Initial Public Offerings

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Netherlands

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Introduction

History of IPOs in the Netherlands

The main equity market and stock exchange in the Netherlands is called NYSE Euronext Amsterdam (hereafter Euronext). Trading dates back to 1607 in Amsterdam, where the Dutch East India Company became the world's first publicly traded company. Euronext Amsterdam is, together with several other regulated markets in different jurisdictions, one of the largest stock exchanges in the world.

Euronext's three most well-known indices are the AEX, the AMX and the AScX. The 25 largest and most frequently traded companies at Euronext are stated on the AEX. The AMX states the 25 next-largest and most frequently traded companies, whilst the AScX states the following 25 largest and most frequently traded companies.

According to Euronext's website, there are currently 144 companies listed on Euronext (some of which are dual-listed on other markets as well). Roughly 100 of those companies are Dutch legal entities.

Only a couple of companies went public during the financial crises and the years thereafter. Since 2014, however, in spite of difficult market conditions and political uncertainty in Europe and the rest of the world, this trend reversed. In 2017, seven companies obtained a listing in the Netherlands and although volatility on the stock markets increased, nine companies obtained a listing in the Netherlands in 2018. Among those were Adyen, B&S Group, NIBC Holding, Unibail-Rodamco-Westfield and RELX. Three of these nine companies are dual-listed. Recently, Tencent shareholder Naspers announced its intention to float a portion of its e-commerce ventures on Euronext Amsterdam. Euronext remains an attractive market for issuers, selling shareholders and investors.

Reasons for choosing the Dutch jurisdiction

The Netherlands is a very well-suited jurisdiction in which to go public. The country is prosperous and has a well-maintained, digital infrastructure. On top of that, the political climate is stable in the Netherlands. These factors increase the accessibility of financing. Moreover, the stable political climate decreases political and other external risks that could affect the company, or its investors, when it goes public and during the period the company is listed.

Corporate law in the Netherlands is flexible and conducive. On top of that, European regulation has increased harmonisation in the European Economic Area (hereafter EEA). The main regulator for equity markets and stock exchanges in the Netherlands, the Netherlands Authority for the Financial Markets (hereafter AFM), is a constructive and supportive supervisor.

Dutch judiciary is ranked among the most efficient, reliable and transparent worldwide. The Enterprise Chamber of the Amsterdam Court of Appeal is a court that sets the Netherlands apart from other jurisdictions. This court is specialised in corporate proceedings. In this court, among other things, inquiry proceedings can be held to investigate the affairs of the company. In addition, the Netherlands Commercial Court was created on 1 January 2019. This new international commercial chamber of the Amsterdam District Court and the Amsterdam Court of Appeal deals with civil and commercial matters with an international aspect. Proceedings and judgments are in English.

Is the regulatory scheme conducive for an IPO?

The Dutch regulatory framework is highly conducive for an IPO. Dutch corporate law is flexible and the regulator is constructive. This leaves room for tailoring an IPO to the needs of the specific company. In addition, the Dutch corporate governance code (hereafter the Dutch Code) provides a set of clear best practice rules and principles that have to be followed on a comply-or-explain basis.

Most of the rules and regulations governing an IPO process in the Netherlands originate from the European Union (hereafter EU). Regulation and legislation at EU level increases harmonisation in the EEA. One of the key benefits of these EU rules is the so-called passporting regime. It allows a company to draw up a single prospectus and have it approved by the competent authority of their home member state and ask that the competent authority issues a certificate of approval. By doing so, the company usually does not need to draw up another prospectus for admission to trading of that same offering in another EEA member state.

Are companies more frequently of a particular industry?

Companies on Euronext are not more frequently related to a particular industry. In 2017 and 2018, the Netherlands saw a well-balanced mixed of companies. Recent examples of IPOs include Adyen (payments technology), Unibail-Rodamco-Westfield (commercial real estate), B&S Group (distribution), NIBC (banking) and RELX (information and analytics).

Trend of number of IPOs

High market volatility and geopolitical uncertainty have slowed IPO activity across Europe since the second half of 2018, but the announcement by Tencent shareholder Naspers of its intention to float a portion of its e-commerce ventures on Euronext Amsterdam may give a boost to other IPOs in the Netherlands. Despite the current uncertainty, experts in the field expect that the second half of 2019 will give rise to a decent number of IPOs. The quality of the coming IPOs is expected to be of a higher standard, as investors are increasingly focused on quality and distinction.

Other noteworthy trends

Three of the nine companies which obtained a listing in the Netherlands in 2018 have a dual listing on other European stock exchanges: the London Stock Exchange; Euronext Brussels; and Euronext Paris. Investors in the bloc can only trade shares on foreign platforms that EU regulators have deemed to be "equivalent", meaning they comply with customer protection and other rules that are similar to those in the EU.

In the case of a no-deal Brexit, the LSE platforms no longer qualify automatically. The European Commission is responsible for granting equivalence to foreign financial operators, taking advice from the European Securities and Markets Authority (hereafter ESMA). Without this, European investors wanting to trade in London in the shares of a

company that is also listed on an EU exchange would be cut off from a big pool of trading, which could mean less competitive prices.

Another noteworthy trend is the use of an accelerated book-build offering (hereafter ABB). When compared to rights offers, cash placings, bought deals and fully marketed offerings, ABBs are the predominant follow-on sale mode in Europe. ABBs are conducted within a few hours post-market close. The share price may be structured as either: "best efforts", as a result of which the bank builds a book of demand for the seller in which the seller has control over the distribution, but no price certainty; or with a "backstop", in which the bank builds a book for the seller but guarantees the execution and a minimum price. ABB does generally not involve a US-style block trade.

An international noteworthy trend is the rise of international coin offerings (hereafter ICOs). ICOs are often structured in such a way that they fall outside the scope of financial supervision by, amongst others, the AFM. The protection provided to investors by financial supervision legislation is therefore absent.

The Netherlands ranks relatively high based on the adoption rate of cryptocurrencies. There are many cryptocurrency start-ups based in the Netherlands as a result. There are, however, ongoing regulatory developments concerning ICOs. The European Parliament has submitted a proposal for a regulation on European Crowdfunding Service Providers for Business, which may regulate ICOs with a consideration of more than €8 million. Also, the Dutch Minister of Finance recently announced the introduction of a national licensing regime for crypto exchange platforms and crypto wallet providers, and the investigation of the possibility of bringing specific cryptos in line with the Dutch definition of a security.

The IPO process: Steps, timing and parties and market practice

Typical timeframe

In general, the entire IPO process takes approximately six to eight months provided that the market conditions are stable. The IPO process can be divided into eight phases: (i) initial tasks; (ii) preparation; (iii) analyst presentation and research; (iv) intention to float (hereafter ITF); (v) pre-deal investor education (hereafter PDIE); (vi) launch; (vii) management roadshow and bookbuilding; and (viii) pricing, allocation and listing. Subsequently, a period of stabilisation starts, during which the over-allotment option may be used. A detailed description of each phase is as follows:

(i) *Initial tasks*: Before an issuer decides to pursue an IPO, the feasibility thereof and the critical issues have to be identified.

(ii) *Preparation*: The IPO process starts with the selection and engagement of advisors by the issuer. In general, a kick-off meeting is organised, during which the transaction team is introduced to each other and to the characteristics of the issuer. Besides a kick-off meeting with the transaction team, a courtesy meeting with the AFM is also often organised. During the preparation phase, the due diligence is initiated, the outline for the corporate governance structure is established and the publicity guidelines are drafted. Furthermore, several drafting sessions are organised with the issuer to produce the first draft of the prospectus. In this period, early-look meetings with investors will also be held to establish a dialogue with investors, educate them on the company's equity story, and get an understanding of how they see the company evolving to become a successful IPO candidate.

(iii) *Analyst presentation and research*: During this phase, the issuer gives a presentation

to the syndicate analysts (connected to the syndicate banks, but independent within their bank as is required) and the research reports are drafted. The presentation is sometimes accompanied with site visits. Following the presentation, the research reports are circulated to the transaction team for a factual accuracy review.

(iv) *ITF*: Euronext is engaged and arrangements are made with the selected listing and paying agent. When the documents are ready, the IPO is formally announced to the market in a press release, the syndicate analyst research reports are distributed and the PDIE begins.

(v) *PDIE*: This is the process by which the syndicate analysts use their distributed research as a basis for discussing the issuer with potential investors, and to answer questions on the issuer and its potential valuation drivers ahead of the setting of the price range and management commencing the roadshow.

(vi) *Launch*: Two weeks before the actual listing, the prospectus is approved by the AFM and published by the issuer. The prospectus contains the maximum IPO size and the price range. There is no minimum market capitalisation requirement for companies listed on Euronext. However, Euronext requires a minimum free float of 25% of the issued shares in the capital of the issuer, or 5% if this represents at least €5 million.

(vii) *Management roadshow and bookbuilding*: This involves the issuer's management marketing the transaction through roadshows to potential investors with the aim of securing orders from those investors to purchase shares and facilitating the bookbuilding process.

(viii) *Pricing, allocation and listing*: At the conclusion of the bookbuilding process, the final offer price and the final offer size are set and published in a press release. Also the shares are allocated to the investors. The next day, trading starts on an "as-if-and-when-issued-or-delivered" basis. Two trading days after the first trading date, the transactions are settled through Euroclear Nederland and unconditional trading starts.

(ix) *Stabilisation*: Following the IPO, the underwriters may stabilise the price of the shares on the stock exchange. The issuer or the selling shareholders will therefore grant the underwriter who has been appointed as the stabilisation agent an over-allotment option to buy additional shares from the issuer or the selling shareholders that can be exercised for up to 30 days after the IPO. This over-allotment option is typically for a number of shares equal to 15% of the shares offered in the IPO. If the share price goes up, the over-allotment shares are sold. If the share price drops below the IPO price, the stabilisation agent will support the share price by buying shares back from the market, and will redeliver these shares to the issuer or the selling shareholders. Stabilisation activities following an IPO are allowed under the Market Abuse Regulation (hereafter MAR).

Parties involved and their roles

(i) *Management*: During the IPO process, management shall represent the company to various parties involved in the IPO process, such as syndicate analysts and potential investors. Management is also heavily involved in the drafting sessions for the prospectus, the analyst presentation and the roadshow presentation. Management shall further be involved in several due diligence sessions and various due diligence bring-down moments during the IPO process (ITF, launch, pricing and allocation, and stabilisation).

(ii) *Supervisory board*: Many Dutch listed companies have a two-tier board structure,

whereby the supervisory board is entrusted with the supervision of management, also during an IPO process. In the post-IPO structure, the supervisory board must establish three different committees if the issuer is to comply with the Dutch Code: the audit committee; the remuneration committee; and the selection and appointment committee.

(iii) *The (lead) underwriters*: The lead underwriters' role is to coordinate the overall process of the IPO, to advise on the structure and size of the offering, to perform a thorough due diligence exercise to ensure a non-misleading prospectus, and to coordinate all marketing activities necessary to make the deal a success. In addition, the banks will act as listing, paying, settlement and stabilisation agents.

(iv) *Lawyers*: An IPO process is a very complex and technical process. The lawyers will draft the majority of the prospectus and will check compliance with the applicable laws and regulations. The various other documents such as the underwriting agreement, the share lending agreement, the relationship agreement (an agreement with a substantial or controlling shareholder), governance documents such as the articles of association and board and committee rules, policies and employee incentive plans, are also drafted and negotiated by and between the lawyers.

(v) *Public relations firm*: A public relations firm can assist the company in its preparation for a public status. They are responsible for obtaining media coverage for the IPO, carefully drafting press releases, and training of management for their presentations to investors and media interviews.

(vi) *Accountant*: The accountant will audit the financial statements of the issuer over the last three financial years that will be included in the prospectus and deliver a report thereon. The accountant also provides 'comfort letters' to the underwriters in which certain confirmations are included with respect to the financial information as set out in the prospectus.

Anti-takeover measures

Under Dutch law, there are various active, passive, and other anti-takeover measures. If a company decides to implement an active anti-takeover measure, it should best do so when listing a company. In the context of an unsolicited public bid, the use of an anti-takeover measure is only permitted for the purpose of allowing a publicly traded company, for a limited period of time, the opportunity to ascertain the intentions of a bidder, and to create a level playing field in order to either consult with shareholders or to investigate alternatives preferable to an unsolicited bid.

The three most common active anti-takeover measures are: (i) protective preference shares; (ii) priority shares; and (iii) the issuance of depositary receipts.

(i) *Protective preference shares*: The issuer grants a call option on preference shares to an independent foundation, which gives the foundation the right to acquire such number of preference shares equal to 100% of the outstanding shares at the time of exercise of the call option, less one share. The foundation's objects are generally to protect the interests of the issuer and its business by making every effort to prevent anything which may affect the independence, continuity or identity of the issuer.

(ii) *Priority shares*: The holder of priority shares, generally an independent foundation, may have certain special statutory rights attached to those shares. Commonly, such rights include the right to make a binding nomination to appoint members of the management or supervisory board, the right to issue shares, and the right to approve certain important decisions of the company.

(iii) *Issuance of depositary receipts*: In this structure, the economic rights are separated from the voting rights of shares. A foundation will be the holder of the shares and will issue depositary receipts. The depositary receipts, which will be listed, represent the beneficial ownership of the underlying shares. The holder of the depositary receipts is entitled to all dividend payments and other distributions. The voting rights are legally held by the foundation. However, the foundation will generally grant a power of attorney to the holders of the depositary receipts to exercise the voting rights at their own discretion. In hostile situations, the foundation may limit, exclude or revoke the power of attorney (to be) granted to the depositary receipt holders. The Dutch Code provides that depositary receipts for shares should not be issued as an anti-takeover protective measure and that the board of the foundation should issue voting proxies under all circumstances and without limitations to all depositary receipt holders who request this. Companies may, however, deviate from the Dutch Code if they explain such deviation.

Other passive anti-takeover measures are, amongst others: (i) majority shareholding; (ii) a dual-voting structure containing two types of shares with different voting rights attached thereto; and (iii) the large company regime (*structuurregime*) acting as an extra layer for the appointment of members of the management board.

In addition, based on the Dutch Code, the management board may invoke a response time of 180 days in the event that a shareholder puts an item on the agenda that may lead to a change in the company's strategy. A new draft bill allows Dutch listed companies to invoke a statutory response time of up to 250 days. The management board can apply this response measure if shareholders ask the company to put a change in the board composition on the agenda of a general meeting, or in the event of a hostile public offer. The management board should use the response time to assess the effects the developments might have on the company's stakeholders, and to explore alternatives.

Regulatory architecture: Overview of the regulators and key regulations

Regulatory architecture

- *Governmental bodies*

  The AFM is the Dutch regulatory body that verifies the compliance of the prospectus with prospectus regulation and, in case of compliance, approves it. The AFM is the authority to which substantial holdings in Dutch listed companies have to be notified. Other notification requirements pursuant to the MAR also fall under the supervision of the AFM. The AFM also supervises the application of financial reporting standards by Dutch companies whose shares are listed on a Dutch, European or foreign stock exchange.

- *Public stock exchanges*

  Euronext is the main regulated (equity) market and stock exchange in the Netherlands. Euronext is governed by the Dutch Financial Supervision Act (hereafter DFSA). Operation of a regulated market in the Netherlands is subject to prior licence by the Dutch Central Bank (*De Nederlandsche Bank*) (hereafter DCB). The AFM, together with the DCB, monitors this market and ensures compliance with market rules.

- *Self-regulatory organisations*

  The VEB is an investor association that represents the interests of investors. The association, among other things, seeks attention in the media and takes action or initiates a class action on behalf of investors in case of (financial) abuses in listed companies.

Key rules and regulations

- *EU and Dutch rules and regulations*

  Most of the rules and regulations governing the Dutch equity markets and exchanges originate from EU legislation (for example, the Prospectus Directive, the Prospectus Regulation and the MAR). Such EU legislation has been implemented into Dutch law or, in the case of regulations, is directly applicable in the Netherlands.

  The DFSA is the main body of law governing the Dutch equity markets and exchanges. In December 2018, a bill implementing the Prospectus Regulation (Regulation EU 2017/1129) was submitted to the Dutch Parliament. Because the Regulation has direct effect, most articles concerning prospectuses will be removed from the DFSA. As a result, only four articles concerning prospectuses, which articles include the responsibility for the information in the prospectus and the national regime with regard to exempted offers of securities to the public, will remain part of the DFSA. In anticipation of the Prospectus Regulation, the Netherlands raised the exemption limit for offers of securities to the public from €2.5 million to €5 million in 2018.

  Additional rules and regulations applicable to listed companies can be found in a variety of other laws, governmental decrees and regulations. Certain legislation is only applicable to listed companies that have their registered seat in the Netherlands, such as the Dutch Code. Certain other rules, such as market rules applicable in a public takeover bid, apply only to companies listed in the Netherlands, irrespective of their jurisdiction of incorporation.

- *Euronext rules and regulations*

  Euronext has certain specific rules and regulations in place for companies listed on one of their markets. Euronext Rule Book I contains harmonised rules, applicable to all companies listed on any of the Euronext markets (that is, Amsterdam, Brussels, Lisbon, London or Paris). Euronext also has a non-harmonised rule book for each separate market it operates. The non-harmonised rule book for a particular market only applies to the companies listed on that particular market.

Recent, impending or proposed changes to regulatory architecture and the impact

The current Prospectus Directive, which was adopted in 2003 and revised in 2009, will be replaced by a new Prospectus Regulation from the EU. This Prospectus Regulation enters into effect in three phases and aims to create a capital markets union by further increasing harmonisation. The new Prospectus Regulation will enter into effect in its entirety on 21 July 2019. However, some parts have already entered into effect on 20 July 2017 and on 21 July 2018. The new Prospectus Regulation specifies, with greater clarity, the amount of information required in order to make prospectuses shorter and clearer.

As part of the new Prospectus Regulation, any issuer whose securities are admitted to trading on a regulated market or an MTF may in the future draw up every financial year a registration document in the form of a universal registration document (hereafter URD) describing the company's organisation, business, financial position, earnings and prospects, governance and shareholding structure. Such URD reduces the cost of compliance with the new prospectus regulation for frequent issuers and enables them to swiftly react to market windows.

Influence of supranational regulatory regimes or bodies

ESMA is an independent EU authority that contributes to safeguarding the stability of the EU's financial system by enhancing the protection of investors and promoting stable and orderly financial markets. It achieves this by, amongst other things, completing a single

rulebook for EU financial markets, and promoting supervisory convergence by providing guidelines and Q&As on EU regulation.

Significant market practices impacting IPOs

Shares in Dutch IPOs are generally offered within the United States of America in accordance with Rule 144A (hereafter Rule 144A) under the US Securities Act of 1933, as amended (hereafter Securities Act). Offers and sales of securities to the public in the United States must be registered, absent an exemption. In very general terms, Rule 144A establishes an exemption from this registration requirement where the securities are only offered and sold to qualified institutional buyers in the United States in a way that would not otherwise constitute a US public offering. As a result, several US practices have become market practice in the Netherlands.

Rule 144A does not, however, provide an exemption from the various US securities anti-fraud laws, in particular, the broad anti-fraud provisions of Rule 10b-5, under which the company, its directors, its underwriters and others may potentially be liable to US investors if the prospectus or other offering materials contain any untrue statement of a material fact, or omit material facts necessary to make the statements that are made in the prospectus not misleading.

To be found liable under Rule 10b-5, the defendant must have acted recklessly or with intent to deceive. The investor making a claim under 10b-5 needs to have suffered a loss caused by the misstatement or omission. While the Dutch disclosure regime also prohibits such misstatements or omissions in principle, as a practical matter US investors and regulators are much more likely to pursue securities law claims or otherwise seek compensation from the company, its underwriters and its directors than investors in the Netherlands. Consequently, this risk is taken very seriously.

The exercise of reasonable care, in the form of a carefully conducted due diligence investigation, tends to negate the existence of the intent to deceive or recklessness required for a 10b-5 claim. As a consequence, enhanced underwriter due diligence has become a critical component of a defence to liability in Rule 144A offerings. As part of that exercise, underwriters typically also request what are known as "10b-5 disclosure letters" from both their own and the company's US counsel, which are negative assurance letters as to the absence of any such misstatement or omission. This, in turn, leads the lawyers to insist that the prospectus is generally drafted to US disclosure standards, in addition to the standards that would apply in the Netherlands.

Another US practice relates to the financial information included in the prospectus. Pursuant to the Dutch requirements, the prospectus must include the audited financial statements of the company over the last three years using the international financial reporting standards (IFRS) or equivalent generally accepted accounting principles (GAAP) as well as interim financial information, which may be unaudited, covering at least the first six months of the financial year (if the prospectus is published more than nine months after the end of the last financial year).

In practice, the 135-day rule is applied and the prospectus contains financial statements with a balance sheet as of a date that is within 135 days prior to settlement of the IPO. This requirement is driven by US accountants' comfort letter practices. Depending on the timing of the offering, this sometimes requires the preparation and inclusion of additional financial statements in the document, as well as additional disclosures relating to that information in the "operating and financial review" paragraph of the prospectus, while this would formally not be required under the Dutch rules. It may also be necessary to have those financial statements reviewed by the auditors, which has timing and cost implications.

Public company responsibilities

Obligations imposed that do not apply to private companies

- *Periodic reporting and disclosure requirements*

  After a company is listed, the company, its shareholders, or other affiliated persons may be bound by extra regulation.

  Most importantly, the company is required to disclose inside information without delay. This obligation derives from the MAR. Inside information is information of a precise nature, that has not been made public, relating directly or indirectly to one or more issuers or to one or more financial instruments, and that, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments. The information must be made public in the form of a press release. The press release must also be submitted to the AFM and published on the company's website. The company will be entitled to delay the disclosure of inside information if all of the following three conditions are met:

  (i) immediate disclosure is likely to prejudice the legitimate interests of the company;

  (ii) delay or disclosure is not likely to mislead the public; and

  (iii) the company is able to guarantee that the information concerned is kept confidential.

  In addition, a major shareholder who, directly or indirectly, obtains or loses capital or voting rights in a listed company which exceeds or falls below certain threshold values, must, without delay, notify the AFM of its holdings and the relevant change. The threshold values for the purpose of this obligation are 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%.

  Furthermore, there are several other ongoing (notification) obligations. These include, amongst others:

  (i) notifications by members of the management and supervisory board of their shares and voting rights and of changes therein where these concern shares, depositary receipts for shares and rights to acquire shares (such as employee share options, share awards, call options, warrants and convertible bonds) in the issuer;

  (ii) notifications of transactions that have been performed by managers in shares of the company;

  (iii) notifications of changes in share capital or voting rights of the company;

  (iv) the obligation to provide shareholders with certain information on the upcoming general meeting ultimately on the 42nd day before that meeting;

  (v) the obligation to publish the general meeting's voting results; and

  (vi) the obligation to publish annual and semi-annual accounts.

- *Corporate governance standards*

  In 2016, a new Dutch Code was published. The Dutch Code places, amongst other things, more emphasis on long-term value creation and introduces "culture" as a component of effective corporate governance. The Dutch Code operates according to the "comply or explain" principle. This principle means that listed companies must apply the principles and best practice provisions, or provide reasons as to why they are opting not to apply a particular principle or best practice provision.

Potential risks, liabilities and pitfalls

Potential risks that should be addressed during the due diligence process

Pursuant to the Prospectus Directive, any prospectus in the EU must contain all material information relating to the issuer and the shares offered by the issuer. In addition, it must contain all information that is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position and prospects of the issuer. Pursuant to the DFSA, the information in a prospectus may not be inconsistent or in conflict with information present at the AFM with regard to the issuer and must be presented in a form comprehensible to a reasonably informed person exercising due care.

If the prospectus is misleading, underwriters may establish a so-called due diligence defence to avoid prospectus liability. They must prove that they conducted a "reasonable investigation" in respect of material misstatements or omissions and, following such investigation, the underwriters must have reasonable grounds to believe, and must believe, at the time the prospectus was published, that the statements therein were materially true and that there was no omission to state a material fact. Therefore, the due diligence performed by the underwriters will generally cover all items that need to be included in the prospectus pursuant to the annexes to the Prospectus Regulation.

Potential legal liabilities and penalties when going public

After the company has gone public, the possibility of prospectus liability can arise. Prospectus liability can arise from several legal grounds, such as unlawful acts or unfair commercial practices. There are not many prospectus liability cases in the Netherlands. The most famous one is the World-Online case. In this case, the Dutch Supreme Court held that, in order to assess whether a statement is misleading, the starting point must be the presumed expectations of an averagely informed, prudent and observant ordinary investor at whom the statement was aimed or which is received by the latter. It can be expected that this "reference investor" is prepared to go deeply into the offered information but not that he is a specialist or has special knowledge and experience. This has become a very important criterion for disclosing information in a prospectus and in marketing material.

Common missteps and pitfalls that may increase liability risk

There are strict rules on publicity and marketing during an IPO process. Investors should make investment decisions based on the full disclosure in the prospectus and not on information that has not been approved by the relevant regulator. Providing information prior to an IPO that has not been approved is known as "gun jumping". An interview given by Google executives in *Playboy* prior to the IPO of Google is an iconic example of such. A company and all affiliated parties should be aware of all statements it makes, including interviews in magazines or on the internet, during the IPO process.

Following the IPO, inside information has to be published immediately by way of a generally accessible medium to investors, pursuant to the MAR. For newly listed companies, the MAR contains a whole new regime with obligations to be compliant with, especially the assessment of whether certain information is considered as inside information. The AFM has published practical guidelines which contain points of reference as to what could be considered as inside information; however, the final assessment of whether information qualifies as inside information is entirely up to the issuer. Especially when a company has just become a listed company, such assessment can be difficult.

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Jetty Tukker specialises in securities and corporate law, with particular emphasis on equity capital markets and (public and private) M&A transactions. Her capital markets experience includes initial public offerings (IPOs), secondary offerings and rights issues. She leads the equity capital markets group of Houthoff jointly with Alexander Kaarls. Over the past 10 years, Jetty has fulfilled a lead role in some of the most significant IPOs in the Dutch markets. Other activities include advising both private and public companies on joint venture and corporate governance matters. Jetty joined Houthoff in 2016, after practising for more than 16 years in the Amsterdam and London offices of Allen & Overy. She graduated from Radboud University Nijmegen with Master's degrees in Dutch law and business administration in 1998 and 1999, respectively, and was admitted to the Bar in the Netherlands in 2000.

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