



# US high yield bonds: experiences from a Norwegian lawyer working in London

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# Background

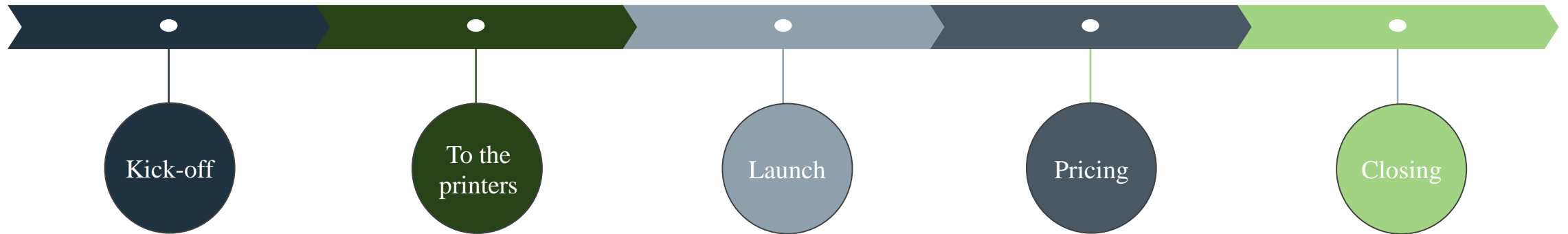


- › Cravath, Swaine & Moore
- › Experiences from the US high yield process both from a legal and practical perspective – unregistered offerings

# What is US high yield?

- › NY law
- › Unregistered offerings under Rule 144A and Regulation S
- › The role of the managers
- › Due diligence defence
- › Physical notes

# Timeline



# Documentation

US
Purchase Agreement
Investor presentation
Offering Memorandum
Description of the Notes (DoN)
Indenture
Global Notes
Comfort Letters
Legal Opinions
Bring down questionnaire
Security documents

Norway
Subscription form
Investor presentation
Offering memorandum (sometimes)
Term sheet
Bond terms
Completeness statement
(Legal opinions)
Legal Opinions
Bring down questionnaire
Security documents

# Purchase Agreement

- › Contains the terms and conditions for the managers' purchase of the bonds
- › The purchase agreement from the precedent deal
- › The managers' legal adviser holds the pen
- › Signed at pricing
- › Substantial negotiations
- › Bonds sold from initial purchasers to investors in connection with settlement

# Offering Memorandum

- › The issuer's information document
- › Fact back up
- › Drafting sessions
- › "To the printers"
- › Final OM prepared after pricing

# Description of the Notes (the DoN)

- › A description of the terms and conditions for the bonds
- › Different from a Nordic bond term sheet
- › Subject to extensive negotiation
- › Part of the OM when ready – not signed



# Indenture

- › The loan agreement
- › Contains the final terms of the bonds
- › Based on the precedent indenture
- › Signed at closing

# Global Notes

- › Physical securities
- › The bonds have to be authenticated by the trustee in order to be valid
- › The USD 500 million limit

# Comfort Letters

- › Provided to the managers by the issuer's auditor
- › Representation letter
- › "Circle up"
- › Normally two comfort letters
- › Closing condition

# Legal opinions and disclosure letters

- › Always required
- › Disclosure letters provide "negative assurance" on the contents of the OM
- › Addressed to the managers as "initial purchasers"
- › Important part of the managers' "due diligence defence"
- › Always a closing condition

# Trustee's role

- › Risk averse and inactive
- › Limited feedback provided
- › Bondholder representative
- › International trustees often part of international financial institutions

# Certain differences

- › "More is more"
- › Majority requirements
- › Purchase agreement
- › Due diligence
- › The auditor's role
- › Physical securities
- › No amount limitation
- › Incurrence covenants
- › Financial printer
- › Precedent driven
- › Listing agent
- › IG covenant reset

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