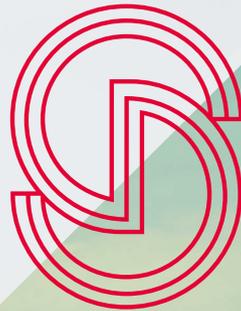


A DECADE

IN REVIEW

The Forum For US Securities
Lawyers In London



2006-2016

“ Before the Forum ... U.S. legal know-how on many important issues affecting non-U.S. clients was very scattered. U.S. securities laws has always been a complicated black box area where potential issues lie dormant. The Forum’s hard work has begun to bring these issues to the forefront so that they may be discussed and addressed in a meaningful and coherent way. ”

- Lawyer from a major investment bank in London

The Forum for US Securities Lawyers in London (the “Forum”) is proud to present its Decade-in-Review, which sets forth the Forum’s activities since its inception in 2006.

During this time, the Forum has spearheaded several successful initiatives, including:

- periodic roundtables and discussions on changes in law and market practice;
- submitting numerous comment letters to the SEC on proposals and rule changes affecting the London and international capital markets;
- distributing regular U.S. securities updates, digests and other informational emails;
- meeting annually with the Securities and Exchange Commission in Washington, DC (the “SEC”);
- publishing the International Capital Markets Glossary; and
- coordinating the implementation of electronic settlement of Regulation S, Category 3 securities trading on the London Stock Exchange.

The Forum’s creation in 2006 was inspired by the need to solve the problem of paper settlement of U.S. Regulation S, Category 3 securities, which makes this last accomplishment in 2015 particularly notable.

We look forward to the next decade of exciting projects. This year, we are hosting a series of roundtables focusing on: (i) a draft comment letter regarding the SEC’s recent review of the Accredited Investor definition; (ii) proposing changes to Regulation S, Category 3, with the aim of submitting the proposed changes to the SEC; and (iii) updating the International Capital Markets Glossary.

Best regards,



Daniel Winterfeldt
Partner, Reed Smith LLP

Founder and Co-Chair
of the Forum



Edward Bibko
Head of EMEA Capital Markets, Baker & McKenzie LLP

Co-Chair of the Forum

2007

SEC Comment Letters

Throughout the past decade, the Forum has submitted several comment letters to the SEC on topics affecting the London and international capital markets. The SEC has considered and often referenced the Forum's comments in their final rulemaking. The Forum is pleased to have been able to contribute to the rulemaking process and to have had a positive impact on U.S. securities issues that affect the London markets. The SEC's references to the Forum's comment letter(s) include those relating to:

- “private offering reform” (*September 4, 2007* and *October 8, 2007*), which addressed the proposed changes to Regulation D and Rules 144 and 145. “Private offering reform” was a significant event in 2007 and early 2008 with the SEC releasing a series of rule proposals and adopting new rules aimed at facilitating access to U.S. capital markets for small issuers and international companies. **The SEC cited the Forum’s comment letter twice in its final rule adopting the amendments to Rule 144;**
- the SEC’s proposed amendments to Rule 12g3-2(b) (*April 25, 2008*), an exemption from reporting requirements under the U.S. Securities Exchange Act of 1934 (the “Exchange Act”) available to foreign private issuers. The comment letter generally supported the SEC’s attempt to modernize the exemption regime under Section 12(g);
- the SEC proposed amendments to the rules on Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings (the “Cross-Border Tender Offer Rules”) (*June 23, 2008*) which, among other areas, supported raising the Tier 1 exemption threshold to 15%. **The SEC again cited the Forum’s comment letter in its final rule;**
- Rule 15a-6 (*September 8, 2008*) regarding the SEC proposals on exemptions for foreign broker-dealers. The Forum generally supported the SEC’s recommendations in these proposals, including expanding the scope of activities that a foreign broker-dealer could conduct in the United States without the need for registration, simplifying procedures and the increasing direct access and interaction with U.S. investors; *and*
- the rules required to be adopted by the SEC pursuant to the Jumpstart Our Business Start-ups Act of 2012 (the “JOBS Act”) (*June 29, 2012* and *October 5, 2012*). The comment letters addressed issues affecting the London and international markets including the effects of lifting the ban on general solicitation and general advertising and the interaction of these provisions with Regulation S as well as certain aspects of Regulation D and Rule 144A offerings. In addition, the comment letters included some novel points not raised in other comment letters including requests for confirmation:
 1. of any effect the Section 201 changes to general solicitation and general advertising would have on the permitted activities of unregistered foreign broker dealers under Rule 15a-6 under the Exchange Act;
 2. that the use of general solicitation and general advertising in connection with a Rule 506 or Rule 144A offering would not impact an issuer’s ability to take advantage of an exemption or exception under the Investment Company Act of 1940 (the “Investment Company Act”). **The Forum’s comment letter was cited four times in the final rule.**

Regulation S, Category 3 Year Two Project

(the “**Year Two Project**”) - 2007

The Year Two Project addressed the treatment of non-affiliate Regulation S, Category 3 securities and sought to establish a set of guidelines to enable such securities to be electronically traded and settled offshore following the one-year distribution compliance period. In August 2007, after consulting lawyers practicing U.S. securities law in London and relevant market participants, the Forum finalized the Year Two Project and **published a set of proposed model procedures** for the treatment of such securities.

The model procedures presented a framework to guide companies through the implementation of uncertificated settlement in conjunction with advice from their U.S. legal counsel and other advisers as to overall compliance with the requirements of U.S. securities laws, including Regulation S.

Regulation S, Category 3 Year One Project

(the “**Year One Project**”) – 2007

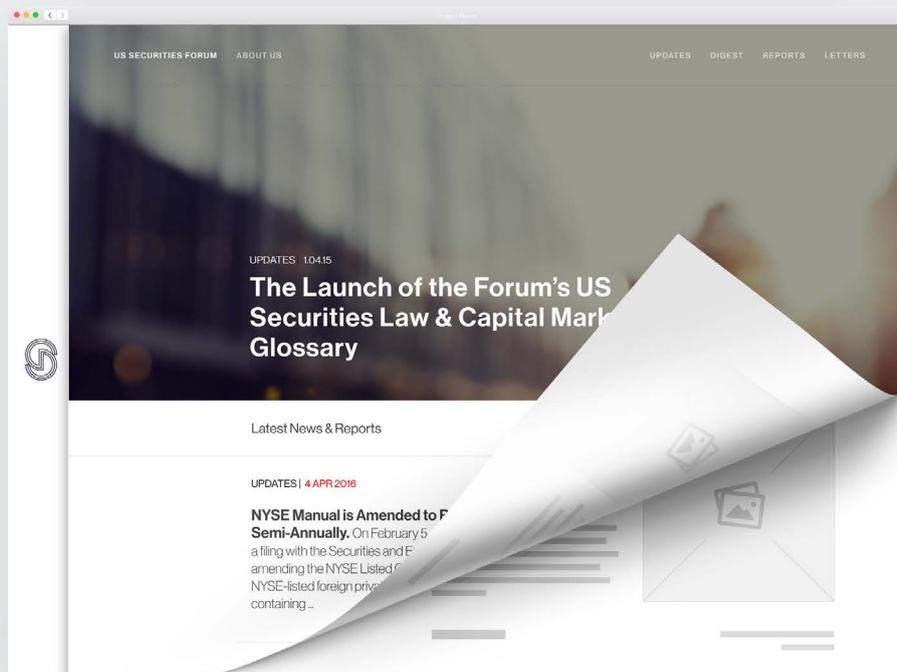
Following the success of the Year Two Project, the Forum launched the Year One Project relating to the offshore electronic trading and settlement during the one-year distribution compliance period of non-affiliate Regulation S, Category 3 securities.

After a drafting phase for the Year One Project in the second half of 2007, the public consultation period was launched; the launch event was held in the Theatre at the London Stock Exchange and was widely attended by representatives from law firms and market participants, including NOMADs, registrars and financial institutions. The proposed guidelines were developed by the Forum and were informed by a dialogue with Forum members and market participants, market practice, a review of SEC no-action letters and applicable law and regulations. The London Stock Exchange and Euroclear UK and Ireland Limited (“EUI”, as the owner and operator of CREST), also began developing a trading and settlement platform to be used during the one-year distribution compliance period for Regulation S, Category 3 securities and began seeking consultation with the SEC. The Year One Project and Forum meetings were a **useful addition to this larger ongoing dialogue**.

“We are delighted that a solution has been found for the electronic settlement of US Regulation S, Category 3 securities in London. This issue has caused concern to institutional investors and corporates for some time and it has been through the hard work and perseverance of many parties, particularly the Forum team, that a clear structure is now being put in place to allow for the electronic settlement of these securities to occur.” — Director, NOMAD

2008

“ The Forum launched its website (tffuslil.com) in 2008 which contains legal updates and copies of the Forum’s comment letters as well as other project documentation. ”



VIEW OUR NEW WEBSITE



2009



“ The Forum was shortlisted for the Law Firm Innovation Award by the British Legal Awards in October 2009, which recognized the Forum as an innovative, collaborative platform for dealing with the application of and compliance with U.S. securities issues in the London capital markets. ”

“ As part of the Forum’s “SEC Speaker Series,” the Forum hosted a conversation in 2009 with Associate Director of the Division of Corporation Finance, Mauri Osheroﬀ, on the SEC’s amendments to the Cross-Border Tender Offer Rules. ”

2012

Investment Company Act Section 3(c)(7) Model Procedure

“ Among numerous publications, the Forum published a note in 2009 elaborating upon the proposed U.S. federal legislation that would repeal the existing TEFRA D Eurobond exemption. ”



The Forum created the Investment Company Act Section 3(c)(7) sub-group in 2009 and, throughout that year, held several meetings to discuss issues relating to offerings by companies that rely on the exemption provided by Section 3(c)(7) under the Investment Company Act (the “3(c)(7) exemption”). Unlike for debt issuers, there was no established market practice for compliance with the Section 3(c)(7) exemption for non-U.S. equity issuers; **this project aimed to establish model procedures to ensure compliance with Section 3(c)(7) for such securities.**

The sub-group included market participants (including financial institutions), lawyers and other practitioners in the market and worked to develop and launch the Investment Company Act Section 3(c)(7) Model Procedures for Equity Issuances in the London Capital Markets (the “3(c)(7) Model Procedures”) in 2012. The 3(c)(7) Model Procedures include a menu of procedures and considerations to be used by issuers in the London market taking advantage of the 3(c)(7) exemption for equity securities.

In addition, the Forum conducted a **PLI one-hour Briefing on the 3(c)(7) Model Procedures**. The 3(c)(7) Model Procedures are only appropriate for non-U.S. issuers and can be found here. <http://tffuslil.com/portfolio/investment-company-act-section-3c7-model-procedures-for-equity-issuances-in-the-london-capital-markets>

2013

Elimination of the Ban on General Solicitation and General Advertising

In response to the elimination of the ban on general solicitation and general advertisements in Rule 144A offerings and certain Regulation D offerings mandated by the JOBS Act amendments (July 10, 2013), **the Forum held a roundtable on August 14, 2013 and a subsequent PLI Briefing on September 19, 2013 entitled “The International Implications of the Recent JOBS Act Amendments”**. Led by Daniel Winterfeldt and Edward Bibko, along with panellists from Bank of America Merrill Lynch and Deutsche Bank, the PLI briefing, among other topics, discussed the interplay between amended Rule 144A and new Rule 506(c), on the one hand, and Regulation S, on the other, in concurrent U.S. private placement/Regulation S offerings.

As a follow-on, in June 2014, **the Forum along with Goldman Sachs conducted another PLI briefing discussing the international market and the JOBS Act amendments** eliminating the prohibition on general solicitation and general advertising under new Rule 506(c) of Regulation D and Rule 144A. Both briefings were **attended by nearly 100 participants, including U.S. regulators, financial institutions and capital markets lawyers**.

2014

Regulation S, Category 3 Securities: EU Regulation on Central Securities Depositories

(“**CSDR**”) – 2014-2015

In August 2014, Article 3(2) of the CSDR was implemented requiring all securities on a trading venue to be recorded and settled electronically. At that time, Regulation S, Category 3 securities trading on the London Stock Exchange were trading exclusively in paper form. Despite steps taken in the Year One Project, electronic trading for these securities had not been implemented due to limitations stemming from CREST functionality. While Article 3(2) of the CSDR was technically effective 17 September 2014, the book-entry requirement was initially intended to be effective in January of 2015; subsequently, the London Stock Exchange was given two extensions to implement Article 3(2) and it was ultimately made effective on 1 September 2015.

Working closely with the London Stock Exchange and EUI, **the Forum held several roundtables with lawyers and market participants** to discuss the impact of the CSDR requirement for mandatory electronic settlement. These roundtables aimed to build a market consensus and were also instrumental in compiling comprehensive comments on and finalizing the documentation surrounding the electronic trading and settlement of Regulation S, Category 3 securities. The documentation and trading and settlement platform were largely based on the Year One Project described previously.

In addition to these numerous roundtables, **the Forum presented a Practising Law Institute (“PLI”) one-hour briefing in September 2015**. Daniel Winterfeldt and Edward Bibko of the Forum and Marcus Stuttard, Head of AIM from the London Stock Exchange, participated as panellists; the briefing attracted **over 100 attendees from regulators, banks and corporates**.

The Forum also published a Practical Law article entitled “*The Electronic Settlement of US Regulation S, Category 3 Securities Trading on the London Stock Exchange*” which is available to Practical Law members at <http://uk.practicallaw.com/>. Furthermore, **the Forum published a final Model Document** entitled “*Electronic Trading and Settlement of Regulation S, Category 3 Equity Securities*”, which is available [here](#).

“The Forum team has provided valuable insights into the trading and settlement of US Regulation S, Category 3 shares which has helped us shape the registration service we provide to the London market. Their hard work and dedication in providing expert comment and guidance is much appreciated and will assist us in maintaining our leading position in the market.” — Chief Operating Officer, Financial Intermediary

The Regulation S, Category 3 Project has been nominated for the Innovation in Legal Expertise Award by the FT Innovative Lawyers Awards 2016.



**INNOVATIVE
LAWYERS 2016**
AWARD NOMINEE

2015

International Capital Markets Glossary

In recent years, the Forum realized that both lawyers and market participants working in the capital markets were lacking a resource to turn to for a comprehensive glossary of capital markets terms that may arise in a transaction. In order to address this issue, the Forum undertook the development and publication of an International Capital Markets Glossary, which was launched in early 2015.

The Glossary provides definitions of key terms used in the international capital markets and **serves as an essential tool for practitioners and market participants involved in capital markets transactions**. It is a useful reference for any international capital markets practitioner and has been **widely acclaimed by the market**.

**“Really super creative tool,
educational, useful and easy to
use – perfect!”**

— Partner, London office of International Law Firm

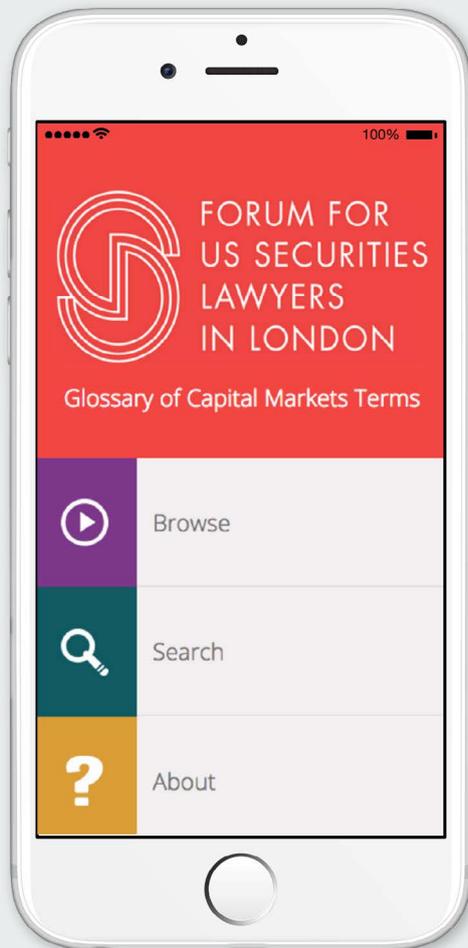
The Glossary comes in multiple formats: as a print version, as an interactive PDF, and as an app, which is available for Android, Windows and Apple devices.

To download the interactive PDF version of the Glossary, please click [here](#).

To download the app, please click on the relevant link below:



We are in the process of updating the Glossary. If you have any comments, kindly send them to info@tffuslil.com.



The International Capital Markets Glossary, prepared by the Forum for US Securities Lawyers in London, is a free dictionary of terms frequently used in capital markets transactions.



“The Glossary is a great addition to any banker’s (or lawyer’s) toolkit and should be on everyone’s desk. It is comprehensive yet concise, user-friendly and in a size that is easily portable and accessible.” “Really super creative tool, educational, useful and easy to use – perfect!”

— Managing Director, Financial Institution

Present

U.S. Securities Law Digests and Updates

The Forum publishes regular U.S. Securities Law Digests which include round-ups of major U.S. securities law developments relevant to the London capital markets. The Forum also publishes ongoing U.S. Securities Updates and has done so throughout the past decade, including, among others:

- SEC Soliciting Comments on Proposed Increased Regulation of certain Alternative Trading Systems, including Dark Pools (February 2016)
- Implications of the FAST Act to Foreign Private Issuers (February 2016)
- SEC Guidance on Online Private Placements and General Solicitation under Regulation D (November 2015)
- Regulation Crowdfunding - the SEC adopts Final Rules for U.S. companies (November 2015)
- Regulation S, Category 3 Securities Trading on the London Stock Exchange can now Settle Electronically in Compliance with the EU CSDR (September 2015)
- SEC Charges Private Equity Firm with Misallocating Broken Deal Expenses in Breach of Fiduciary Duty (July 2015)
- Electronic Settlement for US Regulation S, Category 3 securities extended until 1 September 2015 (May 2015)
- Accredited Investor Definition: Recommendations made by the SEC Advisory Committee on Small and Emerging Companies (May 2015)
- Dark Pools face an increase in SEC Enforcement Actions (March 2015)
- SEC Issues updated Compliance & Disclosure Interpretations, including with respect to Rule 905 of Regulation S (February 2015)
- SEC Issues New Guidance on Rule 144A and New Rule 506(c) (November 2013)
- Impact of SEC Social Media Regulation and Cyber Disclosure (July 2013)
- SEC Obtains Preliminary Injunction in Foreign-based Fraud Case (April 2013)
- Overview of Important US Securities Law Related Federal Court Cases in 2011/12 (April 2012)
- Extraterritorial reach of Section 10(b) and Rule 10b-5 Liability: Supreme Court Ruling in Morrison v. National Australia Bank Limited (June 2010)
- Proposed Repeal of TEFRA C and D (December 2009)
- SEC Emergency Short Selling Rules (September/October 2008)
- Revisions to Exchange Act Rule 12g3-2(b) (August 2008)
- Foreign Issuer Reporting Enhancements (February 2008)
- SEC Adopts Amendments to Rules in relation to Cross-Border Business Transaction Exemptions (November 2007)
- Rule 144 and Rule 145 under the Securities Act (November 2007)



Daniel Winterfeldt

Partner
Reed Smith LLP
+44 (0)20 3116 3696
dwinterfeldt@reedsmith.com



Edward Bibko

Head of EMEA Capital Markets
Baker & McKenzie LLP
+44 (0)20 7919 1343
Edward.Bibko@bakermckenzie.com

