

Rule 144A Debt Offering vs. 4(a)(2) Debt Placement

The following chart briefly summarizes some of the principal differences between a traditional Rule 144A offering of debt securities and an institutional (or “insurance”) private placement of debt securities.

	RULE 144A DEBT OFFERING	INSTITUTIONAL PRIVATE PLACEMENT
CONTRACTUAL STRUCTURE	Initial purchasers make a firm commitment to purchase, at a discount to offering price	Issuer sells directly to investors; placement agent receives a placement fee
DILIGENCE	Initial purchasers conduct due diligence: Document review Management due diligence Auditor due diligence	Investors conduct limited due diligence: Investor counsel reviews documents Investors conduct management Q&A through the placement agent No meetings with auditors
OFFERING DOCUMENT	Offering memo with information similar to that used in a registered offering memo Offering memo drafted by issuer’s counsel; reviewed by initial purchasers’ counsel At pricing, pricing term sheet with security terms, other pricing terms and any additional disclosures	Streamlined marketing document drafted by issuer with input from placement agent Streamlined term sheet
MARKETING	Timing: less than one day to a full week or more Can include investor calls, a live roadshow, an e-roadshow	Timing: Typically a few weeks Investor conference call with management; occasionally, in-person meetings
PRICING	Issuer and initial purchasers sign a purchase agreement Auditor delivers a comfort letter	No agreement signed with placement agent at pricing No comfort letter
DOCUMENTATION OF SECURITIES	Indenture similar to a registered offering	Note purchase agreement entered into by the issuer and investors
REGISTRATION RIGHTS	Exchange offer registration vs. Rule 144A “for life”	No registration rights
CLOSING	Counsel to issuer and counsel to initial purchasers provide legal opinions (including “no registration” opinion) and 10b-5 negative assurance letters Accountants provide bring-down comfort letter Investors pay the offering price to the initial purchasers, who pay the purchase price to the issuer Global notes (one for the Rule 144A tranche and one for the Regulation S tranche) are deposited into the DTC or other clearing system	Counsel to issuer provides opinion (including “no registration” opinion) Counsel to investors provides “no registration” opinion; no 10b-5 negative assurance letters No comfort letter Each investor pays the issuer directly Physical note certificates are delivered to each investor
SECONDARY TRADING	Through DTC; relatively liquid	Individually negotiated; physical delivery; relatively illiquid
COVENANT PRACTICES	Typically, incurrence-based covenants	Typically, maintenance-based covenants
RATINGS	Assigned prior to pricing by one or more of Moody’s, S&P or Fitch	Assigned post-pricing by the National Association of Insurance Commissioners
TRANSACTION SIZE	Size matters to liquidity	Issue size can be small
FUNDING	All funding at closing – typically T+2, but can be as long as T+10	Delayed funding is possible in order to match issuer’s need to apply proceeds