

# NEWS ROUND UP

A Morrison & Foerster summary of recent developments affecting Israeli companies active in the capital markets.

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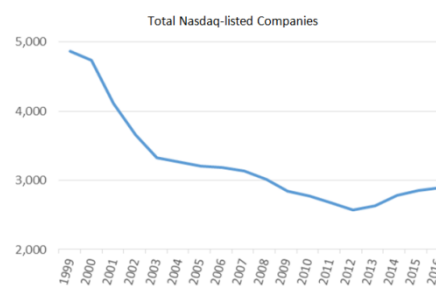
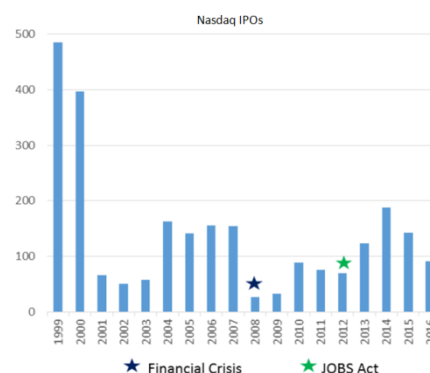
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## Reviving the U.S. IPO Market

A recent study based on work undertaken by the University of Florida found that the median age of companies going public in the United States in 1999 was 5 years. Between 2004-2016, the median age grew to 10 years. Six companies between 2004 and 2015 reached valuations upwards of \$10 billion before going public in the United States. Capital invested in private tech companies grew from \$11b billion in 2005 to \$75 billion in 2015 and almost tripled from 2013 to 2015. The market is “losing” IPO candidates as promising companies choose to stay private longer or pursue M&A exits.

On May 10, 2017, the Securities and Exchange Commission (“SEC”)’s Division of Economic and Risk Analysis and New York University’s Stern School of Business held a dialogue aimed at assessing the economic factors causing the recent downturn in initial public offerings (“IPOs”) in the U.S. market. Former Acting Chair and current SEC Commissioner Michael Piwowar began the dialogue, reiterating the importance of making public capital markets available to businesses. Commissioner Piwowar emphasized that a robust IPO market fosters innovation, creates jobs and provides opportunities for investors to increase wealth and mitigate risk.

Throughout the discussion, academics, regulators and industry practitioners opined on economic trends that have led to a severe decrease in IPO activity over the past fifteen years. The overall U.S. IPO activity is presently less than 1/3 of where it stood in the 1990s and 40% of current-day IPOs are undergone by large companies. Panelists agreed that regulation, including restrictions and disclosures required by Sarbanes Oxley and the JOBS Act, has had at most a minimal impact on the decline of the IPO market. Rather, through venture capital, private equity, hedge funds and mutual funds, emerging companies today enjoy a variety of options to privately grow their businesses and gain needed liquidity. Even firms desiring “exit options” can opt to pursue strategic sales rather than entering the public market. While some industry professionals expect an uptick in IPOs as soon as this year, the time allocation, cost and risk of going public will likely continue to limit IPO activity, particularly among smaller issuers.



Commissioner Piwowar's opening remarks at the SEC-NYU Dialogue on Securities Market Regulation: Reviving the U.S. IPO Market are available at:

<https://goo.gl/rp6Oob>. Based on the level of interest that this topic has garnered, we believe that the SEC is likely to devote significant attention to reforms it believes may make U.S. IPOs more attractive.

## **NYSE Proposes to Require Listed Companies to Provide Advance Notice of Dividend and Stock Distribution Announcements**

On April 13, 2017, the NYSE issued a proposed rule change that would amend Sections 204.12, 204.21, and 202.06(B) of its NYSE Listed Company Manual to require listed companies to provide notice to the NYSE at least ten minutes before making any public announcement about a dividend or stock distribution, including outside of the hours during which the NYSE's immediate release policy is in operation. The principal effect of the change would be to require listed companies to provide ten minutes' advance notice to the NYSE with respect to a dividend announcement made at any time, rather than just during the hours of operation of the immediate release policy as is currently the case. The NYSE noted that the proposed rule change will help avoid confusion in the marketplace if there is contradictory information available from multiple sources or uncertainty as to whether news reports of dividends are accurate, and also will enable NYSE staff to answer questions from market participants about corporate actions.

A copy of the proposed rule change is available at:

<https://goo.gl/FAknbM>.

## **NYSE MKT Proposes Rule Change to Harmonize its Periodic Reporting Requirements with Those of the NYSE**

On May 8, 2017, the NYSE MKT issued a proposed rule change to harmonize its periodic reporting requirements with those of the NYSE. Currently, the NYSE MKT provides companies that are late in making required filings with a compliance plan under its general provisions for companies that are non-compliant with NYSE rules, as set forth in Section 1009 of the NYSE MKT Company Guide. Section 1009 gives the NYSE MKT the discretion to grant companies up to 18 months to cure events of noncompliance and does not provide specific guidance with respect to how compliance periods should be administered for companies late in submitting their filings. In contrast, Section 802.01E of the NYSE Listed Company Manual limits companies to a maximum cure period of 12 months to submit all delayed filings and includes specific provisions for determining how much time companies should be given to cure within the context of that maximum 12 months and what is required to be eligible for that additional time. The proposed rule change also harmonizes NYSE MKT requirements with respect to semi-annual reporting by foreign private issuers with that of the NYSE. The NYSE MKT noted that a consistent approach among the two sister exchanges will avoid confusion among investors and companies and their service providers about the applicable rules.

A copy of the proposed rule change is available at:

<https://goo.gl/ht7Uqh>.

## **Late Stage Private Placements: A Life Sciences Sector Survey**

As privately held companies choose to remain private longer and defer their IPOs, these companies are increasingly reliant on raising capital in successive private placements. For companies in the life sciences sector, for instance, a late-stage private (or mezzanine) placement made to known and well-regarded life science investors may serve to validate the company's technology. We have compiled data on late-stage private placements in the life sciences sector.

In this survey, we have examined the late-stage private placements that preceded life sciences IPOs undertaken in 2015 and in 2016. In 2015, there were 61 life sciences IPOs completed. Overall, in 2015, there were 185 IPOs completed. Life science IPOs represented approximately 33% of the IPOs for 2015. In 2016, there were 42 life sciences IPOs completed. Overall, in 2016, there were 117 IPOs completed. Life sciences IPOs represented approximately 36% of the IPOs for 2016.

To read our survey, click here:

<https://goo.gl/WSjEM7>.

## **A Trio of FINRA Notices Focused on Capital Formation Issues**

On April 12, 2017, the Financial Industry Regulatory Authority, Inc. ("FINRA") released three regulatory notices for comment that propose amendments to various FINRA rules affecting capital formation. In connection with its release of the notices, FINRA President and CEO Robert Cook noted FINRA's continuing commitment to assessing its regulations and their role in facilitating capital formation. This initiative is part of the comprehensive self-evaluation and

improvement initiative that FINRA announced several months ago called the FINRA 360 initiative. The initiative, FINRA's recent request for comment on its engagement efforts, and these regulatory notices certainly reflect a new tone. In all three notices, FINRA specifically requests that commenters address the economic impacts of the rules, including costs and benefits, and the specific effects on the capital formation process.

FINRA Rule 5110 (commonly referred to as the Corporate Financing Rule) and certain other FINRA Rules address commercial fairness in underwriting and other arrangements for the distribution of securities. Rule 5110 provides for the review by FINRA of underwriting or other arrangements in connection with most public offerings in order to enable FINRA to assess the fairness and reasonableness of proposed underwriting compensation and arrangements. An offering that is required to be filed with FINRA may not proceed until FINRA has delivered a no-objection letter relating to the underwriting compensation. FINRA Regulatory Notice 17-15 seeks comment on proposed amendments to the Corporate Financing Rule that are characterized by FINRA in its Notice as intended to modernize and simplify the rule based on FINRA's retrospective review of the rule.

To learn more, read our client alert: <https://goo.gl/zOANBZ>.

## FINRA Publishes New Guidance on Social Media and the Application of Rule 2210

In Regulatory Notice 17-18, FINRA provided additional guidance, in the form of 12 FAQs, on its earlier regulatory notices relating to the use of social media and the application of FINRA Rule 2210

(Communications with the Public). Specifically, the FAQs expand on the areas of recordkeeping, third-party posts and the use of hyperlinks to third-party sites. FINRA acknowledged that the use of social media and digital communications has expanded since the last regulatory notice on the use of social media by member firms, which was in Regulatory Notice 11-29 in 2011.

To learn more, read our client alert: <https://goo.gl/OBZb8k>.

## Trump Administration Releases One-Page Tax Plan

On April 26, 2017, amidst much anticipation, the Trump administration released its tax plan, entitled "2017 Tax Reform for Economic Growth and American Jobs" (the "Plan"). The Plan was presented at a press conference by Secretary of the Treasury Steven Mnuchin and Director of the National Economic Council Gary Cohn. Touted on its face as the biggest individual and business tax cut in American history, the plan only consists of a single page containing just twelve substantive bullets; however, Mnuchin stated that the Plan is intended only to outline the core principles of the Trump administration's tax reform agenda. The Plan offers less detail than plans issued by President Trump during his campaign, and it is unclear whether the public should look to his campaign materials to fill in the gaps.

To learn more, read our client alert: <https://goo.gl/es3fW7>.

## UPCOMING EVENTS

### **The New Benchmark for Financial Transactions**

*Morrison & Foerster Teleconference*

Tuesday, June 6, 2017

12:00 p.m. – 1:00 p.m. EDT

The date for implementation of the new EU Regulation on indices used as benchmarks in financial instruments is January 1, 2018, which is rapidly approaching. The new Regulation will have a major impact on securities or other financial contracts in the EU that reference a financial benchmark (which is likely to include some customized proprietary indices). Our speakers will be joined by representatives of IHS Markit who will share their perspectives and address issues facing industry participants.

For more information, or to register for this free teleconference, please visit: <https://goo.gl/lMkBc1>.

### **Keeping up with Regulatory Developments Affecting Social Media Use**

*Morrison & Foerster Teleconference*

Thursday, June 15, 2017

12:00 p.m. – 1:00 p.m. EDT

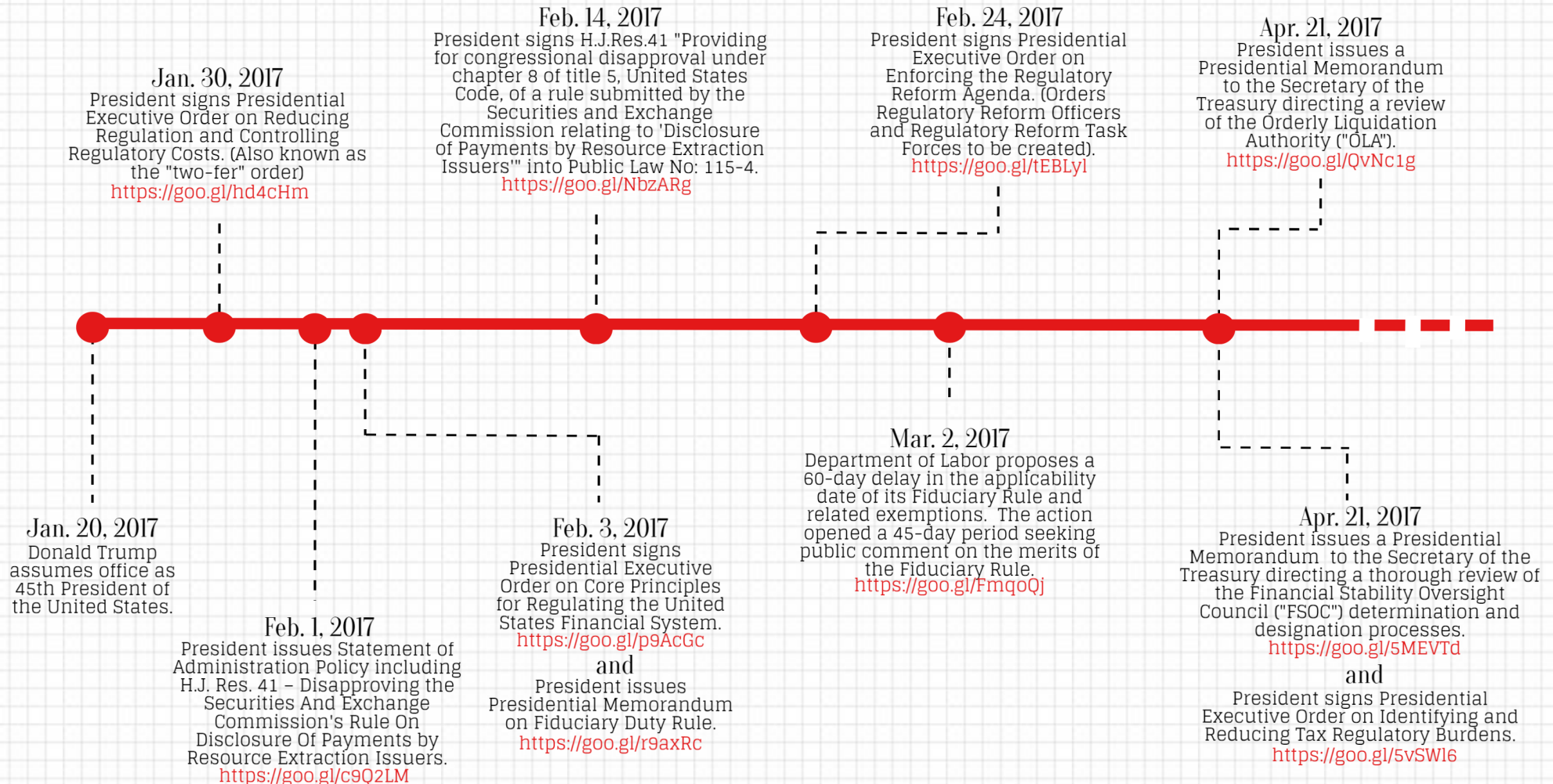
This session will focus on the considerations for issuers, broker-dealers, registered investment advisers, and commodity pools in using social media, whether for corporate communications or in the context of securities offerings.

For more information, or to register for this free teleconference, please visit: <https://goo.gl/LhxXpC>.

## A Timeline of Recent

# PRESIDENTIAL ACTIONS

## on Regulation Reduction



## CLIENT RESOURCE CORNER

We have a number of resources available to our clients and friends including:



### MoFo Jumpstarter.

Our Jumpstart blog is intended to provide entrepreneurs, domestic and

foreign companies of all shapes and sizes, and financial intermediaries, with up to the minute news and commentary on the JOBS Act. Visit: [www.mofojumpstarter.com](http://www.mofojumpstarter.com)



### MoFo's Quick Guide to REIT IPOs.

Our recently updated Quick Guide to REIT IPOs provides an overview of the path to an IPO for a REIT. The guide also addresses regulatory, tax and accounting considerations relevant to sponsors considering forming a REIT. Our guide is available here:

<https://goo.gl/jwrKE1>.



### The Short Field Guide to IPOs.

In our recently updated IPO Field Guide we provide an overview of the path to an initial public offering and address a number of recent developments. Our guide is available here: <https://goo.gl/Cvxa4S>.

### Capital Markets Practice Pointers.

In our practice pointers, which address a range of topics of interest, we offer guidance on frequent issues encountered in connection with securities disclosures and filings. Visit our Practice Pointer webpage at: <https://goo.gl/FizH9N>.



Social media sites are transforming not only the daily lives of consumers, but also how companies interact with consumers. Social media generates new legal questions at a far faster pace than the law's ability to provide answers to such questions. In an effort to stay on top of these emerging issues, and to keep our clients and friends informed of new developments, Morrison & Foerster has launched a newsletter devoted to the law and business of social media. Visit [www.mofo.com/sociallyaware](http://www.mofo.com/sociallyaware).

## CONTACTS

### James Tanenbaum

(212) 468-8163  
[jtanenbaum@mofo.com](mailto:jtanenbaum@mofo.com)

### Anna Pinedo

(212) 468-8179  
[apinedo@mofo.com](mailto:apinedo@mofo.com)

### Ze'-ev Eiger

(212) 468-8222  
[zeiger@mofo.com](mailto:zeiger@mofo.com)

### Lloyd Harmetz

(212) 468-8061  
[lharmetz@mofo.com](mailto:lharmetz@mofo.com)

## ABOUT OUR ISRAEL PRACTICE

For more than four decades, Morrison & Foerster has participated in the development of the Israeli market, representing numerous Israeli companies globally, at every stage of their evolution, as well as the foreign investors or investment banks that finance those companies. We provide innovative securities and capital markets advice that is sharply focused on providing global capital markets access to technology-centric companies. We believe that this expertise, as well as our historic commitment to Israel, has contributed to our long and successful track record with Israeli clients. For more information, visit: <https://www.mofo.com/practices/international/israel/>.

## ABOUT MORRISON & FOERSTER

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life sciences companies. We've been included on *The American Lawyer's* A-List for 13 straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients while preserving the differences that make us stronger. This is MoFo. Visit us at [www.mofo.com](http://www.mofo.com).

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*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.*