Canadian Capital Markets 101: Key Terms to Know

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OCTOBER 17-19, 2018

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Canadian Capital Markets 101:
Key Terms to Know

An overview of the key terms to know in connection with the transactions that raise capital in the Canadian market:

- Key participants.
- Main types of securities.
- Main types of securities offerings.
- Key terms in capital markets transactions.

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What Are Capital Markets?

Capital markets are markets for buying and selling equity securities and debt obligations in order to match the demand for funds of issuers with the supply of funds from investors.

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Key Participants in the Capital Markets

- Issuer
- Investors
- Selling Shareholders
- Investment Banks/ Dealers
- Regulatory Agencies

REUTERS/Mark Blinch

Investment Banks/Dealers

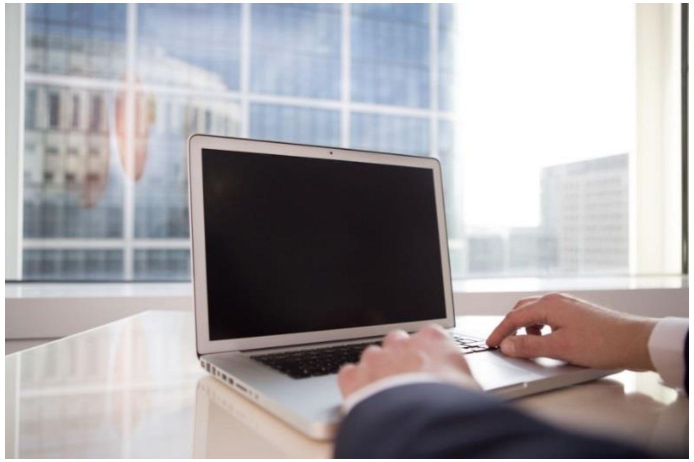
- The institutions who facilitate transactions when an issuer needs buyers or a buyer is looking for an issuer in which to invest.
- Must be registered with applicable regulators in the appropriate category.
- **Investment dealers** are able to sell any types of securities.
- Other categories, such as an **exempt market dealer** or **restricted dealer**, are restricted as to what they may sell.

Investment Banks/Dealers (continued)

- They may be acting as an **underwriter** who, as principal, agrees to purchase securities with a view to selling them to other buyers.
- If there is more than one underwriter, typically one will be the **lead underwriter** of the **underwriting syndicate**.
- If the dealer is acting only as **agent**, it acts on behalf of the issuer to sell securities of the issuer to buyers and is not required to purchase any securities for its own account.

Regulatory Agencies

- Issuers must deal with each of the regulators in the jurisdictions where they are a **reporting issuer** or where they are offering securities.
- An issuer is a reporting issuer if it is filing required documents with the applicable **securities regulatory authority** in a Canadian jurisdiction.



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Regulatory Agencies (continued)

- The **Investment Industry Regulatory Organization of Canada** (IIROC) oversees all investment dealers and trading activity on equity and debt marketplaces in Canada.
- The **Mutual Fund Dealers Association of Canada** (MFDA) regulates **mutual fund dealer** members.
- The Canadian federal, provincial and territorial governments also enact legislation and have a regulatory function in the capital markets.

Stock Exchanges

Stock Exchanges in Canada provide the markets in which securities are bought and sold in Canada.

REUTERS/Toru Hanai

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Other Markets

- **Alternative Trading Systems (ATS)** are marketplaces that are not a recognized quotation and trade reporting system or a recognized exchange.
- **Over-the-counter (OTC) Market** where dealers trade directly with each other through telephone, email and proprietary electronic trading systems, rather than going through a central securities exchange.

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Types of Securities

In the context of capital markets, a **security** is:

- An instrument that represents ownership (**equity security**, often common shares, sometimes other types of shares, **partnership** interests or **trust** units).
- A **creditor** relationship (**debt obligation**, like bonds, debentures or notes which may be **convertible** into equity securities).
- Other right to ownership (such as a **call** or **put option** or **warrants** to acquire equity securities).

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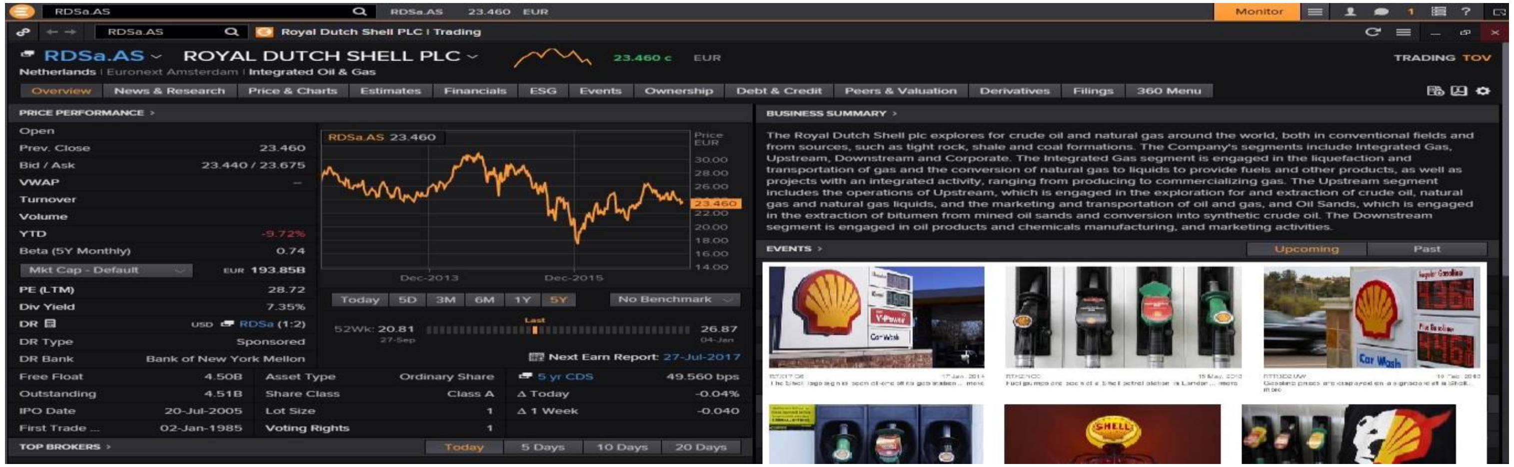
Capitalization

- **Capitalization:** total amount of a company's outstanding securities, including short-term debt, long-term debt and equity. Also commonly used to refer to the capital (debt and equity) structure of a company.
- **Market capitalization:** total market value of a **public company** calculated by multiplying the number of issued and outstanding shares by the current **market price** of one share.

Types of Offerings – Who is Selling?

- **Primary Offering:** Public offering of securities directly by the issuer qualified by prospectus, usually in order to raise additional capital.

- **Secondary Offering:** Public resale offering of securities by shareholders or other securityholders of the issuer qualified by prospectus. The issuer does not receive any proceeds.



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Types of Offerings - When is Issuer Selling?

- **Initial Public Offering**: Often called an IPO, it is an offering by a **private issuer** where its equity securities are being offered to the public for the first time and are qualified by a prospectus filed with the applicable securities regulatory authorities.
- **Follow-on Offering**: After completing its IPO, an issuer may later decide to offer additional securities, whether debt obligations or equity, to the public.

Types of Offerings – How Marketed?

Best Efforts Offering:

- The underwriters do not agree to purchase all of the securities from the issuer, only to use their best efforts to sell the securities and act only as an agent of the issuer in marketing the securities to investors.
- The underwriters purchase from the issuer only those securities that their clients have agreed to buy.
- The price of the securities may not be determined until after the marketing is complete.

Types of Offerings – How Marketed?

Marketed Offering:

- The underwriters agree to purchase all of the securities from the issuer or selling shareholder but may not firmly agree on the price or amount until after marketing the securities to potential investors.
- The underwriters purchase from the issuer or other seller only those securities that their clients have agreed to buy.
- The price of the securities and size of the offering may not be determined until after the marketing is complete.

Types of Offerings – How Marketed?

Firm Commitment Underwriting:

- Also known as a firm commitment offering.
- An offering where the underwriters commit to purchase all of the securities being offered by the issuer and/or the selling shareholders with a negotiated discount or commission regardless of whether investors purchase the securities.
- Any securities not resold to the public are paid for and held by the underwriters for their own account.

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Types of Offerings – How Marketed?

Bought Deal:

- Type of firm commitment underwriting.
- Underwriters agree to purchase all securities of an issuer that are to be offered in a distribution under a short form prospectus at a negotiated price.
- There are exemptions from certain requirements if pursuant to a **bought deal agreement**. For example, can offer the securities for sale prior to a receipt for a preliminary short form prospectus.
- Preliminary short form prospectus must be filed no more than 4 business days after confirmation of the agreement.

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Types of Offerings – Private Placements

Private Placement: Sale of securities by an issuer pursuant to an exemption from the prospectus requirement. Most common types used:

- **Accredited Investor Exemption**.
- **Minimum Amount Exemption**.
- **Offering Memorandum Exemption**.
- **Private Issuer Exemption**.
- **Family, Friends and Business Associates Exemption**.
- **Asset Acquisition Exemption**.
- **Petroleum, Natural Gas and Mining Properties Exemption**.

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Key Offering Documents

- **Prospectus**: Disclosure document that must be used to offer and sell the securities to the investing public when there is no exemption.
- **Short Form Prospectus**: Can be used by issuers that meet certain issuer or transaction requirements. Documents may be incorporated by reference.
- **Offering Memorandum** (OM): Disclosure document provided to prospective investors in an exempt offering or private placement of securities.

Key Agreements

- **Underwriting Agreement**: The agreement between the underwriters, the issuer, and the selling shareholders, if any.
- **Agency Agreement**: The agreement between the agents, the issuer, and the selling shareholders, if any.
- **Subscription Agreement**: The agreement signed by the purchaser, addressed to the issuer and the underwriters or agents, if any, that is accepted by the issuer in connection with a private placement. Not used for public offerings.

Key Deal Terms - Commission or Discount

Commission or Discount:

- Underwriters' compensation for marketing and selling the offered securities and for assuming the risk that they may be unable to sell all the offered securities. Typically lower for an agent not assuming that risk.
- For equity offerings, it is expressed as a percentage of the purchase price.
- For debt offerings, it is expressed as a percentage of the principal amount of debt being offered.

Key Deal Terms - Over-allotment Option

Over-allotment Option: Also green shoe option. Granted to the underwriters of a prospectus offering or private placement to cover over-allotments.

- Can purchase additional securities (typically up to 15% of the number of securities issued in the offering) with terms identical to the original issuance of securities.
- From either the issuer, the selling shareholders, or both.
- At the original purchase price for up to 30 days after the date of the underwriting agreement.

What’s Market?

Scenario: A corporation is contemplating an offering of its securities and you have been asked to find deal terms of similar transactions that have been completed in recent years.

You could use:

- **System for Electronic Document Analysis and Retrieval (SEDAR)**
- DisclosureNet™
- **Business Law Centre on WestlawNext® Canada**
- **What's Market** on Practical Law Canada

Questions?

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Thank You For Attending!

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