market has been developed to help ensure compliance with Rule 144A and to help facilitate Rule 144A transactions.

## **PRIVATE INVESTMENT IN A PUBLIC EQUITY (PIPE)**

---

Public companies that wish to obtain additional financing without selling securities to the general public may sell securities to a group of accredited investors through a private placement. The accredited investors in most cases will be institutional investors who wish to invest a large amount of capital.

Common stock, convertible or nonconvertible debt, and rights and warrants may all be sold to investors through a PIPE transaction. Obtaining

capital through a PIPE transaction benefits the public company in a number of ways:

- Reduced transaction cost
- Term disclosure only upon completion of the transaction
- Increased institutional ownership
- Quick closing

Securities sold through a PIPE transaction are subject to Rule 144.

## REVERSE MERGER

---

A reverse merger, sometimes called an alternative public offering or APO, can be used by a private company as a cost effective alternative to a traditional public offering. In an APO transaction, a private company acquires or merges with a company who is already public as a means of taking itself public. Once completed, the private company will be publicly traded at a significantly lower cost and with less dilution than in a traditional offering. The details of the transaction will be reported upon completion of form 8K.

### REGULATION S OFFERINGS

Domestic issuers who make a distribution of securities exclusively to offshore investors do not have to file a registration statement for the securities under the Securities Act of 1933. In order to qualify for exemption offered under Regulation S the issuer may make no offerings of the securities within the United States and may not announce or distribute literature relating to the securities within the United States. Securities distributed under Regulation S are subject to a distribution compliance period during which the securities may not be resold to domestic investors. The distribution compliance period is one year for equities and 40 days for debt securities.

### REGULATION A OFFERINGS

A Regulation A offering allows the issuer to raise up to \$5,000,000 in any 12-month period. Of the \$5 million, no more than \$1.5 million may be offered or sold by selling shareholders. The JOBS act of 2012 increased the amount that may be raised under a Regulation A offering to \$50 million. This exemption from full registration allows smaller companies access to the capital markets

without having to go through the expense of filing a full registration statement with the SEC. The issuer will instead file an abbreviated notice of sale or offering circular known as a 1-A with the SEC and purchasers of the issue will be given a copy of the offering circular rather than a final prospectus. Purchasers of the issue must have the preliminary or final offering circular mailed to them 48 hours before mailing the confirmation. The same 20-day cooling off period also applies to Regulation A offerings. A small business may also use a crowd funding portal to raise up to \$1 million dollars in a 12 month period from small investors. The crowd funding portal used to raise the money must be approved by both FINRA and the SEC.

### **RULE 145**

Rule 145 requires that shareholders approve any merger or reorganization of the company's ownership. Stockholders must be given full disclosure of the proposed transaction or reclassification and must be sent proxies to vote on the proposal. Rule 145 covers:

- Mergers involving a stock swap or offer of another company's securities in exchange for their current stock.
- Reclassification involving the exchange of one class of the company's securities for another.
- Asset transfers involving the dissolution of the company or the distribution or sale of a major portion of the company's assets.

In the case of a spin off, the shareholder will retain the securities of the issuer and will receive shares of the newly independent company that was the subject of the spin off.

Rule 145 does not cover:

- Stock splits
- Reverse splits
- Changes in par value

### **RULE 137 NONPARTICIPANTS**

---

Firms that are not participating in a distribution of securities may issue recommendations, information, or opinions relating to the securities that are in registration, if the issuer is a reporting company as required by The Securities

and Exchange Act of 1934. So long as the broker-dealer did not receive compensation from the issuer, a selling shareholder, or a participant in the distribution for issuing the report it will not constitute an offer of the securities.

## **RULE 138 NONEQUIVALENT SECURITIES**

---

If a registration statement has been filed for a nonconvertible bond or a nonconvertible preferred stock, a broker-dealer, who is a participant in a distribution of the securities, may in the normal course of business issue recommendations, information, or opinions relating to the issuer's common stock or convertible securities. If the registration statement covers common stock or a convertible security of the issuer, a broker-dealer may only issue recommendations, information, or opinions relating to the issuer's nonconvertible debt or preferred stock.

## **RULE 139 ISSUING RESEARCH REPORTS**

---

A broker-dealer who is participating in a distribution of an additional issue may continue to issue research reports relating to the issuer if the issuer is a large reporting company under the Securities and Exchange of 1934 and;

- The company is followed by analysts.
- The information, opinion, or recommendation appears in a regularly published report.
- Information, opinions, or recommendations that are at least as favorable as the current report must have been contained in the previous report.
- The company who is subject to the offering is not highlighted or featured more prominently than other companies in the report.

If the broker-dealer is not currently covering the company, the report is not considered to be issued with sufficient regularity. Any projections relating to the company's earnings may not extend past the current fiscal year. Broker dealers may issue reports for smaller issuers if the report contains information relating to a substantial number of issuers in the same industry as the issuer, or a list of securities currently recommended by the broker-dealer, so long as the information relating to the registrant is not displayed more prominently than other information in the same report. If the broker-dealer is the manager or comanager of the offering and the subject issue is an initial public offering



the broker-dealer must wait 40 days prior to initiating or continuing coverage. If the offering is a subsequent offering of securities the firm must wait 10 days prior to initiating or continuing coverage of the issue. A member of the underwriting syndicate or selling group must wait 25 days prior to initiating or continuing coverage if the issue is an IPO. If the issue is a subsequent offering there is no waiting period for members of the syndicate or selling group.

## RULE 415 SHELF REGISTRATION

---

Rule 415 allows an issuer to register securities that may be sold for its own benefit, for the benefit of a subsidiary, or in connection with business plans in an amount that may be reasonably sold by the issuer within a two-year period. The two-year window starts from the registration date and allows the issuer and the underwriters flexibility in the timing of the offering. Issuers who qualify as well known seasoned issuers (WKSI) and who qualify for automatic registration may sell securities for up to three years. Rule 415 also allows the issuer to register to sell securities on a continuous basis in connection with an employee benefit plan or upon the conversion of other securities.

### TEST FOCUS!

Any posteffective amendment to any registration will be declared effective immediately.

## SECURITIES OFFERING REFORM RULES

---

The SEC has adopted the securities offering reform rules, which are designed to modify and streamline the filing and communication requirements of issuers under the Securities Act of 1933. The rules focus on the following areas:

- The communications related to registered securities offerings.
- Registration and other procedures in the offering and capital-formation processes.
- The delivery of information to investors, including the timeliness of that delivery.

The rules adopted have placed an increased importance on the value of electronic communications and filing and have helped eliminate cumbersome and outdated filing requirements.

## SEC RULE 405

---

SEC Rule 405 defines certain classes of issuers who may be entitled to use a streamlined registration process depending on how the issuer is classified. Well-known seasoned issuers and seasoned issuers may take advantage of automatically effective shelf registration of securities by filing Form S-3 or F-3. The registration of the securities covered under the filing of Form S-3 or F-3 is effective immediately upon filing.

### **WELL-KNOWN SEASONED ISSUER (WKSI)**

An issuer that within 60 days of its eligibility determination has at least \$700 million worth of voting and nonvoting common equity held by nonaffiliates or that has issued within the last three years at least \$1 billion in nonconvertible securities for cash (excluding common equity). A WKSI also includes a company that is a majority-owned subsidiary of a WKSI.

### **SEASONED ISSUER (PRIMARY S-3 ELIGIBLE)**

An issuer that has a public float of \$75 million meets the requirements of Form S-3 to register a primary offering of securities.

### **UNSEASONED REPORTING ISSUER (NOT PRIMARY S-3 ELIGIBLE)**

An issuer that is required to report under the Exchange Act but that does not qualify with the requirements of Form S-3 or F-3 to file a primary offering of securities.

### **INELIGIBLE ISSUER**

A reporting issuer that is not current with the filing of reports required under the Securities Exchange Act. Ineligible issuers also include:

- Companies who have filed for bankruptcy within the last three years.
- Blank check companies.

- Shell companies.
- Issuers of penny stock.
- Issuers that are limited partnerships that don't have a firm commitment underwriting agreement to sell securities.
- Issuers that have been subject to a stop order or have been convicted of a felony or misdemeanor under the Exchange Act directly or indirectly through a subsidiary within the last three years.

## ADDITIONAL COMMUNICATION RULES

---

An issuer who is a reporting company may continue to release regular business communications with forward-looking statements prior to the effective date of an additional offering of securities. A forward-looking statement is one that contains information about what may possibly happen in the future, such as projected sales or new products. If the securities being offered are the subject of an IPO for a non-reporting issuer, only standard factual business communications may be released by the company. Standard factual information contains information relating to products or services and is not intended to be used by potential investors to make an investment decision. These two safe harbors allow the companies to continue to communicate without violating the gun jumping provisions of the communications rules. The gun jumping rules are designed to limit communications during the time an issue is in registration and to prevent companies from trying to create more favorable market conditions for the securities than otherwise would exist.

Road shows are designed to help the company communicate the details of the offering to broker dealers and representatives. Road shows have been traditionally held at large hotels in financial centers across the country. More and more these road shows are being conducted over the internet via webinars and are known as electronic road shows. These road shows may be broadcast live and recorded for playback and may be available on demand. If the recorded road show is for an IPO of equity securities, the recorded road show must be filed with the SEC unless at least one version is made available to the public in addition to the financial community. Recorded road shows for additional issues do not have to be filed with the SEC.

<http://www.pbookshop.com>

# Pretest

## ISSUING CORPORATE SECURITIES

1. A syndicate has published a tombstone ad prior to the issue becoming effective, which of the following must appear in the tombstone?
  - I. A statement that the registration has not yet become effective
  - II. A statement that the ad is not an offer to sell the securities
  - III. Contact information
  - IV. No commitment statement
  - a. III and IV
  - b. II and III
  - c. I and II
  - d. I, II, III, and IV
  
2. During a new issue registration, false information is included in the prospectus to buyers. Which of the following may be held liable to investors?
  - I. Officers of the issuer
  - II. Accountants
  - III. Syndicate members
  - IV. People who signed the registration statement
  - a. I and III
  - b. II and IV
  - c. I, II, and III
  - d. I, II, III, and IV

3. Which of the following is not a type of offering?
  - a. Rule 149 offering
  - b. Subsequent primary offering
  - c. Secondary offering
  - d. Combined offering
  
4. Once a company decides to raise long-term capital to meet its needs, it will:
  - a. Approach the money market to determine how much capital can be raised
  - b. Hire an underwriter to advise the issuer about the type of securities to issue
  - c. Hire a dealer to issue stock for public purchase
  - d. Hire a broker to issue stock for public sale
  
5. A firm participating in the offering of a private placement may sell the private placement to:
  - a. No more than 12 nonaccredited investors in any 12-month period
  - b. No more than 6 nonaccredited investors in any 12-month period
  - c. No more than 35 nonaccredited investors in any 12-month period
  - d. No more than 15 nonaccredited investors in any 12-month period
  
6. A Regulation A offering, as amended by the JOBS Act, pertains to:
  - a. An intrastate offering of securities
  - b. An offering of bonds
  - c. An offering of \$50,000,000 or less
  - d. An offering of \$3,000,000 or less.
  
7. Rule 145 covers which of the following?
  - a. Stock splits
  - b. Stock swaps
  - c. Reverse splits
  - d. Changes in par value

8. The SEC has been reviewing a company's registration statement and would like clarification on a few items. It would most likely:
  - a. Call the company
  - b. Issue a stop order
  - c. Issue a deficiency letter
  - d. Call the lead underwriter
  
9. XYZ has just gone public and is quoted on the Nasdaq Capital market. Any investor who buys XYZ must get a prospectus for how long?
  - a. 30 days
  - b. 25 days
  - c. 60 days
  - d. 45 days
  
10. A red herring given to a client during the cooling off period will contain all of the following except:
  - a. Proceeds to the company
  - b. Use of proceeds
  - c. Biographies of officers and directors
  - d. A notice that all the information is subject to change
  
11. For an insider to sell unregistered stock under an exemption from registration with the SEC, a Form 144 Notice of Offering, which contains certain information, must be filed with the SEC. The insider can sell securities during the period of time in which the 144 Notice of Offering is effective, which is:
  - a. 60 days
  - b. 6 months
  - c. 90 days
  - d. 12 months

<http://www.pbookshop.com>