Funding International Development Organizations

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CHAPTER 6

Regulation of Offerings by International Financial Institutions under the U.S. Federal Securities Laws

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Abstract

International financial institutions (IFIs) face large funding needs to fulfill their missions. These funding needs are often met through the issuance of debt securities to global investors. US investors have historically shown a strong interest in debt securities of IFIs. Offerings of securities in the United States must comply with applicable US laws, in particular the US federal securities laws administered by the US Securities and Exchange Commission (SEC). This article discusses the US federal securities laws and regulations that are applicable to IFIs that offer debt securities in the United States.

1 Introduction

1.1 *Investment Trends*

National governments frequently join together with other national governments to sponsor and support supranational and multilateral development banks (broadly referred to as international financial institutions or IFIs) for the purpose of promoting and funding economic and social progress in specific countries or regions of the world. These IFIs face large funding needs to fulfill their missions. These funding needs are often met through the issuance of debt securities to global investors. Investors in the United States have historically shown a strong interest in debt securities of IFIs, as evidenced by reports from the US Department of the Treasury. These reports indicate steadily increasing holdings by US investors of debt securities issued by "international organizations".

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TABLE 6.1 US holdings of debt securities of international organizations as of December 31, 1994–2020[a] (in billions of USD)

Year	Total	Long-term debt	Short-term debt
1994	9.6	9.6	*n.a.*
1997	17.0	17.0	*n.a.*
2001	12.2	11.7	0.5
2003	18.3	17.2	1.1
2004	20.0	17.8	2.2
2005	24.0	19.0	3.0
2006	21.5	19.0	2.5
2007	23.7	22.2	1.5
2008	25.2	20.3	4.9
2009	48.3	40.2	8.1
2010	54.7	41.4	13.3
2011	52.4	45.9	6.5
2012	57.0	50.3	6.7
2013	61.8	53.9	7.9
2014	64.4	58.2	6.2
2015	65.8	54.6	11.2
2016	75.2	70.6	4.6
2017	90.4	81.7	8.7
2018	85.6	75.7	9.9
2019	100.8	86.7	14.1
2020	119.2	108.4	10.8

[a] US Portfolio Holdings of Foreign Securities, US Department of the Treasury, Federal Reserve Bank of New York, Board of Governors of the Federal Reserve System, reports from April 2000 through October 2021. This report does not specifically define the entities included within this category, although from context it appears to closely track IFIs.

1.2 *US Statutory Framework*

Offerings of securities in the United States must comply with applicable US laws, in particular the US federal securities laws administered by the SEC. These laws provide a comprehensive set of regulations that all issuers must address when they raise funds in the United States.

Two Depression-era US federal statutes form the center of the US regulatory regime relating to the issuance and trading of securities in the United

States: the Securities Act of 1933[1] (Securities Act), and the Securities Exchange Act of 1934[2] (Exchange Act). The Securities Act generally governs the initial offer and sale of securities in the United States, while the Exchange Act generally regulates the post-issuance trading of securities, reporting obligations of entities with publicly traded securities, and the activities of financial intermediaries such as broker-dealers, transfer agents, and stock exchanges.

The Securities Act requires registration with the SEC of any transaction involving the offer or sale of a security, unless the security is of a type that is exempt from registration or the transaction is structured to take advantage of an available exemption from registration. The terms "offer", "sale", and "security" are broadly defined.

The registration requirement applies to all entities that issue securities, although some entities, such as US banks and state and local governments in the United States, benefit from an exemption. Sovereign governments, and by extension IFIs, must comply with the registration requirement. In 2001, the SEC settled an enforcement action against a foreign sovereign bank that had offered and sold securities in the United States without complying with the registration requirements.[3] The SEC found that the bank had promoted an offering of debt securities through activities such as a mass mailing to 30,000 to 40,000 Indian nationals residing in the United States, full page advertisements in Indian newspapers published in the United States, and television advertisements on Indian broadcast channels. In this instance, the SEC did not seek a penalty or fine. Rather, the bank agreed with the SEC that it would cease and desist from committing future violations of the registration provisions of the Securities Act.

2 Registered Offerings under the Securities Act

2.1 *General Process for Registration*

In order to register securities under the Securities Act, an issuer of securities must file a registration statement with the SEC that meets the detailed disclosure requirements prescribed by the SEC under the Securities Act. The Securities Act delineates two types of issuers: foreign governments and political subdivisions thereof; and all other issuers.[4] The Securities Act also sets out

1 15 U.S. Code, Section 77a et seq.
2 15 U.S. Code, Section 78a et seq.
3 U.S. Securities and Exchange Commission 2001.
4 See Section 7(a)(1) of the Securities Act of 1933. For ease of reference, this article refers to issuers that are not foreign governments or political subdivisions as "corporate issuers".

the information to be included in a registration statement: Schedule A to the Securities Act specifies 32 items of information that corporate issuers must provide in a registration statement; and Schedule B to the Securities Act specifies 14 items of information that foreign governments must provide.

In the Securities Act, the US Congress gave the SEC the authority to supplement the information that must be provided in registration statements. Over the decades, the SEC has used this authority broadly with respect to corporate issuers, and has adopted numerous forms and many additional detailed disclosure requirements beyond the matters enumerated under Schedule A. For foreign governmental issuers however, the SEC has taken a more limited approach, adopting minimal rules relating to disclosures that must be provided in a registration statement.

Schedule B requires disclosure of the following matters: (1) the name of the borrowing government; (2) the use of proceeds of the offering; (3) the amount of funded debt of the government, and a brief description of outstanding indebtedness, addressing such matters as interest rate and maturity date of such indebtedness; (4) whether the government or its predecessor has, within the prior 20 years, defaulted on the principal or interest of any external indebtedness, and if so, the details of such default; (5) receipts (classified by source) and expenditures (classified by purpose) for the latest fiscal year and the two preceding fiscal years on a year-by-year basis; (6) the names and addresses of the underwriters; (7) the name and address of the government's authorized agent in the United States, if any; (8) the estimated net proceeds from the offering of securities; (9) the price at which the securities will be offered to the public or the method by which such price will be computed; (10) commissions paid or to be paid to the underwriters in connection with the offering; (11) the estimated expenses of the offering; (12) the names and addresses of the government's counsel who provide an opinion on the legality of the securities; (13) a copy of the underwriting agreement for the offering; and (14) an agreement to furnish a copy of the legal opinion relating to the securities being offered.

Although the SEC has not adopted additional detailed disclosure requirements for foreign governments as it has for corporate issuers, by course of practice the registration statements of foreign governmental issuers will generally include much more information than strictly required under Schedule B and cover a standard set of topics for investors, providing extensive information relating to the foreign country's economy and financial system and additional information about the political, social, and governance environment in the foreign country.

As discussed below, disclosures in registration statements are subject to the antifraud provisions under the US federal securities laws, which impose

liability for material misstatements and omissions in the offer or sale of securities. The fundamental test for "materiality" is whether there is a substantial likelihood that a reasonable investor would consider the misstatement or omission important in deciding whether to purchase or sell a security. The US Supreme Court has explained that "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available".[5] Thus, the determination of materiality is a mixed question of law and fact, with no bright-line quantitative test for materiality.

Registration statements under the Securities Act are subject to review and comment by SEC staff. The purpose of the review process is to enhance compliance with applicable disclosure requirements by issuers. The SEC staff does not evaluate the merits of offerings or issuers and does not determine whether an investment is appropriate for investors. The SEC review process is not an in-depth on-site evaluation of the veracity of the information in the registration statement. Rather, it is more like a desk review, and the staff's comments on the disclosures are based on publicly available information and the staff's assessment of the importance of the information to investors. The SEC staff process results in a registration statement being declared "effective", a statutory term of art under the Securities Act indicating that the securities have been registered with the SEC and that sales of securities under the registration statement can occur.

The US securities laws contain several overlapping provisions which impose so-called antifraud liability if certain disclosure documents, or in some cases oral statements, contain an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading. Cases may be brought by private litigants as well as governmental authorities such as the SEC and the US Department of Justice. Registered securities offerings are subject to specific antifraud provisions that are not applicable to unregistered offerings such as under Rule 144A, as discussed below.

2.2 *Registration under the Securities Act by International Financial Institutions*

As noted above, the registration provisions of the Securities Act draw a distinction between issuers of securities that qualify as foreign governments and all other issuers. For an IFI considering a registered offering of debt securities

5 TSC Industries, Inc. v Northway, Inc., (1976).

in the United States, a key factor is determining whether the SEC would treat the IFI like a foreign government. If the SEC would not treat the IFI like a foreign government, then the IFI would be required to comply with the extensive financial statement and other disclosure requirements that apply to corporate issuers, rather than those outlined under Schedule B.

That said, the SEC has permitted a number of entities that are not strictly foreign governments (or political subdivisions) to register securities on Schedule B. Examples include financial institutions that are owned by a foreign government, whose activities carry out a social purpose for that foreign government and whose debt securities are guaranteed by, or which benefit from a form of credit support from, that foreign government.

In the past, the SEC staff would provide written advice to a requesting entity advising as to the SEC staff's view on whether the use of Schedule B was permitted for the entity. The requesting letter to the SEC staff would generally describe the legal status of the entity under local law, the ownership structure, the public purpose, governmental control, and any guarantee or the credit support provided by the foreign government, including whether the government's taxing power was available to support any debt securities. In response, the SEC staff would generally not raise an issue to the use of Schedule B.[6]

IFIs can have a more difficult time establishing the appropriateness of using the Schedule B registration regime rather than the registration regime for corporate issuers. IFIs are not owned by a single foreign government and are frequently created under a multilateral treaty rather than a specified law. Also, their financial obligations are generally not guaranteed by the foreign governments that are members of the IFI, although the IFI may be entitled to effect capital calls upon its members.

Nonetheless, the SEC has long recognized that the use of Schedule B is appropriate for some IFIs with relevant characteristics. For example, in 1973, the Central American Bank for Economic Integration (CABEI) requested permission to register its debt securities on Schedule B.[7] In its request letter, the CABEI explained its formation as an international institution with five Central American countries as members and its purpose of promoting economic integration and balanced economic development of member states. The CABEI was administered by a board of governors consisting of ministerial officials from the member states, and officers employed by the bank. Its capital structure consisted of ordinary capital and guarantee capital subscribed to by

6 See U.S. Securities and Exchange Commission 1987, and ibid. 1993.

7 See ibid. 1973.

member states. The SEC staff responded favorably to the CABEI's request to use Schedule B.[8]

In the absence of formal SEC rules describing the disclosures required to be provided beyond the minimum requirements described in Schedule B, IFIs have adapted their registration statement disclosures to provide relevant information to investors. This information generally includes disclosures relating to the administration of the IFI, as well as its capital structure, funding, governance and operations. Disclosures may also relate to projects funded and/or loans extended by the IFI, providing details on the countries involved and the specific borrowing entities in those countries. When appropriate, disclosures relating to the potential impact of economic sanctions may also be provided. Financial statements of the IFI are included as part of the registration statement, but unlike for corporate issuers, such financial statements are not required to be audited under SEC-prescribed standards or prepared in accordance with SEC-recognized accounting standards.

2.3 *Periodic Reporting under the Exchange Act*

When a corporate issuer sells securities in an offering that is registered under the Securities Act, it becomes obligated under Section 15(d) of the Exchange Act to file with the SEC periodic reports for the remainder of the fiscal year in which the offering takes place, and on a continuous basis thereafter, unless the securities are held by fewer than 300 holders of record or the securities mature or are redeemed and are no longer outstanding. This filing obligation helps assure that purchasers in the secondary market shortly after the offering have access to current information about the issuer. Foreign governments and political subdivisions are exempted from this requirement.[9] By course of practice, this exemption is also extended to IFIs that are permitted to register their securities on Schedule B.

Even when foreign governments choose to register securities under the Securities Act for sale to the public in the United States, the large majority of such securities are not listed on a US stock exchange. Instead, such securities will trade in the broad over-the-counter market in the United States, an unorganized trading venue among US broker-dealers and financial institutions.

Should a foreign government decide to list its securities on a US stock exchange, then under Section 12(a) of the Exchange Act, the foreign government must file a separate registration statement for the purpose of such listing.

8 For similar correspondence, see ibid. 1982 (I).

9 The last sentence of Exchange Act , Section 15(d) reads: "Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof".

The SEC has adopted a registration statement form for this purpose: Form 18. As noted, foreign government debt securities are rarely listed on a US stock exchange and, as a result, Form 18 is used very infrequently.

Additionally, the SEC has adopted an annual report form to be used by foreign governments: Form 18-K. As explained in the next section, many foreign governments, as well as foreign governmental banks and IFIs that are permitted to register securities on Schedule B, file Form 18-K annual reports with the SEC on a voluntary basis for the purpose of maintaining a shelf registration statement current and keeping their disclosures up-to-date. There is no specific SEC form type for a foreign government to file materials other than an annual report. As a result, when a foreign government, including an IFI that has registered securities on Schedule B, seeks to file with the SEC a semi-annual or quarterly report or other information, the filing must be made as an amendment to the Form 18-K annual report.[10]

2.4 *Shelf Registration*

The Securities Act contemplates a registration regime that applies on an offering, by offering basis: each discrete registered offering of securities should be the subject of a separate registration statement. Over time, this approach produced delays associated with preparing long-form disclosure documents, which detracted from issuers' ability to quickly access market windows for favorable financings. The SEC addressed this problem in 1982 by creating a system for corporate issuers known as shelf registration, under which companies could register a large dollar amount of generic unspecified securities on an up-front basis. When financing opportunities arose, companies could take securities "off the shelf" for immediate sale, with specified terms for the securities provided in updated offering documents without any prior SEC review. The shelf registration system also allowed for short-form prospectuses, under which information already on file with the SEC was deemed to be incorporated by reference into a short prospectus, so that information need not be repeated.

The shelf registration system for corporate issuers has been enhanced and improved over the years through a number of formal rule changes. The most recent enhancements were adopted in 2005 under an initiative referred to as Securities Offering Reform, which permits certain SEC-reporting corporate issuers to undertake registered offerings without any regulatory delays associated with registering securities.

10 On the SEC's EDGAR filing system, these amendments are styled as a "Form 18-K/A".

For IFIs and foreign governmental issuers that register securities on Schedule B, the shelf registration system has been implemented through two statements of policy (not formal rules) published by the SEC in 1980 and 1982.[11] The statements provide for a procedure under which an issuer can file a base prospectus disclosing standard political, economic and statistical information with regard to the IFI or foreign government that is appropriate for a Schedule B registration statement, in addition to a generic description of the debt securities to be offered. When an offering of specific securities is planned, the issuer will prepare a prospectus supplement that describes the use of proceeds, the complete description of the securities offered (such as the interest rate and interest payment and maturity dates), the plan of distribution (typically this is a firm commitment underwriting), the underwriters' names and their compensation, and any recent material developments not disclosed in the earlier base prospectus.

The SEC's shelf registration procedure for IFIs and foreign governments does not contemplate the availability of an incorporation-by-reference approach. By its terms, the SEC's procedure set out in its policy statements requires an IFI or foreign government to prepare and update a long-form prospectus annually. Through an informal process, however, the SEC has permitted Schedule B filers to use an incorporation-by-reference procedure. In this informal process, the IFI or foreign government makes a written request explaining to the SEC that it is setting up a shelf registration for its debt securities and that the IFI or foreign government will disclose in a Form 18-K annual report, and in amendments to that annual report, the same type of information that would be contained in a Schedule B registration statement. Then when the IFI or foreign government files a Schedule B shelf registration statement, it will incorporate by reference the most current Form 18-K and any recent amendments. The SEC staff will generally respond to this written request that it will not object to the use of this procedure. Numerous IFIs and foreign governments have taken advantage of this informal process.

11 Interpretative Release relating to Delayed Offerings by Foreign Governments or Political Subdivisions Thereof, U.S. Securities and Exchange Commission 1980; Interpretative Release relating to Continuous and Delayed Offerings by Foreign Governments or Political Subdivisions Thereof, U.S. Securities and Exchange Commission 1982 (II).

3 Exempt Offerings under the Securities Act

Offerings of debt securities by IFIs are often structured as global offerings that are simultaneously offered to investors inside and outside the United States. When these offerings are not registered with the SEC, they are typically structured to take advantage of a combination of exemptions from registration under the Securities Act. Most typically, the portion of the transaction sold to investors outside the United States will be designed to comply with the safe harbor for offshore offerings provided by Regulation S under the Securities Act. At the same time, the portion sold to US investors will be structured to comply with the safe harbor from registration under Rule 144A under the Securities Act, which allows for resales of offered securities to certain large US institutional investors known as "qualified institutional buyers" or QIBs. Some exempt offerings in the United States (generally smaller transactions) may be structured as private placements under Section 4(a)(2) of the Securities Act or Regulation D under the Securities Act.

Even though an offering may qualify for an exemption from registration with the SEC, any offering of securities that involves a US domestic transaction in securities, conduct within the United States or that has effects in the United States may be subject to the broad antifraud liability provisions under Exchange Act Section 10(b) and Rule 10b-5 under the Exchange Act, under which claims may be brought by parties to a transaction as well as by the SEC and the US Department of Justice. As a result, offering participants pay particular attention, especially in Rule 144A offerings in which securities are sold to US institutional investors, to prepare an offering document that contains information that meets high standards.

3.1 *Regulation S*

By the express terms of the statute, the registration requirements under the Securities Act apply to any offer or sale of a security involving interstate commerce or use of the US mail system, unless an exemption is available. The Securities Act defines "interstate commerce" to include "trade or commerce in securities or any transaction or communication relating thereto [...] between any foreign country and any State, Territory or the District of Columbia".[12]

Upon initial consideration, an offering of securities by an IFI located outside the United States to investors also located outside the United States would not appear to involve interstate commerce under the Securities Act. However,

12 Securities Act Section 2(a)(7).

as a practical matter, widely distributed offerings of debt securities in global offerings frequently involve US-headquartered broker-dealers, even if the transaction is mainly executed through a non-US office. In light of this involvement and the resultant potential for e-mail messages and telephonic communications into the United States – coupled with the breadth of how the US interstate commerce threshold is interpreted and applied – an IFI could face difficulty establishing that its offering did not use US interstate commerce.

Fortunately, the SEC has historically recognized that registration of securities offerings with only incidental contacts with the United States should not be required. This approach is codified in Regulation S, which adopts what the SEC refers to as a territorial approach to the registration provisions of the Securities Act.

Regulation S provides a safe harbor from the Securities Act's registration requirements for certain offerings outside the United States. If the conditions of Regulation S are met, the transaction is deemed to take place outside the United States and hence does not trigger the registration requirements of the Securities Act.

All Regulation S transactions start with the same basic requirements, which are set out in Rule 903 under the Securities Act. Regulation S then layers on additional restrictions depending on the nature of the issuer and the securities being offered. The basic requirements under Regulation S, referred to as general conditions, are that:

(1) The offer or sale must be made in an "offshore transaction"; and
(2) There must be no "directed selling efforts" in the United States in connection with the offering.

An "offshore transaction" is defined as an offer that is (1) not made to a person in the United States and (2) at the time the buy order is originated, the buyer is outside the United States, or the seller (and any person acting on the seller's behalf, such as an underwriter) reasonably believes that the buyer is outside the United States.[13]

The term "directed selling efforts" is broadly defined to include any activities that have, or can reasonably be expected to have, the effect of conditioning the market in the United States for the securities being offered in reliance

13 Regulation S, Rule 903(h). An "offshore transaction" also includes a transaction that is executed in, on or through the physical trading floor of an established foreign securities exchange located outside the United States. This aspect of Regulation S is less relevant because most securities exchanges have migrated to fully electronic trading.

on Regulation S. Prohibited efforts include mailing offering materials into the United States, conducting promotional seminars in the United States, granting interviews about the offering in the United States (including by telephone), or placing advertisements with radio or television stations broadcasting in the United States. Importantly, selling activities in the United States in concurrent US offerings – whether registered or exempt – do not constitute directed selling efforts. In addition, offshore transactions that are carried out in compliance with Regulation S are not integrated with registered or exempt US domestic offerings.

In the context of offerings by issuers, Regulation S provides a safe harbor for sales by any issuer, "distributors" employed by an issuer (essentially, broker-dealers who act as underwriters or placement agents for the issuer) and entities and individuals who are considered affiliates of the issuer or a distributor. This safe harbor distinguishes among three classes (or "categories") of securities, with varying procedural safeguards imposed. Such safeguards are designed to have the securities come to rest outside the United States. The criteria used to designate securities into a particular group were chosen because the criteria reflect the likelihood that the securities may be resold into the United States after their initial sale.

The first issuer safe harbor category, known as Category 1, has no requirements other than the two general conditions discussed above. Of most relevance for offerings of debt securities by IFIs, offerings included in Category 1 include:

(1) Securities backed by the full faith and credit of a foreign government;
(2) Securities offered by non-US issuers who reasonably believe at the commencement of the offering that there is no "substantial US market interest"[14] in the securities offered; and
(3) Securities offered in an "overseas directed offering".[15]

14 A substantial US market interest in debt securities is measured at the commencement of the offering and is defined as (a) the issuer's debt securities being held of record by 300 or more US persons, (b) USD 1 billion or more of principal amount of debt securities being held of record by US persons, and (c) 20% or more of the principal amount of outstanding debt securities being held of record by US persons. In light of the increasing US investor interest in IFI debt securities as discussed above, some IFIs may find that there is a substantial US market interest in their debt securities.

15 For an IFI, an overseas directed offering is one that is directed to residents of a single foreign country other than the United States made in accordance with local laws and customary practices and documentation in that country. Given the typical practice of IFIs selling securities in multiple jurisdictions, this aspect of Regulation S is of limited utility.

As discussed above, there is a lack of clarity as to whether an IFI would be considered a foreign government for the purposes of being able to utilize the Category 1 safe harbor as a matter of right without having to undertake further analysis on the extent of US market interest in the IFI's debt securities or the type of offering being undertaken. The SEC offers no formal or informal guidance on whether IFIs can be treated as foreign governments under the Regulation S safe harbor.

If an IFI was not considered a foreign government, it would be treated in the same fashion as a foreign corporation for purposes of determining the appropriate safe harbor category under Regulation S. When an IFI has made several debt offerings under Reg S and Rule 144A, it may find that its debt is held by a large number of US investors and that it would fall under Category 2 under Regulation S because it is considered to have a substantial US market interest in its debt securities.[16] IFIs in Category 2 may take advantage of the safe harbor if various additional conditions are satisfied along with the two general conditions discussed above. These additional conditions include a 40-day compliance period during which offers and sales of newly issued debt securities cannot be made to a US person (as defined under Regulation S), an agreement by the underwriters not to so offer and sell the securities, and legends on offering documents and other materials relating to the selling restrictions.[17]

3.2 *Rule 144A*

By its terms, Rule 144A under the Securities Act is not available for an offering of securities by the issuer of the security; Rule 144A is only available for resale transactions. Although market participants often refer to financings involving the use of this rule as "Rule 144A offerings", as a technical matter most Rule 144A offerings involve two distinct steps: (1) there is a sale to one or more initial purchasers under an exemption, which is followed by (2) resales to QIBs under Rule 144A. The initial purchasers are typically US broker-dealers and serve much the same function as underwriters in connection with registered offerings. The requirements for a valid Rule 144A offering include:

16 See footnote 13 for the thresholds to determine whether there is a substantial US market interest in debt securities.

17 A further Category 3 under Regulation S provides for additional restrictions, such as the use of a temporary global certificate to initially represent the offered securities, and a required certification as to non-US status in order to obtain definitive certificates. It is unlikely that an IFI, if it is formed under the laws of a non-US jurisdiction and is owned by foreign governments or foreign governmental entities, would need to comply with the Category 3 safe harbor procedures.

(1) Resale to QIBs: the securities must be offered and sold only to QIBs or to a person who the seller (and any person acting on its behalf) reasonably believes is a QIB;
(2) Notice to buyers: the seller and any person acting on its behalf must take reasonable steps to ensure that the buyer is aware that the seller may be relying on Rule 144A;[18]
(3) Fungibility: the securities must not be, when issued, of the same class as securities listed on a US stock exchange;[19] and
(4) Information delivery: a holder or the purchaser must have the right to obtain from the seller or the issuer, upon request, certain minimal reasonably current information concerning the business of the issuer and its financial statements.

Rule 144A contains an exemption from the information delivery condition for "foreign governments [...] that are eligible to register securities on Schedule B".[20] For an IFI, the question of Schedule B eligibility surfaces again in the context of an unregistered offering conducted under Rule 144A.

3.3 *Certain US-Supported International Financial Institutions*

There are six IFIs that benefit from an exemption from the registration requirements under the Securities Act and reporting requirements under the Exchange Act: the International Bank for Reconstruction and Development (better known as the World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation and the European Bank for Reconstruction and Development. The enabling legislation enacted by the US Congress for each of these IFIs contains an express exemption from such registration requirements.[21] Each of these IFIs files reports and offering documents with the SEC pursuant to separate rules adopted by the SEC specific for each of these IFIs.

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18 This notice is generally made through disclosure in an offering memorandum or a trade confirmation.

19 An IFI is unlikely to have debt listed in the United States.

20 Rule 144A(d)(4)(i).

21 For example, Section 15(a) of the Bretton Woods Agreements Act, 1945, which established the World Bank, provides that "any securities issued by International Bank for Reconstruction and Development (including any guaranty by the bank, whether or not limited in scope), [...] shall be deemed to be exempted securities" under the Securities Act and the Exchange Act.

4 Conclusion

IFIs have many regulatory options from which to choose when considering undertaking a financing in the United States, including registering on Schedule B or making a Rule 144A offering. More broadly, IFIs can utilize Regulation S in a global offering. The SEC has provided helpful procedures and guidance for IFIs in each area, although interpretive questions continue to arise.

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