LUISS

The Direct Listing As a Competitor of the Traditional Ipo

Research Paper – Law & Economics Course (IUS/05)

Degree: Economics & Business, Dipartimento di Economia e Finanza

Academic Year: 2019-2020

Name: Ludovico Morera

Student Number: 216721

Supervisor: Prof. Pierluigi Matera

Abstract

In 2018, Spotify SA broke into the NYSE through an unusual direct listing, allowing it to become a publicly traded company without the high underwriting costs of a traditional Initial Public Offering that often deter companies from requesting to list. In order for such procedure to be possible, Spotify had to work closely with NYSE and SEC staff, which allowed for some amendments to their implementations of the Securities Act and the Securities Exchange Act. In this way, Spotify's listing was done within the limits imposed by the U.S. market authorities.

Several rumours concerning the direct listing arose, speculating that it may disrupt the American going public market and get past the standard firm-commitment underwriting procedures. This paper argues that these beliefs are largely wrong given the current regulatory limitations and tries to clarify for what firms direct listing is actually suitable. Furthermore, unlike the United Kingdom whose public exchanges have some experience, the NYSE faced such event for the first time; it follows that liability provisions under § 11 of the securities Act of 1933 may be attributed in different ways, especially due to the absence of an underwriter that may be held liable in case of material misstatements and omissions upon the registered documents. I find out that the direct listing can substitute the traditional IPO partially and only a restricted group of firms with some specific features could successfully do without an underwriter.

INTRODUCTION

Financial innovation has been progressing at a disrupting pace in the latest decades pushing people to overhaul their strategies to raise funds; lawmakers often struggle to keep up with such quick-fire rhythms in that new rules are required to regulate innovative financial processes. Brilliant entrepreneurs and businessmen oftentimes exploit such missing regulations to raise capital or make profit in alternative ways.

The usual and best-known method for a company to go public is to hire an investment bank as the underwriter for the company's newly issued equities which are sold to investors on a public exchange in the primary market on behalf of the issuer. Spotify's choice of going public through a direct listing in 2018 gave rise to innumerable rumours as it was the first time that the NYSE[1] faced an event of such a magnitude[2]; the national exchange endeavoured to apply the same legislative iter as to traditional initial public offerings, but this attempt inevitably gave rise to a series of issues with SEC[3] with respect to the regulations of both the Securities Act and the Securities Exchange Act (Exchange Act)[4]. Traditional IPOs and direct listings are two different procedures that companies have at their disposal and substantially differ in terms of scope, as discussed in section I.A. Companies primarily enter the offering market in order to raise more capital on top of the equity already issued through private markets; here lies the crucial difference between the two procedures: direct listing does not yet allow the issuer to raise capital, but it merely consists in the firm's private stockholders selling out their shares to the market. Therefore, direct listing turns to an exclusive category of companies, mostly unicorns[5], which are usually full of cash and do not need to go through further fundraising

1 New York Stock Exchange.

2 The Exchange did experience listings similar to Spotify's but not in terms of dimension.

3 The U.S. Securities and Exchange Commission is an independent federal government agency responsible for protecting investors, maintaining fair and orderly functioning of the securities markets, and facilitating capital formation.

4 The two acts date back respectively to 1933 and 1934. They were drafted within the New Deal legislative body as a result of President F.D. Roosevelt's attempt to restore the U.S. market after the crash in 1929. In spite of the consistent time span, the two Acts are still in place today after having been deeply overhauled.

5 Unicorns are technology companies whose market valuation is at least $1 billion.

rounds. Section I.B. analyses the characteristics that a company suitable for direct listing should have prior to commencing registration procedures with the SEC. One of the disruptively new features of direct listing is the absence of an underwriter: investment banks have ever since the beginning sold newly issued equities on behalf of listing companies. The usual procedure dictates that private companies who wish to go public shall approach an investment bank that, along with the so called underwriting syndicate composed by an affiliation of several investment banks, takes care of the sale procedures of the equities[6]. Underwriters go along with the company's representatives on a roadshow throughout the country, with the aim of presenting the assisted company and marketing its shares to all interested investors.

Yet, the absence of the underwriter poses some legal issues: § 11 of the securities Act permits the investing public to raise claims against the underwriters in case of wrongdoing; in direct listings it is not clear who should bear such responsibility. Should it be put on companies or their financial advisers? Indeed, the same investment bankers that underwrite firms' securities in traditional IPOs, in direct listings they are bound to perform the role of mere financial advisors and as such can still be liable for material misstatements or omissions. On the other hand, companies face a higher risk of being attributed liability. The issue discussed in this paper is relatively recent: the U.S. legislation has not come across a lawsuit involving some parties that took part in a direct listing. This may sound odd, but the only direct listings carried out in the country are those of Spotify Technology SA and of Slack Technologies, Inc, whereas the United Kingdom has seen this type of listing on its public exchanges each year since 1995[7]. Starting from the definition of underwriter under § 2(a)(11), section II.A. analyses how underwriter's liability is attributed and if direct listers' financial advisors may be considered as acting as underwriters. Some evidence shows that there is potential for financial advisors to be held liable under § 11; nonetheless, inference about the latter topic is limited due to the lack of a judgement upon some fallacies stemming from direct listing.

6 For more on the role of the underwriting syndicate see Rajesh P. Narayanan, Kasturi P. Rangan & Nanda K. Rangan, The role of syndicate structure in bank underwriting, 72 Journal of Financial Economics 555–580 (2004).

7 Exchange, London Stock. "A guide to listing on the London Stock Exchange (LSE)." November, London (2010). P. 108 below "Listing": Issuers can list their GDRs without raising capital – known as an 'introduction'.

Spotify's and Slack's direct listings were made possible thanks to SEC and NYSE's willingness to cooperate with the executives of the companies; after all, the U.S. as a whole do not mind attracting foreign companies that list on the national market and so are investment bankers who, although do not earn the usually consistent spread fee can still gain substantial money. Yet, it was not easy for the Commission to follow the direct listing procedures: in the first place, long talks with the Exchange were needed to bring such a listing to light and the whole process deeply resembled that of a traditional public offering as noted in Section II.B. Still, considering the uncertainties arising from the utterly new context, it was quite a big step forward as to legal and financial boldness from authorities.

Direct listing allows to cut listing costs, to speed up the related procedures and to most probably reduce the overall risk of litigation. Companies that wish to list in such a way have to necessarily raise massive amounts of funds through private markets, which nowadays is becoming a more common event as private placements are growing bigger and bigger. As of now, direct listing does not permit companies to raise capital at the same time of listing, but NYSE has expressed some intentions to erase also this limitation. Further legal developments are expected from the SEC and the national exchanges, which may revolutionise the traditional process for going public.

I. THE CONTEXT FOR DIRECT LISTING

A. Direct Listing: Context and Purposes

In the attempt of going public while cutting expenses to the bone and circumventing investment banks' underwriting fees, some privately held companies have long been seeking for new methods, innovative and reliable at the same time[8]. Spotify came up with the seemingly odd idea of performing a direct listing in early 2017; this piece of news spread numerous rumours about the Swedish music streamer giant's ambiguous

[8] Massimo G. Colombo, Douglas J. Cumming & Silvio Vismara, Governmental Venture Capital for Innovative Young Firms, The Journal of Technology Transfer, 41(1), 10-24 (2014).

intentions. As it was the first time that the US investors and lawmakers came across such an event, some of them were looking at some procedure very similar to a traditional IPO. Indeed, the two are equivalent in terms of making a company's privately held shares available on a public exchange, but the crucial difference lies in the scope: unlike traditional IPOs, direct listings do not allow firms to raise capital, which is paradoxically the principal objective for most companies wishing to go public[9]. It is clear that only companies gone through enough fundraising rounds can thus aim at performing a direct listing to launch their shares on the market[10].

Direct listing deviates from a traditional US IPO process in that it purports to achieve some goals which are not necessarily aligned with those of the latter one's[11]. Companies that do so are also willing to bear a higher amount of risk as to the public placement of its shares due to the lack of a stock underwriter, defined in the Unites States Code[12] as "any person who has purchased from an issuer … offers or sells for an issuer" and that thus guarantees the sale of that given issuer's stock(15 USC § 77k(a)(5)). Nonetheless, these goals are not be considered absent in traditional going public procedures, but rather secondary.

1. Offer Greater Liquidity to Existing Shareholders

Existing stockholders' shares, usually held by early-stage investors and employees, can be regularly traded through private placement markets, which are notably not as liquid as public exchanges are, mostly due to entry costs and restrictions[13]. A company that prepares for going public through direct listing is ought to register an amount of shares out of the total outstanding ones which are suitable for being sold on a national exchange

9 Alexander Ljungqvist & William J. Wilhelm, IPO Allocations: Discriminatory or Discretionary?, Journal of Financial Economics 65(2), 167-201 (2001).

10 Ran Ben-Tzur & James D. Evans, United States: IPO vs. Direct Listing: What's Right For Your Company?, Mondaq Business Briefing (2019).

11 Spotify Case Study: Structuring and Executing a Direct Listing by *Marc D. Jaffe, Greg Rodgers, and Horacio Gutierrez, Latham & Watkins LLP* available at corpgov.law.harvard.edu.

12 Code of Laws of the United States of America.

13 E. Maynes & A. Pandes, Private placements and liquidity, Schulich School of Business, York University (2008).

in compliance with SEC rules and C.F.R.[14] laws that prohibit shares under previous lock-up agreements to be sold out or transferred. Stockholders are not obligated to sell, but they are given the option of exercising an exit strategy[15] to obtain the return yielded from their holding or simply differentiating their investments[16]. After that an issuer's shares begin to trade on a public exchange, liquidity registers a substantial increase thanks to the wider range of market agents being able to purchase the securities. In a standard IPO process, the underwriter[17] would impose a lock-up period[18]: this provision is a method deployed by investment banks and, more widely, by financial advisors with the aim to forbid further sales of stock, held by existing shareholder in the launching company, which could flood the market in the attempt of benefiting from the usual price surge and, hence, result in a detrimental impact on the share price or in an unexpected increased volatility in the post-offering supply[19]. Lock-up periods usually last for 180 days after commencement of stock trade[20]. Moreover, one trait of traditional IPOs that may detrimentally affect existing shareholders of a going-public company is ownership dilution: the issuance of new equity most probably causes the firm's investor base to widen as accessibility to its shares, i.e. to the company's ownership[21], is potentially enhanced as a result of listing as mentioned above; the consequence will be a diluted ownership in terms of percentage holding of the issuer's equity that will damage early-stage investors who turn out to have less voting rights[22].

[14] Code of Federal Regulations.
[15] An exit strategy is a contingency plan that is executed to liquidate a position in a financial asset.
[16] Aarlen Jacobius, Direct listings open new avenues for institutions; New opportunities possible for managers and their clients - but there could be pitfalls, too, Pensions & Investments (2019).
[17] See the proper definition of underwriter in the U.S.C ,15 USC § 77k(a)(5).
[18] For a deeper consideration of lock-up agreements implications see Arthurs, J. D., Busenitz, L. W., Hoskisson, R. E., & Johnson, R. A. (2009).
[19] The potential offering of shares by existing shareholders whose shares are suitable for being publicly traded. The increase in liquidity that accompanies the commencement of trade usually enhances the share price with respect to the previously one determined in private transactions.
[20] Eli Ofek & Matthew P. Richardson, Large the IPO Lock-Up Period: Implications for Market Efficiency and Downward Sloping Demand Curves, SSRN Electronic Journal (2000). See also Norton Garfinkle, Burton G. Malkiel & Costin Bontas, Effect of Underpricing and Lock-Up Provisions in IPOs, 28 The Journal of Portfolio Management 50-58 (2002).
[21] In financial markets, shares represent units of ownership in the issuing entity. There are various share classes; e.g. common stocks provide ownership and voting rights.
[22] See note 21.

One further point in favour of direct listing is the complete absence of stock underpricing, which usually accounts for the major cost that issuers pay for the underwriting service[23]; this cost, also known as spread, is equal to the difference between the face value of single shares and the price paid by the underwriter for the purchase. In this way investment banks can both build themselves a safety net should the stocks from the IPO turn out to be overpriced[24] and favour some sophisticated clients (e.g. hedge funds) registered in the investors book by selling them at a discount[25]. The usual spread fee charged by investment banks on medium-sized companies is 7 percent[26], which can be significant for such firms[27].

Table 1.

	Proceeds Category	
	$25-100 million (inflation-adjusted in 2011 $)	more than $100 million (2011 $)
<7%	2.7% (23)	49.73% (556)
=7%	95.9% (811)	49.73% (556)
>7%	1.4% (12)	0.54% (6)
Total	100% (846 IPOs)	100% (1,118 IPOs)

Note. Percentages of underwriting fees charged in the U.S. on mid-sized companies raising more than $ 25 million. Source: Professor Jay R. Ritter, Cordell Eminent Scholar, Warrington College of Business (2019).

Therefore, this facet of direct listing may be said to be of particular interest to existing shareholders, insiders and employees who own the company's shares and deemed to be shareholders friendly.

[23] Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, SSRN Electronic Journal (2019).

[24] In financial jargon overpricing is referred to as an IPO failure because of the lower company valuation considered by investors, hence the failure of the underwriter to grasp the client's business model and value.

[25] During the typical "roadshow" performed by underwriters and firm executives in a traditional IPO process, the issuing party builds a book of investors interested in purchasing the newly issued equity. See Chen, C. R., & Mohan, N. J., Underwriter spread, underwriter reputation, and IPO underpricing: A simultaneous equation analysis. Journal of Business Finance & Accounting, 29(3-4), 521-540 (2002).

[26] Hsuan-Chi Chen & Jay R. Ritter, The Seven Percent Solution, 55 The Journal of Finance 1105-1131 (2000).

[27] See also SEC commissioner Robert J. Jackson Jr.'s speech upon the spread fee: The Middle-Market IPO Tax, 2018, available at www.sec.gov.

2. Provide Unfettered Access to Market Participants

During a traditional IPO process, as mentioned above, the key executives of the going public firm and a team of assisting investment bankers travel across the country in order to publicise the issuer by building up a solid reputational profile. Whilst meeting with investors and presenting them the company's outlook and business model, the team is involved in the book-building process which is crucial to obtaining a positive outcome for the IPO; such strategy allows the team to poll investors' real interest in investing in the company by means of buying shares directly from the underwriting syndicate[28]. At the end of this process, the investment bank would decide to whom allocate the newly issued shares. Institutional investors[29] tend to appear prominently among the buy-side actors in going-public processes, with means of 66.3% and 92.9% of IPO shares being allocated to such entities respectively in the U.S. and U.K. capital markets[30]. A direct listing needs not such a demanding itinerary: by means of enabling existing shareholders to sell out to the exchange, investors cannot order or reserve any amount of equity, but the access to the shares is open to every kind of agent who wishes to take a position[31] on the issuer's stock. Also, the lack of an underwriter entails uncertainty as to the available number of shares at commencement of trading due to the fact that registered shares will be sold at the discretion of the owners[32]; this argument may also result in a negative impact on the stock price which would be driven down by an excessive supply of shares[33].

[28] Lawrence M. Benveniste & William J. Wilhelm, Initial Public Offerings: Going By The Book, 10 Journal of Applied Corporate Finance 98-108 (1997).

[29] Institutional investors, properly large funds, banks and other financial institutions, are opposed to retail investors whom are represented by individual investors. For further clarifications on what institutional investors are and perform see Institutional Investors, Davis & Steil, 2004 and for a distinction from retail investors within the IPOs market see Neupane, S., & Poshakwale, S. S. (2012). Transparency in IPO mechanism: Retail investors' participation, IPO pricing and returns at repository.griffith.edu.au.

[30] Alexander Ljungqvist & William J. Wilhelm, IPO Allocations: Discriminatory or Discretionary?, Journal of Financial Economics, 65(2), 167-201 (2001).

[31] It is possible to short sell newly issued stocks; for a strategy upon short selling recent IPOs see https://seekingalpha.com/article/4269496-short-selling-recent-ipos.

[32] See Spotify Case Study: Structuring and Executing a Direct Listing, cited at note 11.

[33] Of course, direct listing entails taking some risks that may result in procedural pitfalls. For a sharp consideration of these potential downsides see "The downsides" in *United States: IPO vs. Direct Listing: What's Right For Your Company?, by* Ran Ben-Tzur and James D. Evans at www.mondaq.com. See also

In order to arrange for such a massive sale of shares, the company needs a thorough coordination among the parties involved in the direct listing; according to a baseline model[34], it is possible to categorise the agents involved in early-stage investors and employees as existing stockholders, key executives[35], public market investors, an investment bank, a regulator and an exchange[36]. The process is complex and an in-depth *concordia ordinum* is required by all parties. The executives of the firm shall educate their employees in time if they want to convey a clear understanding of how the financial process is composed, by instructing them[37]. With the aid of the investment bank as the financial advisor, executives will instruct the latter agents upon how market orders are matched and the resulting price-setting mechanism[38], how the legal framework may prosecute them for insider trading[39] in case of abuse of material non-public information[40] and to make sure that those who intend to sell their shares to market investors will deposit them in a brokerage or dealer's[41] account. In addition, the executives of the company shall be in close talks with the national public exchange and with the regulator, say SEC or FCA[42], in order to comply with all the legal requirements such as registration agreements and disclosing documents that must be filed before the commencement of trade.

Once that employees are made aware of the legal and financial implications of the procedure, unfettered market access can result in a powerful market-driven dynamic that may greatly benefit sellers. To better understand these potential upsides is called for

Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, SSRN Electronic Journal (2019).

34 Zheng, M., Direct Listing or IPO? The Choice of Going Public and Welfare Implications Under Adverse Selection (February 29, 2020).

35 Directors on the board and officers.

36 The model is an extension of The Theory of Corporate Finance, Jean Tirole, 2010, Chapter 6.3.

37 Ran Ben-Tzur & James D. Evans, United States: IPO vs. Direct Listing: What's Right For Your Company?, Mondaq Business Briefing (2019).

38 Here, it is possible to apply the demand and supply framework from classical Economics.

39 The illegal market practice of trading on the stock exchange to one's own advantage through the use of confidential information.

40 According to the CFA definition, information is material if its disclosure would probably have an impact on the price of a security or if reasonable investors would want to know the information before making an investment decision. Information is non-public until it has been disseminated or is available to the marketplace in general.

41 A broker-dealer is a natural or legal person that engages in the trade of securities and derivatives. They provide the public with access to capital markets.

42 Financial Conduct Authority, a British financial regulator independent of the UK Government.

looking at the pricing mechanism triggered by shifting the trade of shares from a private placement market to a public stock exchange[43].

3. Maximum Transparency and Market-driven Price Discovery

A significant share of the existing ownership in a private company is oftentimes represented by insiders who thus have a deeper knowledge of the firm better than any other agent in the market; for this reason it is not possible to apply the assumption of efficient capital markets[44] for what concerns the shares of a company that is going public due to the presence of asymmetric information[45] between buyers and sellers, with the latter party being in advantage. In addition, as a result of the unfettered access to the market, direct listing does not leave any accurate and reliable anticipation about what the opening price is going to be, given the absence of an underwriter that builds a book of investors which allows for price determination. Nonetheless, Spotify, which performed the largest direct listing in the U.S. market, addressed this issue by providing in the first place a price range of the most recent sale prices of its shares on the front page of its preliminary prospectus[46], as required by the SEC's rules[47], and then by providing information on how the opening share price would be determined. Moreover, for the sake of accomplishing market transparency, Spotify provided public company-style guidance shortly before commencing trading. These pieces of information concerned the financial outlook of the company for the full year[48].

In a direct listing, share price valuation is completely at discretion of the market participants who submit sell and buy orders at the price at which they are willing to purchase or sell out the stock via their brokers. Orders are conveyed to a market

[43] Kahan, M., & Tuckman, B., Private vs. public lending: Evidence from covenants (1993).

[44] The assumption under which marketed security prices fully reflect all relevant and publicly available information. The discrepancy in material knowledge about a certain firm, between its insiders and the investing public, is an ordinary matter discussed by asymmetric information and may be accentuated in direct listings because of the absence of an intermediary, i.e. the underwriter investment bank.

[45] George A. Akerlof, The Market for "Lemons": Quality Uncertainty and the Market Mechanism, 84 The Quarterly Journal of Economics 488 (1970).

[46] Spotify's prospectus available at https://perma.cc/ES4F-D9YW.

[47] In compliance with C.F.R. § 229.501.

[48] See Spotify Case Study: Structuring and Executing a Direct Listing, cited at note 11.

specialist[49] who is given the duty by the national exchange to smoothen the trading of some specific securities by means of crossing limit orders[50] and, if necessary, by trading shares out of its own inventory[51] in the IPO context, the specialist is called Designated Market Maker[52] and it works closely with both the launching company and the investment bank in the role of underwriter in traditional IPOs or financial advisor in direct listings. This coordination is aimed at yielding the opening day price[53] based on the book of investors in the former case, on the company's expertise in the latter one. Then, it follows that companies who are willing to do so require a significantly solid degree of self-confidence as their stock price and thus the ensuing market capitalisation [54] utterly depend from the sole outcome of market forces of supply and demand. Not all executives and owners are willing to undertake such a hazardous move that for some firms, especially if their reputation is not well regarded, may end into a failure.

Figure 1.

[49] Specialist systems, nowadays largely represented by electronic communication networks, are assigned the responsibility for managing the trading of each security. Brokers wishing to buy or sell shares for their clients direct the trade to the specialist's post on the floor of the exchange.

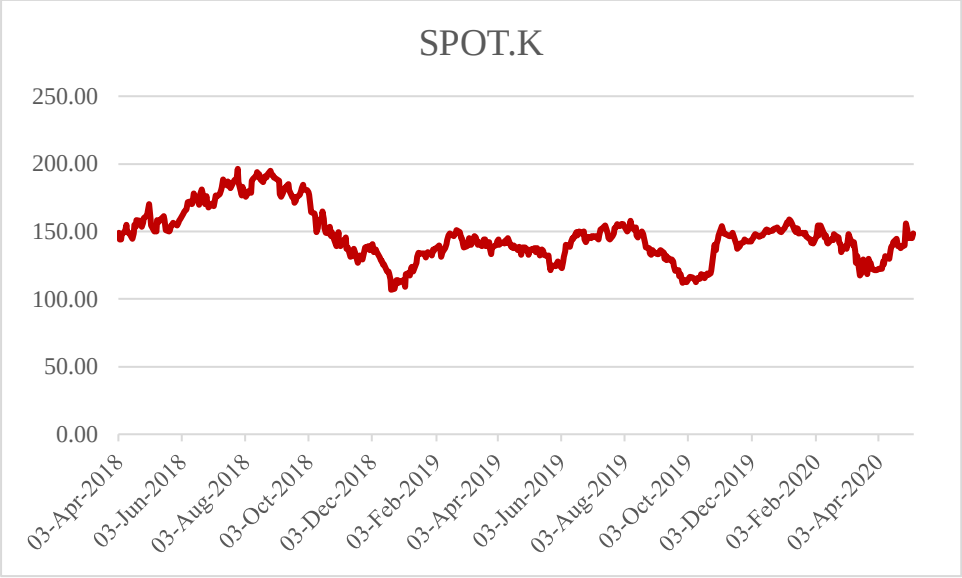
[50] From SEC definition: A limit order is an order to buy or sell a stock at a specific price or better. A buy limit order can only be executed at the limit price or lower, and a sell limit order can only be executed at the limit price or higher. A limit order is not guaranteed to execute.

[51] Market Specialists own an inventory of the stocks they've been assigned to oversee. In case of need, say, a deep discrepancy between buy-side and sell-side depth degree. Specialists' role is highly criticised because of the potential conflicts of interests that may arise, see *Report of Special Study of Securities Markets of the Securities and Exchange Commission*, p. 336, 1963. See also Zvi Bodie, Alex Kane & Alan J Marcus, Essentials of investments, (2009).

[52] Hereinafter referred to as DMM.

[53] The stock price at the very commencement of trade. See Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, SSRN Electronic Journal (2019).

[54] Market Capitalisation is calculated as the product between the number of outstanding shares and the current market price of an individual share. It indicates the total market value in cash of a company.



Note. Price of Spotify SA's stock from the day of listing. Source: Refinitiv Eikon.

B. When a direct listing is recommended

Direct listing is a powerful means for cutting down on listing expenses. The largest share of the fees paid to investment bankers is made of the spread[55], which is not due in the direct mechanism. This is the reason why many emerging companies that wish to go public yearn for doing so by direct listing. Yet, the structure makes sense only for a few companies with a certain background. As Barry McCarthy stated, a direct listing is "just an IPO without the O"[56], meaning that it allows to commence trading of the company's stock without involving any new equity offer. In spite of a recent proposal submitted by the NYSE[57] being backed up by several investment bankers who would be happy to cash in on this new process as well, the SEC does not allow firms to do a direct listing and raise capital on the market at the same time. In the first place, one right background characteristic of a suitable company is an outstanding success in raising capital in the private market[58]. Only firms that performed several and large enough fundraising rounds

[55] See section I.A.1.

[56] See www.reuters.com/article/breakingviews-direct-listings. Barry McCarthy is Spotify's CFO often considered one of the main supporters of the company's courageous move.

[57] See corpgov.law.harvard.edu/2020.

[58] Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, SSRN Electronic Journal (2019).

may have a high probability of succeeding with a direct listing, considering that it is a rare occurrence that no further capital raising is needed. The company also needs to boast an exceptionally broad reputation: underwritten IPOs allow companies to have a say about the investors to whom the shares will be allocated, typically solid institutional investors. This is not the case for direct listings, where launching companies have to rely mostly on their own capabilities of branding and of being profitable[59], especially if among stockholders there are investors who exclusively seek for short-run profits[60]. Additionally, some regulatory restrictions adopted by the SEC in compliance with § 11 of the Securities Act[61] forbid companies from sharing sensitive non-public information with financial institutions that do not fall under the status of underwriters[62]. Hence, investment bank research analysts out of the underwriting syndicate are not allowed to provide companies with coverage[63], whose output is regularly published in periodic reports and, as evidence suggests, the resulting recommendations do have an impact on the public's investment decisions[64]. Well-known companies usually draw substantial analysts' coverage even without paying for the service[65] as their business magnitude may be of interest to investors. For smaller and less known companies, publicising themselves can be a highly expensive process because of the time that the executives of the company should spend with the underwriter analysts in order for the latter ones to fully understand the former ones' designated business model, and, even with massive amounts of capital raised in private placements, a public direct debut might be a failure. Other than Spotify, Slack Technologies has been the quintessential company to be suitable for a direct listing: the Canadian unicorn has offered a workplace-messaging software, called Slack[66], that

59 Short-term investors are only interested in earning dividends and disregard stock price to a large extent. For a thorough understanding on what legal constraints are imposed on distributable profits see Principles of modern company law, Davies, P. L., & Gower, L. C. (2008).

60 Robert J. Shiller, Stanley Fischer & Benjamin M. Friedman, Stock Prices and Social Dynamics, 1984 Brookings Papers on Economic Activity 457 (1984).

61 15 USC § 77k(a)(4).

62 As previously said, direct listings do not involve the use of underwriters.

63 Ran Ben-Tzur & James D. Evans, United States: IPO vs. Direct Listing: What's Right For Your Company?, Mondaq Business Briefing (2019).

64 Xin Chang, Sudipto Dasgupta & Gilles Hilary, Analyst Coverage and Financing Decisions, SSRN Electronic Journal (2004).

65 Analyst Coverage. (n.d.) Farlex Financial Dictionary, (2009).

66 See Morgan Brown, How Slack Became the Fastest Growing B2B SaaS Business (Maybe) Ever GrowthHackers (2015), https://growthhackers.com/growth-studies/slack-fastest-growing-b2b-saas-business-ever (last visited May 19, 2020).

since 2013 has allowed users to create channels through which they are able to invite fellow workers for communicating and sharing files and other contents. Professionals have largely approved the service with enthusiasm and have been productively utilising the application for their work, which has contributed to giving the tech company a significant exposure throughout the workplaces of the globe and to promoting the validity of the service by word of mouth[67]. Considering that Slack Technologies' balance sheet contained an amount of cash equal to $800 million[68], the company's executives decided to launch the company's existing equity on the market without the need for raising further shareholders' capital.

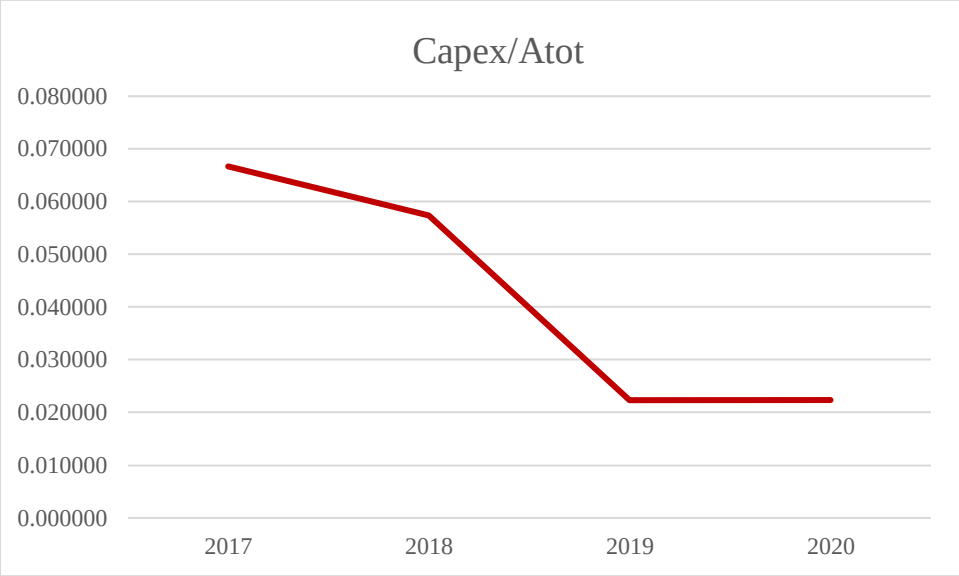
According to Zheng's study, based on the UK capital markets, firms that go public through direct listing exhibit a higher market capitalisation on the first day of trading and lower capital expenditure rate in comparison to peer firms that performed underwritten IPOs in the same year[69]. The former piece of evidence suggests that companies that listed directly to the market were to some extent better-established than those which adopted a traditional IPO and thus needed to raise capital. Direct listers had a discrepancy in capital expenditure rate, being measured by the ratio of investments to total assets value, that amounts to 4.62% lower than their counterparty's rate; the latter evidence indicates that those firms adopting traditional IPOs expended more capital over the first year of trade than direct listers did, which in turn are assumed to have spent larger amounts of capital before going public thanks to the funds they were able to raise in private markets.

Figure 2.

[67] Id.

[68] Phil Simon, Slack For Dummies, p. 326, (2020).

[69] Zheng, M., Direct Listing or IPO? The Choice of Going Public and Welfare Implications Under Adverse Selection (February 29, 2020).



Note. Average of capital expenditure over combined total assets of Spotify and Slack. The downward trend confirms Zheng's study about diminishing capital expenditure rate. Source: Refinitiv Eikon.

Nevertheless, as long as direct listing will be deemed to be an innovation, entrepreneurs who wish to debut on public markets through such procedure could make their intentions explicit in order to draw the financial press and potentially lure analysts' coverage.

C. The Role of Investment Banks

Investment banks in traditional IPOs earn the highest share of their fees through the underwriting service[70]. Such a high fee is due to the considerable risk that bankers bear as underwriters in that, despite the book-building process, the issuer's shares may still remain unsold or a sudden bear raid[71] may be inflicted upon the firm's newly issued stock by short sellers who bet against firms public debut. In these cases, the underwriter must intervene by contractual obligation in order to stabilise the price of the equities they underwrote by personally buying them back[72]. Firms that wish to list directly to an

[70] See note 26 for the 7 percent tax.

[71] Bear raid is an illegal practice of ganging up to push a stock's price lower through concerted short selling and spreading adverse rumours about the targeted company.

[72] An example of price stabilisation intervention was carried out by Morgan Stanley during Facebook IPO. See Lowinger v. Morgan Stanley & Co. LLC. See Nesrine Bouzouita, Jean-François Gajewski &

exchange have to give up this important safety net, known as *stabilisation*. In a direct listing, instead, investment bankers are assigned the role of mere financial advisor to the issuer and as such earn no underwriting fees, that all in all is one of the main reasons that companies advocate for going through this procedure. Thus, investment bankers find themselves playing a different role: from underwriters to financial advisors[73]. Financial advisors serve several functions, ranging from providing assistance to issuers in filing the S-1 form[74] to helping them with presentations drafting. In his paper, Professor Horton argues that the change of role may lead to lower incentives in conducting the due diligence[75] into the issuers' profile as banks' reputational capital is not at stake, and eventually lead to an overall deterioration of the U.S. going public market[76].

The role of the underwriters is also crucial to investors protection; indeed, investment banks, along with auditors and exchange authorities, are referred to as *gatekeepers*[77] in that their role is to open the market gate to worthy companies and to promptly deny access to unworthy ones. As part of the gatekeeping process, investment bankers engage in roadshows and the book-building process in order to detect the market clearing price for the issuer's stock as well as to price the offering[78]. In underwritten IPOs, opening prices are usually lower than the actual stock valuation[79] while the number of shares booked by investors is higher than the issued one: by doing so, investment bankers ensure that the stock price will pop up on the first day of trading resulting in a pricing run-up. This negatively affects the issuer in that the potential for raising capital is significantly reduced by the stock underpricing operated by the underwriting syndicate in accordance with

Carole Gresse, Liquidity Benefits from IPO Underpricing: Ownership Dispersion or Information Effect, 44 Financial Management 785-810 (2015).

73 Horton Brent J., Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure. SMUL Rev., 72, 177 (2019).

74 Form S-1 is SEC's procedure for registering the stock of companies going public under the Securities Act of 1933. The form is also called *prospectus*. Form S-1 is available at https://www.sec.gov/files/forms-1.pdf.

75 Due diligence is the investigation or exercise of care that a reasonable business or person is expected to take before entering into an agreement or contract with another party, or an act with a certain standard of care.

76 Professor Horton highlights how reputation is important to investment banks.

77 For an understanding of how financial gatekeepers protect investors see Yasuyuki Fuchita & Robert E. Litan, Financial gatekeepers: can they protect investors? (Brookings Institution) (2006).

78 Horton, B. J. Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure. SMUL Rev., 72, 177 (2019).

79 Underpricing is the increase in stock value from the initial opening price to first day closing price.

institutional investors, with the latter buying the equity at favourable prices. Indeed, it is widely argued that underpricing leaves money on the table. As it is clear by now, unicorns such as Spotify and Slack are not in need for raising capital through equity issuance, so that stock underpricing is largely avoided thanks to direct listing, and investment banks, in the role of financial advisors, are not able to profit on it[80].

Furthermore, evidence from the last two decades shows that the cost of IPOs for both issuers and investors has been surging sharply, respectively due to rising cost of capital and losses in stock value primarily resulting from the technology bubble burst[81] in 2001[82], at the expenses of public market investors destroying their confidence. Additional studies affirm the downward popularity of public equity in the U.S. market and put the blame on the governmental policies that over time have favoured the private market side whilst burdening listed companies with heavy disclosure and additional regulations to prevent other bubbles from growing and bursting, that eventually led to an overall diminished capital raising potential[83]. Other evidence from recent studies stresses the fact that private capital markets were successful in providing an alternative way, especially for smaller firms, to raise funds. The positive trend in private placements tends to emerge from all around the world, which relieves some of the responsibility attributable to the Congress[84]. The aforementioned factors all lead to the same result: lower number of yearly Initial Public Offerings with the underwriting function losing relevance.

80 John C. Coffee Jr., The Spotify Listing: Can an "Underwriter-less" IPO Attract Other Unicorns? CLS Blue Sky Blog (2018), available at clsbluesky.law.columbia.edu/2018/ (last visited May 19, 2020).

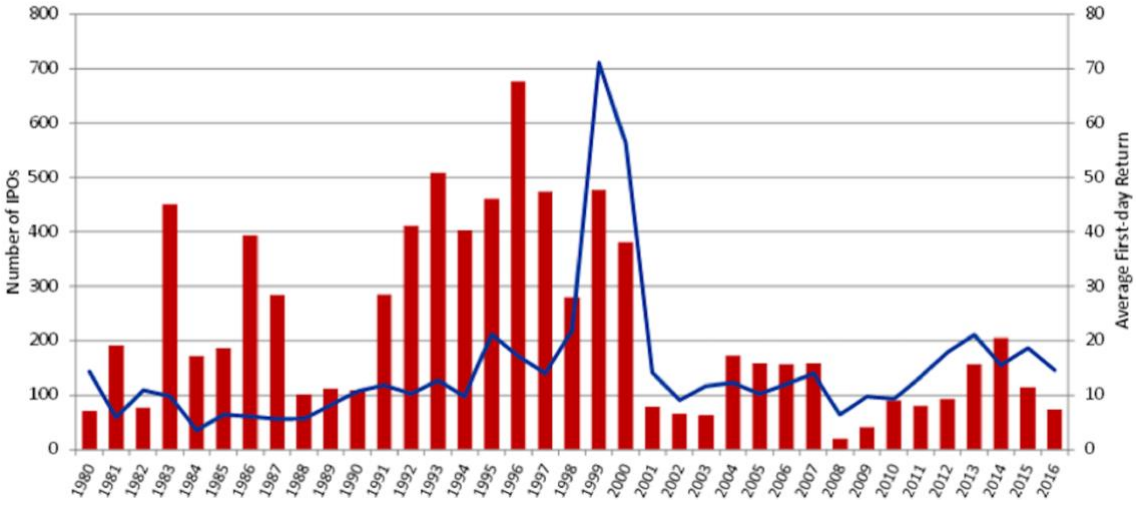
81 For more see the dot-com bubble in 2001.

82 Dale A. Oesterle, The High Cost of IPOs Depresses Venture Capital in the United States, SSRN Electronic Journal (2006).

83 De Fontenay Elizabeth, The deregulation of private capital and the decline of the public company. Hastings LJ, 68, 445 (2016).

84 See John C. Coffee Jr., The Spotify Listing: Can an "Underwriter-less" IPO Attract Other Unicorns? CLS Blue Sky Blog (2018). See also Nesrine Bouzouita, Jean-François Gajewski & Carole Gresse, Liquidity Benefits from IPO Underpricing: Ownership Dispersion or Information Effect, 44 Financial Management 785-810 (2015).

Figure 3[85].



Note. Number of IPOs per year in the US on the left, average first day return on the right (1980-2016). Taken from clsbluesky.law.columbia.edu, John C. Coffee Jr., May 29, 2018.

The analysis above fits this paper in that unicorns usually possess plenty of cash in their balance sheet thanks to the several fundraising rounds they have performed in private placements and, as such, they are likely to seek alternative ways to launch on public markets, not for the purpose of increasing their market capitalisation[86] and, in so doing, they would elude many of the governance and organisational problems imposed on publicly traded companies[87], just like Spotify and Slack did. Direct listing would efficiently serve such purposes.

In the United Kingdom, the London Stock Exchange has made available a direct listing procedure since 1995: the *introduction*. The introduction is a two-stage strategy that allows companies to list on a British exchange with no equity issuance either on the primary market or on the secondary market, like respectively IPOs and direct listings in the U.S. do. Evidence shows that introductions have allowed firms to eliminate uncertainty on the first day of trade that most of the times result in stock underpricing and most importantly, in doing so, the executives of the company are able to issue equity

[85] The evidence shows the dramatic decrease in number of IPOs in the U.S. market. It is clear that investors' confidence has never gone back to level pre-dotcom bubble in 2001.

[86] See section I.A. for direct listings' main objectives.

[87] Brown Keith C. & Wiles, Kenneth W., In search of Unicorns: Private IPOs and the changing markets for private equity investments and corporate control. Journal of Applied Corporate Finance, 27(3), 34-48 (2015).

during favourable business times and to maximise the capital raised[88]. Hence, according to Professor Kecskés, waiting for the right moment for issuing new equity does pay off. In spite of the advantages, the number of introductions has been significantly lower than that of traditional IPOs, with an average ratio of the former to the latter ones equal to 0.15[89].

II. THE REGULATIONS FOR THE DIRECT LISTING

As said in the section above, the direct listing makes investment bankers abandon their usual role as underwriters and appear in the guise of mere financial advisors. The different role not only causes different work commitments towards the clients, but it also entails some radical changes in terms of legal liability, both for the issuers and the advisors[90]. When a company decides to go public, whatever the type of listing, public ownership brings about a new form of risk for the executives and the existing stockholders in terms of liability under the federal securities laws and the ensuing securities class actions[91]. The issuers, upon the advice of the underwriters if any, are bound to compile a registration statement[92] containing the prospectus with the SEC and make it available to investors. The said document shall contain information about the nature of the issuer's business, its financial performance, its management and corporate governance and the risk factors related to its issued securities.

A. Federal Regulations

[88] Francois Derrien & Ambrus Kecskes, The Initial Public Offerings of Listed Firms, SSRN Electronic Journal (2005).
[89] See section IV of Zheng, M., Direct Listing or IPO? The Choice of Going Public and Welfare Implications Under Adverse Selection (February 29, 2020).
[90] The responsibilities held by underwriters in traditional IPOs no longer hold. It is a complex issue to inquire upon the way the legal burden shifts and how liabilities may apply.
[91] Clarke, J. J., Weber, R. D., & Chatfield, K. M., Practical Law (2020), available at content.next.westlaw.com/Document.
[92] Other than the issuer's prospectus, registrations statements are ought to provide additional information about the distribution plans of the shares to be issued.

Initial Public Offering procedures are governed by the Securities Act of 1933, which is also referred to as the "truth in securities" law for it is the first piece of legislation designed to regulate securities markets[93]. Ever since enactment, the two basic objectives of the Act have been to provide investors with appropriate information pertaining to the securities being offered for sale and prevent issuers from making misstatements or omissions[94].

1. Registration Statement Under the Securities Act of 1933

The first step for accomplishing SEC's goals is the registration statements that the 1933 Act imposes on the companies who wish to go public[95]; firms executives are required to file with the U.S. SEC an in-depth and accurate disclosure of information. In such a way, investors, not the government, are capable of making well-educated judgements upon the companies' long-term prospects and eventually deciding whether to purchase or not the stocks[96]. Registration statements need be efficiently standardised and regulated in order to permit a smooth comparison among the different forms:

> *A registration statement shall consist of the facing sheet of the applicable form; a prospectus containing the information called for by Part I of such form; the information, list of exhibits, undertakings and signatures required to be set forth in Part II of such form; financial statements and schedules; exhibits; any other information or documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).*[97]

93 Farlex Financial Dictionary. S.v. "Truth In Securities Act." Retrieved June 3 2020 from https://financial-dictionary.com.

94 Full text of the Securities Act of 1933 is available at https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf.

95 15 USC § 77e(c): "it shall be unlawful for any person … to make use of any means … to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed".

96 U.S. Securities and Exchange Commission. See https://www.sec.gov/answers/about-lawsshtml.html.

97 17 CFR § 230.404(a).

As the rule on preparation of registration statement highlights, financial information is of particular relevance as to investors' decision-making, since it provides the main basis upon which the public can assess the stock value. As such, the SEC imposes stringent time requirements on the balance sheets and income statements that going-public firms shall provide. The financial statements provided in the prospectus must be audited and approved by an external auditor and must not be older than as it is stated in the Financial Reporting Manual[98]. The rule reported above requires that all registration statements be standardised and provide the public with the same informative material, but at the same time it allows applicant companies to file through different registration forms. The SEC's different submission filings are intended to meet specific companies' needs and match them in the best possible way with investors' right to be properly informed. Form S-1 is filed by those private firms that are selling their securities on a public exchange for the first time (i.e. performing an IPO). More specifically, "this Form shall be used for the registration under the Securities Act of 1933 of securities of all registrants for which no other form is authorized or prescribed"[99]. In the event that a company is already listed on the market and aims to let its shareholders sell their equities, a resale registration statement is most suitable for the purpose. SEC's forms S-3 or F-3 are used when secondary offerings[100], such as in the case described, are put in place. One may argue that a direct listing takes a shape being very similar to that of a resale offering and thus a S-3 form would be most appropriate for it, and he or she would be right. Additionally, as long as the registration statement remains effective, resale registration statements enable issuers to register outstanding shares held by the holders without having to file post-effective amendments or prospectus supplements, usually submitted by SEC's form S-1/A[101]. Nevertheless, companies must comply with specific requirements in order to be able to apply through such a form. In the instance of Spotify, F-3 form could not be filed

98 Available at https://www.sec.gov/corpfin/cf-manual/topic-1. Different financial timing requirements are applied on different types of companies: e.g. foreign companies are usually given more flexibility in such regard.

99 17 C.F.R. § 239.11.

100 A secondary offering involves a large transfer of a company's stock from one investor to one another, with the company receiving no cash from such transactions nor issuing new equity.

101 Post-effective amendments and prospectus supplements are regulated by 17 C.F.R. § 230.462.

because the Swedish company did not satisfy reporting requirements of Sections 13 and 15(d) of the Exchange Act[102] for at least 12 months[103]. In fact, the latter Section states:

> *Every registrant under the Securities Act of 1933 shall file an annual report, on the appropriate form authorized or prescribed therefor, for the fiscal year in which the registration statement under the Securities Act of 1933 became effective and for each fiscal year thereafter, unless the registrant is exempt from such filing by section 15(d) of the Act or rules thereunder. Annual reports shall be filed within the period specified in the appropriate report form.*[104]

As a result, if a company is ineligible to use Form S-3, it will have to register the resale through Form S-1[105]. Indeed, so did Spotify.

The SEC makes only a few exceptions regarding the obligation to provide a registration statement; the Commission's section on investor information clearly states that "by exempting many small offerings from the registration process, the SEC seeks to foster capital formation by lowering the cost of offering securities to the public"[106]. Therefore, for the sake of fostering capital formation, which can be accounted as one further SEC's goal, some offerings that are small both in terms of size and number of participants are exempted from filing some registration form. In this regard, the Commission is indirectly assisted by underwriters in the role of gatekeepers, both in the case of a traditional listing and a direct one[107]. Investment banks thoroughly overhaul disclosed documents and information in the offering material. The judicial system set up by the Securities Act incentivise gatekeepers to conduct due diligence: should investors raise claims against

[102] 17 CFR § 240.13d-1.
[103] Spotify Case Study: Structuring and Executing a Direct Listing by *Marc D. Jaffe, Greg Rodgers, and Horacio Gutierrez, Latham & Watkins LLP,* p. 3.
[104] 17 CFR § 240.15d-1.
[105] William K. Sjostrom, PIPEs, 2 *Entrepreneurial Business Law Journal* 381–413 (2007).
[106] By exempting many small offerings from the registration process, the SEC seeks to foster capital formation by lowering the cost of offering securities to the public.
[107] See section I.C. for a discussion about gatekeepers' role respectively in traditional IPOs and in direct listings.

the issuing entity because of material misstatements, investment banks may be held liable as they're subject to certain statutory defences[108].

2. Registration Statement Under the Securities Exchange Act of 1934

Once a listing has been completed and trade commences, the registered shares become subject to the Securities Exchange Act of 1934. It follows that issuers must comply with the continuous disclosure requirements of the Act[109] and of the ensuing implementations adopted by the stock exchange of relevance. Importantly, Securities laws allow companies to register their shares under the Exchange Act registration statement without necessarily filing under the Securities Act. In this regard, SEC's Form 10 is the most widely used format; companies utilise it when they are listing shares pursuant to § 12(b) of the Securities Exchange Act and it is regulated by § 249.210 of the Code of Federal regulations[110]. For the purpose of utilising such form, it is essential that the issuer is not engaging in any activity of securities sale[111]. As such, shares trade begins in the moment upon which the registration statement is declared effective. In order for the going public firm to be eligible for applying through a Form 10, it is essential that neither the firm itself nor an underwriter is distributing shares. This means that the resale of shares must not be a distribution as it is intended in § 242.100 of the C.F.R.[112] and, therefore, the registered shares must comply with the applicable conditions of the Rule 144[113]. According to the Legal Information Institute, a person satisfying the applicable conditions of the Rule 144 "is deemed not to be engaged in a distribution of the securities and therefore not an underwriter of the securities for purposes of Section 2(a)(11)"[114]. It

[108] Clarke, J. J., Weber, R. D., & Chatfield, K. M., Practical Law (2020), p. 2. See section II.C. for how liability provisions on underwriters are applied.
[109] Primarily Sections 17 CFR § 240.13d-1 and 17 CFR § 240.15d-1.
[110] 17 C.F.R. § 249.210.
[111] John C. Coffee Jr., The Spotify Listing: Can an "Underwriter-less" IPO Attract Other Unicorns? CLS Blue Sky Blog (2018), para. 3: "there is no inherent statutory obligation to register these shares under the Securities Act of 1933, because the issuer is not making any sale".
[112] 17 CFR § 242.100.
[113] 17 CFR § 230.144.
[114] For the LII's definition see https://www.law.cornell.edu/cfr/text/17/230.144. Section 2(a)(11) provides the legal definition of underwriter. I report it in section II.C. at note 148.

logically follows that a company adopting Form 10 does not hire an underwriter. This resembles to fit well the direct listing case; hence, the question arises naturally: is Form 10 the right going-public filing for companies that choose direct listing? The answer is not as obvious as it might be inferred. Historically speaking, evidence shows that companies have preferred not to adopt such a Form in that it entails a broader commitment in terms of time spent due to filing. In fact, the procedure requirements demand for more in-depth disclosures, such as financial statements for the last two or three years and more descriptive corporate information[115]. In support of this evidence, Spotify SA did not choose to adopt the Exchange Act registration statement form, even though it is not possible to exclude that the unicorn originally thought of going public in this way or that its foreign applicant status would have further complicated the process. For this reason, Professor Horton defines Spotify's direct listing as non-pure, whereas a "pure" procedure would only require a Form 10 registration statement[116].

Table 2.

[115] William K. Sjostrom, The Truth About reverse Mergers, *Entrepreneurial Business Law Journal* 743–759 (2007), p. 753-754.

[116] Horton Brent J., Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure. SMUL Rev., 72, 177 (2019), p. 28.

	IPO	Direct Listing (Pure)	Direct Listing (Spotify)
Purpose	Raise capital, liquidity, consideration for later acquisitions	Liquidity, consideration for later acquisitions	Liquidity, consideration for later acquisitions
Required SEC filings	Securities Act registration statement (S-1) followed by Exchange Act registration statement (8-A)	Exchange Act registration statement (Form 10)	Securities Act registration statement (F-1) followed by Exchange Act registration statement (8-A)
Restrictions on communications	Quiet period applies	No restrictions	Quiet period applies
Required NYSE filings	Listing application	Listing application	Listing application
Role of investment banks	Underwriter	Financial advisor	Financial advisor
Amount exceptionally large company pays to investment bank	$130.5 million[28] (large companies pay on average $37 million)[29]	N/A	$35 million

Note. The table summarises the main characteristics of respectively a traditional IPO, a pure direct listing and Spotify's direct listing. Horton Brent J., Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure. SMUL Rev., 72, 177 (2019), p. 12.

Spotify was required by the SEC and NYSE to do much more than a firm would be ought to in a "pure" direct listing, to the extent that the American exchange had to ask the former regulator for carrying out some amendments to its Listing Manual. The reasons why this happened can be attributed to the great innovative character that the direct listing embodies; thus, regulators may have decided to follow the well-trodden path of a traditional IPO procedure, or it may be due to the legal implementations that each regulator adopts which are essential to being considered in this context.

B. SEC and NYSE's Implementing Rules and Regulations

The Securities and Exchange Commission is an independent agency of the U.S. federal government; it was created by the Exchange Act in 1934 in President Roosevelt's attempt to regulate the securities markets of the country. In this regard, the 1934 Act enables the Commission with regulatory powers and its primary purposes are to enforce the Securities Act and other statutes, regulate the nation's stock and option exchanges and propose securities rules[117]. The SEC also delegates authority to Self-Regulatory Organisations (SROs), among which are national stock exchanges that are given some degree of regulatory authority as the definition suggests. As such, SROs' staff have the power to propose amendments on their constitutions that must be submitted to the Commission for being overhauled and potentially passed[118].

1. NYSE Rule Changes

The NYSE possesses its own Listed Company Manual, whose proposed amendments are indeed subject to the SEC's revision and approval. Before Spotify's listing, the NYSE's Manual was not clear for what regards the going-public procedure for a firm filing an Exchange Act registration statement without undergoing an IPO. Yet, the Exchange had the ability to list private companies that were not registered with the SEC only if they met specific requirements:

> *Generally, the Exchange expects to list companies in connection with a firm commitment underwritten IPO…. However, the Exchange recognises that some companies that have not previously had their common equity securities registered under the Exchange Act… may wish to list their common equity securities on the Exchange at the time of effectiveness of a registration statement…. Consequently, the Exchange will, on a case by case basis, exercise discretion to list companies whose stock is not previously registered under the Exchange Act…. In exercising this discretion, the Exchange will*

[117] 15 U.S. Code § 78d.
[118] 15 U.S. Code § 78s(a).

> *determine that such company has met the $100,000,000 aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (a "Valuation") of the company and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market").* [119]

Therefore, the requirements to meet for a company that is not registered under either the Securities or the Exchange Act are a market capitalisation of at least $100,000,000 and a sustained trading history over several months. Whereas Spotify easily met the first condition thanks to its pre-listing market value estimated at around $20 billion, the private resale of the Swedish company's shares would not satisfy the NYSE requirements[120]. Therefore, the NYSE proposed some amendments to its Company Listing Manual to guarantee a smooth direct listing procedure whilst appropriately protecting investors by means of enhancing the market capitalisation requirement and imposing a direct dialogue between the issuer's financial advisors and the Designated Market Maker at the Exchange. Although the proposal did not mention Spotify's unusual application, it was widely understood that the NYSE contemplated the Swedish unicorn's direct listing, and it found fertile ground in the Commission's intentions thanks to the latter's nudge for deregulating policies that has been endorsed by the Chairman, Mr. Clayton , who certainly did not intend to forgo such a notable company listing[121]. The original proposal of the Exchange also included a third amendment that sake to clarify the legislative ambiguity upon private companies listing in the absence of both an IPO and a Securities Act registration statement. In fact, the initial filing[122] remonstrated that "While Footnote (E) to Section 102.01B provides for a company listing upon effectiveness of a selling shareholder registration statement, it does not make any provision for a company listing in connection with the effectiveness of an Exchange Act registration statement in the

[119] § 102.01B (E) of NYSE, Inc., Listed Company Manual.
[120] Spotify Case Study: Structuring and Executing a Direct Listing by *Marc D. Jaffe, Greg Rodgers, and Horacio Gutierrez, Latham & Watkins LLP,* p. 5.
[121] Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, p. 1001, SSRN Electronic Journal (2019).
[122] File no. SR-NYSE-2017-30, 13th June 2017, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2017/NYSE-2017-30.pdf.

absence of an IPO or other Securities Act registration" and thus "The Exchange believes that it is appropriate to list companies that wish to list immediately upon effectiveness of an Exchange Act registration statement without a concurrent Securities Act registration provided the applicable company meets all other listing requirements. Consequently, the Exchange proposes to amend Footnote (E) to Section 102.01B to explicitly provide that it applies to companies listing upon effectiveness of an Exchange Act registration statement without a concurrent Securities Act registration as well as to companies listing upon effectiveness of a selling shareholder registration statement"[123]. In summary, the NYSE wanted to pave the way for direct listings. Yet, this proposed change was withdrawn in the amended rule filing[124]; most probably, it was the result of a compromise between the NYSE and the SEC, with the Commission pursuing investors protection in the first place, hence favouring it upon the enhanced smoothness of the filing procedure that the change would have brought. The SEC was concerned that other companies less financially solid than Spotify could access the market without any concurrent IPO or Securities Act registration[125] and opted for an all-or-none response. It can be easily observed that the lack of a Securities Act registration statement would entail two major issues: in the first place, a sole Exchange Act registration statement would not fall under the statutory liabilities of Section 11 of the '33 Act for material misstatements[126], leaving doubts on this matter in case of litigation. Secondly, such a registration would impose applicant companies to undergo the typical *quiet period* observed in traditional underwritten IPOs during which the issuer is waiting for approval from the SEC[127], and meanwhile communications with external agents are heavily limited[128].

[123] Id. p. 5, para. 2.
[124] Release No. 34-82627. Note that the third amendment proposed in the filing no. SR-NYSE-2017-30 cited above is missing.
[125] See Farrell and Steele, Spotify Files to Go Public Through Direct Listing, Cutting Out Underwriters, available at https://www.wsj.com/articles/spotify-files-confidentially-with-sec-to-go-public-1515002444.
[126] See Section II.C. for how underwriters and financial advisors would be held liable in case of material misstatements.
[127] See § 15D(a)(2) of the Exchange Act.
[128] Horton Brent J., Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure, p. 34. SMUL Rev., 72, 177 (2019).

2. The Traditional Quiet Period and Rule 144

The limits on communications imposed during the period that extends from the time a registration statement is filed up until the SEC staff declares the effectiveness are commonly known and referred to as the *quiet period*[129]. During this time frame, the applicant company cannot release corporate information that could affect the stock price set by underwriters in a traditional IPO. This provision has the primary purpose of retaining material information and preventing artificially-inflated stock prices[130] that might result in some form of market manipulation, but it also aims to keep at bay any risk of facilitating some investors over others. The quiet period is not defined in Securities federal laws, nor is deliberately imposed[131]. Therefore, to prevent the risks said above, the SEC imposes such a silent period both on the listing company itself and on the brokers or dealers that have assisted the going-public process. The time length of the waiting period and the conditions imposed by the Commission are consistent with the Exchange Act, particularly with Sections 6(b)(5)[132], 6(b)(8)[133], 15A(b)(6)[134] and 15A(b)(9)[135][136]. Thus, all companies that file a S-1 form (or F-1 for foreigners) must go through a quiet period that officially ends on the day of declared registration effectiveness; should a company fail to comply with such limitations, the SEC may decide to postpone the company's public debut in order to maintain market and pricing fairness as it occurred

129 SEC, see https://www.sec.gov/fast-answers/answersquiethtm.html.
130 This phenomenon is widely referred to as watered stock. Too see how this was initially interpreted by law enforcers see William W. Cook, "Watered Stock": Commissions: "Blue Sky Laws": Stock without Par Value, 19 Michigan Law Review 583, p. 585 (1921).
131 See the first line of https://www.sec.gov/fast-answers/answersquiethtm.html.
132 "The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade … and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers".
133 "The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title".
134 Same rules as in § 6(b)(5) imposed upon associations of brokers and dealers.
135 "The rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title".
136 Ralph C. Ferrara et al., Ferrara on insider trading and the wall (Law Journal Press), App. N-30, (2001).

during Facebook's offering[137]. In fact, against expectations[138], Spotify did observe the usual quiet period that all underwritten IPOs have gone through, despite direct listings could be filed through a resale registration statement alone, hence avoiding such limits on communications[139].

One further issue to be addressed by the SEC is that a direct listing company's equities are necessarily held as *restricted* securities, meaning that they were acquired in private markets and, as such, they are unregistered and not tradable on public exchanges. Nevertheless, Rule 144[140] allows unregistered securities to be publicly sold if the meet a certain holding period:

> *If the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, a minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.*[141]

Since Spotify SA had not been subject to the Exchange Act reporting requirements before the date of effectiveness, affiliates or non-affiliates who held its shares for less than one year, could have not sold them on the exchange. For this reason, Spotify registered in its F-1 filing only about 31% of its total privately held stock; all these shares had been held for at least one year, mostly by the firm's employees and were thus suitable for being exempted from the reporting requirements thanks to Rule 144. In order to permit other shareholders to meet the resale conditions permitted by the rule, the Swedish music streamer decided to keep its registration statement effective by at

137 The failure to comply with these restrictions generally is referred to as "gun-jumping." For Facebook's incident see http://blogs.reuters.com/financial-regulatory-forum/2012/05/25.

138 For example, see Alexander Osipovich and Maureen Farrell, "Spotify Rule" Would Help New York Stock Exchange Woo Unicorns (Wall St J, May 26, 2017), suggesting that Spotify would face no quiet period.

139 See Section II.A. for what Exchange Act resale registration statement forms direct listers may use.

140 Codified in federal securities law as 17 CFR § 230.144.

141 17 CFR § 230.144(d)(1)(ii).

least 90 days. In fact, in so doing it would be allowed to enhance resale possibilities to its owners thanks to the rule:

> *If the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, a minimum of six months must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.*[142]

Note that in case of compliance with the reporting requirements in Section 13 or 15(d) for at least 90 days, securities holders are enabled to sell their securities on the public market only after a holding period of six months, exactly half the time required in the opposite case. As a consequence, thanks to Rule 144, after 90 days that Spotify SA complied with the reporting requirements thanks to its F-1 form filing, the firm enabled its shareholders to sell publicly their shares if they had held them for at least six months.

3. Regulation M and SEC's No-action Letter

The unusual nature of a direct listing raises some questions as to prevention enforcements from market manipulation and communication among security-holders that may affect the stock price previously set. In traditional underwritten IPOs, this aspect is regulated by a set of Rules[143] enacted by the SEC in 1996 and known as Regulation M. Regulation M imposes further limits on communications and actions upon distribution participants: they are prohibited from bidding for or purchasing the newly issued securities through the period between the pre-pricing period and when secondary trading commences on the exchange. The pre-pricing time lapse usually lasts five business days before the scheduled designated market maker's determination of the opening price. Such limitations are normally imposed upon traditional offerings and consequently are easily understood by

[142] 17 CFR § 230.144(d)(1)(i).
[143] SEC's Rules 100, 101, 102, 103, 104, 105. They are codified in 17 CFR § 242.100 through § 242.105.

issuers and investors[144]. In a direct listing, due to the absence of an underwriter, there is no pricing proposal and the stock price is determined by market forces of supply and demand. Before doing its public debut, Spotify SA was uncertain on whether Regulation M would apply or not and so were its stockholders and interested investors; the company engaged long talks with the Commission in order to make some clarity upon this issue. The Swedish firm's conversations with the SEC went round whether its resale registration statement, being filed through a F-1 Form, constituted an offering and, if so, whether it represented a distribution for purposes of Regulation M[145]. The talks resulted in a *no-action letter* from the Commission, which stated that it would not recommend legal enforcement against Spotify, its financial advisors and stockholders, provided that the parties respected the limitations imposed by the six rules from the pre-listing period until the second day of trading[146].

Once again, from a merely legal point of view it can be observed that the SEC treated Spotify's direct listing quite similarly to a traditional underwritten IPO, requiring it to file a Securities Act registration statement, observe the usual quiet period and also imposing the limits on communications which, theoretically, should not be observed under an Exchange Act filing.

C. The Underwriter's Liability

Aware of the importance of the gatekeeping function that underwriters perform in companies listing, it is easy to acknowledge they bear significant responsibilities towards the issuer that is being advised and the investors in the newly issued equity. Investment banks must conduct careful due diligence into issuer's disclosed material in order to provide a complete framework of all the offering components. Lack of full disclosure gives rise to the liability provisions of the Securities Act and the Securities Exchange Act

144 Spotify Case Study: Structuring and Executing a Direct Listing by *Marc D. Jaffe, Greg Rodgers, and Horacio Gutierrez, Latham & Watkins LLP*, p. 6.

145 Id. See also Spotify's Direct Listing – A Look Under the Hood, p 7. Available at https://corpgov.law.harvard.edu/2018/04/26/a-look-under-the-hood-of-spotifys-direct-listing/ (last visited Jun 14, 2020).

146 Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, p. 1005, SSRN Electronic Journal (2019).

that aim to protect investors through mandatory disclosure and permit the public to bring claims against the underwriters and constitute a vehicle to compensate investors harmed by securities violations[147]. For the purpose of implementing the statutory laws in the acts, the SEC was established in 1934 by the Congress during the mandate of President F.D. Roosevelt.

In the first place, the Securities Act defines underwriters as:

> *any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.*[148]

The definition is intended to be partially vague as legal interpreters shall focus on the kind of relationships that underwriters have with their clients. It is possible to discern three types of statutory underwriters: any person who purchases from an issuer *with a view* to the distribution of a security; any person who offers or sells for an issuer *in connection with* the distribution of a security; and any person who *participates* in any such undertaking[149]. The last type of underwriter seems to be the only one in connection with the direct listing procedures observed in the U.S.[150] and thus financial advisors assisting clients that are listing directly to the market may be considered liable in case of wrongdoing; to my knowledge, at the time of writing there has been no lawsuit involving issuers or financial advisors involved in a direct listing, therefore there's no evidence supporting such a view. Nonetheless, it is possible to infer whether the liability provisions that apply to underwriters under the Securities Act and the Exchange Act have potential for applying.

Complete and accurate disclosure is a device aimed at protecting investors from fallacies and flaws in the offering material; evidence shows that it is a common event that

147 Clarke, J. J., Weber, R. D., & amp; Chatfield, K. M., Practical Law (2020), available at content.next.westlaw.com/Document.

148 15 USC § 77b(a)(11).

149 Id. See also Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, SSRN Electronic Journal (2019).

150 Pure direct listings do not involve any offer or sale conducted by other entities except by the issuer itself. For this reason, we can exclude the first and the second definition of underwriters.

investment banks are sued because of wrongdoings as underwriters: over the period going from 2008 to 2017, 84% of settled cases with only 1933 Act claims involved an underwriter[151]. Section 11 of the Securities Act permits purchasers of the securities to bring claims against all the parties involved with an offering on the basis of misstatements or omissions upon some material registered with the SEC[152]. According to a judgement at Common Law[153], the claimants need to prove that the securities they purchased trace to the registration statement. Whereas this requirement can be easily met in traditional IPOs thanks to the issuance being carried out for the first time and hence being all the equities necessarily registered, in direct listings most of the shares being made available is likely not to have been registered with the SEC[154]. Therefore, the lack of this condition may hamper the action brought against the financial advisors[155].

As of now, underwriter's liability probably remains the main legal issue surrounding potential lawsuits arising within direct listings, mainly due to the limited experience that the U.S. legislation has with this matter[156]. In spite of the lack of legal expertise, as a wave of deregulation has been sneaking through the U.S. national exchanges, also fuelled by Mr. Joseph Clayton[157], the United States authorities were willing to take up the challenge to permit Spotify's direct listing[158]. Of course, this did not come without some crucial accommodations.

D. The Case of Spotify's Listing: Issues, Legal Accommodations and Success

Given the exceptional features surrounding Spotify's listing, the executives of the Swedish unicorn, with the advice of Morgan Stanley, Goldman Sachs and Allen & Co. as

151 Cornerstone, Securities Class Action Settlements (2017), available at www.cornerstone.com/Publications.

152 15 USC § 77k(a).

153 See Hertzberg v Dignity Partners, Inc.

154 The listing company can register a class of shares at its discretion. See also Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, SSRN Electronic Journal (2019).

155 Underwriters do not take part in direct listings, investment banks act as mere advisors. See section I.C.

156 See John C. Coffee Jr., The Spotify Listing: Can an "Underwriter-less" IPO Attract Other Unicorns? CLS Blue Sky Blog (2018), available at clsbluesky.law.columbia.edu/2018/ (last visited May 19, 2020).

157 Joseph "Jay" Clayton is Chairman of the SEC since May 4th, 2017.

158 Ambrus Kecskés, Ambrus Kecskés CLS Blue Sky Blog (2018), available at clsbluesky.law.columbia.edu/author/ambrus-kecskes (last visited May 19, 2020).

financial advisors[159], had to work closely along with the SEC and NYSE staff in order to find a solution to get listed within the limits imposed by the relevant acts[160] and the ensuing implementations by the two organs, with the main aim being investors protection. The path that led to the completion of the project is reported below.

Figure 4.

Note. Spotify SA's iter leading to its listing on April 3, 2018. Source: Spotify Case Study: Structuring and Executing a Direct Listing.[161]

Spotify filed its first confidential submission with the SEC in December 2017; a long series of comments and negotiations between the two followed until February 2018, when Spotify's registration statement was made public for the first time. The Swedish giant submitted a Form F-1, which is the equivalent of an S-1[162] but concerns only foreign private issuers[163]; the registration statement took the form of a resale shelf registration statement, that is typically filed on Form S-3, but given the atypical feature of this IPO in which the issuer was not selling securities but just allowing them to be sold on the exchange, the SEC allowed it to submit such a hybrid form. Spotify's executives appealed to Rule 144[164] which provides a safe harbour for securities resales to qualified institutional buyers under the requirements of the Securities Act of 1933. Therefore, Spotify registered only about 31% of its outstanding shares, those that had been held for no longer than 12

159 See Spotify's Prospectus, p. 186, available at https://perma.cc/S7ZD-9K6G#rom494294_24.
160 The Securities Act and the Exchange Act.
161 Cited at note 11.
162 See note 74.
163 See the term definition in CFR §230.405.
164 17 CFR § 230.144.

months and could have not been sold otherwise; in addition to this, the affiliates and non-affiliates that held its equities for a period longer than twelve months, were enabled to sell them freely thanks to the listing and, according to SEC Rule 144A, they needed not a registration document to do so[165]. The registration statement was made effective by Spotify for a period of 90 days following the date when the statement was made effective; oddly, after the effectiveness was declared on March 23rd 2018, the Swedish company did not choose to commence trading just as most of issuers do, but it waited until April 3rd to ensure that all the existing shareholders had enough time to deposit their shares into a brokerage account by the Depository trust Company[166].

The NYSE had the ability to allow private issuers that had not been registered with the SEC for a public debut if they could prove both a market valuation of at least $ 100 million provided by an independent third party and a sustained trading history in private placement markets over several months[167]. Despite a history of private resales, Spotify did not meet the requirements. After having been in talks with the company, the NYSE came up with a proposal to change § 102.01B of its Listed Company Manual[168]; the proposal aimed to permit direct listings by putting forward two amendments that were accepted by the SEC[169]: remove the sustained trading history requirement if the company was able to prove a market valuation of at least $ 250 million[170] and require the company's financial advisors to work with a DMM in order to establish the opening price. In order to comply with the second amended requirements, Spotify had Morgan Stanley providing the necessary information to Citadel Securities LLC, which was chosen to oversee the company's unusual public debut by matching market orders on the NYSE trading floor[171].

165 Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, SSRN Electronic Journal (2019).

166 Spotify Case Study: Structuring and Executing a Direct Listing by *Marc D. Jaffe, Greg Rodgers, and Horacio Gutierrez, Latham & Watkins LLP*, p. 5.

167 See Section II.B. for what § 102.01B(E) imposed before the Spotify's listing.

168 See Alexander Osipovich and Maureen Farrell, "Spotify Rule" Would Help New York Stock Exchange Woo Unicorns (Wall St J, May 26, 2017) available at www.wsj.com/articles/spotify-rule-would-help-new-york-stock-exchange-woo-unicorns. See also section II.B. for more on the NYSE's proposal.

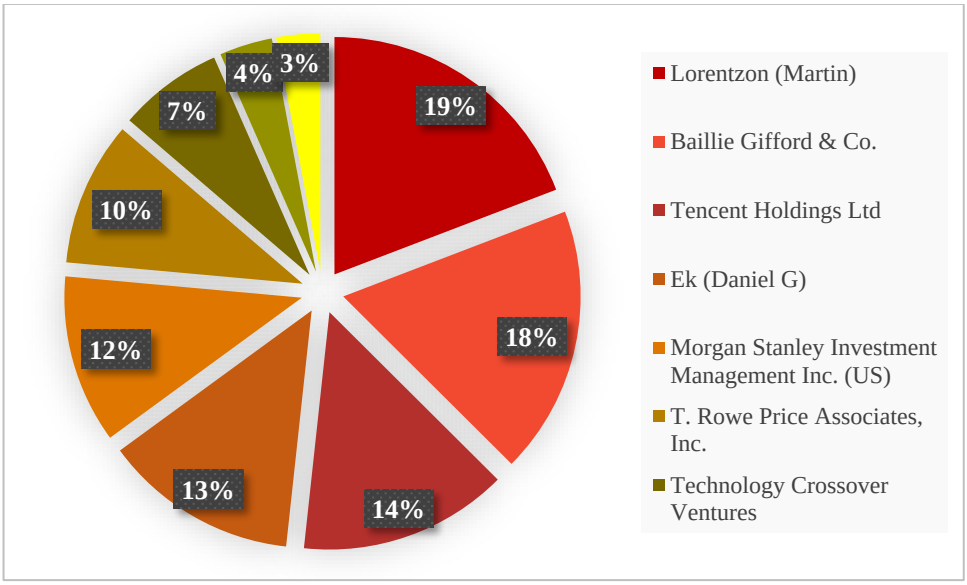
169 For the full draft of the amended proposal see generally Securities and Exchange Commission Release No 34-82627, 83 Fed Reg 5650 (Feb 2, 2018).

170 The amount was easily at Spotify's length whose market capitalisation at the time was around $ 20 billion.

171 Citadel LLC works as a market specialist on the NYSE floor. See note 49 for a definition of specialist.

Spotify reported such information on its prospectus[172], stating that the market price would be determined partly on Morgan Stanley's understanding of its ownership of outstanding shares and prelisting buying and selling interests from public investors[173].
These amendments allowed all agents involved[174] to carry out smoothly the direct listing. On April 3rd, trading of Spotify's shares commenced on the NYSE, whose staff set the pre-trading reference price at $ 132.50 per share and at closure it had grown up to $ 149.01 with 30,526,500 shares being traded. Spotify SA's blockholders today present as follows.

Figure 5.



Note. Spotify's ownership of outstanding shares, as of May 15th, 2020. Source: Refinitiv Eikon.

III. CRITICISM AND FUTURE PROSPECT

From a legal point of view, as shown in chapter II, Spotify Technologies SA's listing proved that there was no concrete difference between the listing procedure of a traditional underwritten Initial Public Offering and that of a direct listing. The SEC has treated the direct listing quite in the same way of underwritten IPOs, imposing the same

172 Spotify's prospectus, p. 185, see note 74.
173 Benjamin Nickerson, The Underlying Underwriter: An Analysis of the Spotify Direct Listing, SSRN Electronic Journal (2019).
174 See section I.A.2. for an understanding of what agents are involved in a public listing.

restrictions[175] in spite of the absence of an underwriter. The question that companies wishing to imitate Spotify's listing might wonder is whether they this should discourage them. Well, the answer seems to be no: as long as direct listing procedures are not substantially different, companies only need to hire consultants who are already well-aware of how things work with the SEC and national stock exchanges. Therefore, there is no need to seek for specialised legal and financial expertise for conducting such a path. All parties would be happy with a direct listing: current stockholders would be given the chance of an exit strategy and investment banks can still earn substantial fees thanks to their role of financial consultants. Though, the biggest advantage is gained by the companies who are listing; according to a study of J.P. Morgan's Corporate Finance Advisory team, an underwritten offering for a company with a market valuation similar to Spotify's would cost between $80 million and $120 million[176]. The financial advisory fees cost the Swedish giant only $35 million[177], resulting in a potential save of a minimum of $35 million. Since companies listing directly to the market are bound to boast an exceptional marketing and financial reputation, they can afford not to pay the burdensome costs of a roadshow. In fact, Spotify organised an Investor Day on its website, that was made publicly available to everybody who wished to watch the firm's leadership talk about their prospects. In light of these figures, it can be imagined that most companies would jump at the opportunity of opportunity of saving so much money. Nevertheless, as specifies in section I.B., direct listings are absolutely not suitable for all companies in that they primarily need an outstanding reputation and, should they wish to build it, they would end up facing advertising and marketing expenses at least as high as those of a traditional public offering. Consequently, monetary aspects in the short term should be carefully weighed up against underlying lack of corporate reliability or concrete financial prospects[178] that would result in stock price deterioration. What concerns Prof. Horton the most is the absence of the underwriter[179] in that investment banks' *reputational*

[175] Mainly a Securities Act registration statement instead of an Exchange Act one alone, the traditional quiet period, standard reporting requirements and Regulation M.

[176] See J.P. Morgan's Corporate Finance Advisory Trending Topics, p. 14. Available at https://www.jpmorgan.com/jpmpdf/1320745853262.pdf.

[177] See Spotify's prospectus.

[178] Figure II illustrates how capital expenditures of companies that listed directly on the market so far are declining over time, indicating a lower amount of investments.

[179] Horton Brent J., Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure. SMUL Rev., 72, 177 (2019). p. 67: "Is Spotify's direct listing a recipe for gatekeeper failure?" The answer is yes.

capital is not at stake as instead it is when performing the traditional gatekeeper role. This fact entails less incentives for investment bankers in conducting due diligence activities on corporate clients' profile as their own reputation is barely involved: in Spotify's prospectus, the names of Goldman Sachs, Morgan Stanley and Allen & Co. figured only a few times. Therefore, securities purchasers would be bearing a higher amount of risk due to greater odds of incurring in material misstatements or omissions and hence more significant price volatility. It is curious to note that all companies that listed directly on the market or had initially planned to do so[180], belong to the technological field. Looking back at the dot-com bubble, many companies were over-valued because investors perhaps were hyped by their innovative business models and features, so that they would pay even $78 per share for a company whose profits were a negative $28.6 million and that eventually went bankrupt[181]. Learning from that market crash, investors should fully understand what types of risks a direct listing entails and the issuers' intentions to do such a move.

However, it is doubtless that the SEC and the other securities exchange regulators need to comprehend what are the concrete risks and what the advantages that direct listings can bring to the market as a whole. In fact, we can expect that more companies over time will ask to debut publicly through such a procedure as private markets are constantly growing[182], resulting in a diminished need for raising capital through an initial public offering or secondary offerings. The NYSE sees that direct listing can improve capital formation in the country and it would also guarantee a more democratic access to capital markets to companies that do not intend to raise further funds. In December 2019 the Exchange submitted to the Commission a proposal for allowing companies to list directly on the market and to raise capital simultaneously; the SEC rejected it. Had it been accepted, it would have been too disruptive for the market as of now, agents would have been largely unprepared. In spite of the refusal, a spokesman said that the Exchange intend to go further with the SEC on this initiative.

180 Slack, Inc., Uber, Airbnb, Lyft and others.

181 Horton Brent J., Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure. SMUL Rev., 72, 177 (2019). p. 69.

182 See De Fontenay Elizabeth, The deregulation of private capital and the decline of the public company. Hastings LJ, 68, 445 (2016).

Final Remarks

The direct listing procedure proved to be cheaper, faster and probably less legally risky to the issuer than it would be under a traditional IPO[183]. These features certainly make it quite attractive at the eyes of private companies that wish to go public in the U.S. and, as the listing of Spotify SA proved, authorities can cooperate in order to make it possible by conducting the legal adjustments required. All in all, attracting private companies is in the interests of the American national exchanges and authorities in that they bring in new capitals within the economy and, as such, it is in the interest of all agents including regulators, who might be willing to facilitate the required procedures. Some legal issues still remain open and will be so until some litigation settlements will deem how liabilities will be attributed to the agents. Nevertheless, we observed that direct listing is not right for every company as it requires crucial features that companies can accomplish over time and successful projects and fundraising rounds. As a result, it can be asserted that the direct listing is not a perfect substitute for the traditional initial public offering as of now, and it is not going to replace it in the near future; yet, given NYSE's intentions to allow companies to list directly and raise capital simultaneously, it is possible to observe crucial radical changes.

[183] John C. Coffee Jr., The Spotify Listing: Can an "Underwriter-less" IPO Attract Other Unicorns? CLS Blue Sky Blog (2018), available at clsbluesky.law.columbia.edu/2018/ (last visited May 19, 2020).

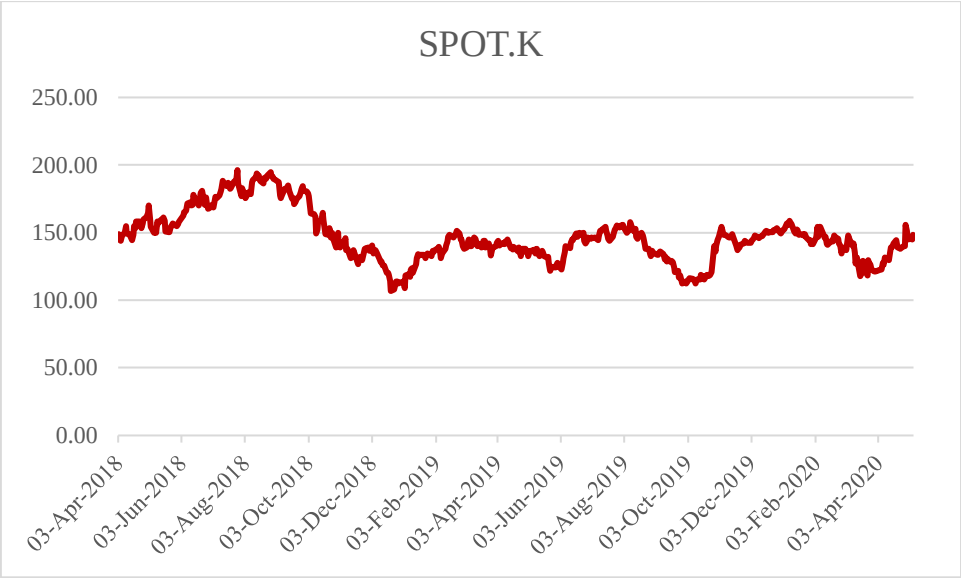
APPENDIX

Table 1.

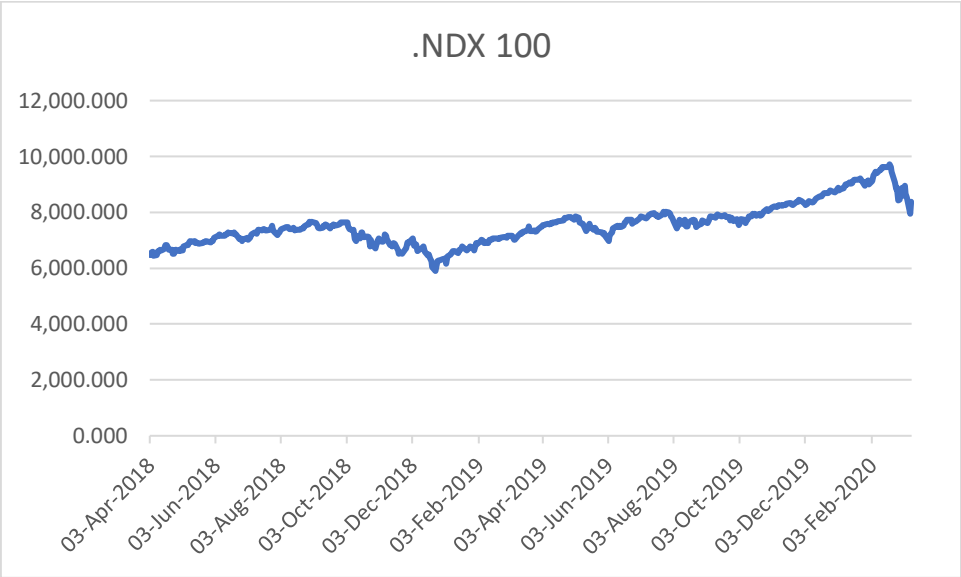
	Proceeds Category	
	$25-100 million (inflation-adjusted in 2011 $)	more than $100 million (2011 $)
<7%	2.7% (23)	49.73% (556)
=7%	95.9% (811)	49.73% (556)
>7%	1.4% (12)	0.54% (6)
Total	100% (846 IPOs)	100% (1,118 IPOs)

From Professor J. Ritter's IPO database, available at https://site.warrington.ufl.edu/ritter/ipo-data/. Professor Ritter finds that over the years, the spread fee applied by investment bankers in the role of underwriters has been 7%. Underwriters paid for their assisted issuer's securities an average of 93% out of the established market full price. This is not only part of the compensation scheme but is also justified by the risk that the stock price may sink after the beginning of secondary trading. In that case, in most IPOs, contractual liability imposes that underwriters must execute a stabilising bid in order to drive the stock price up again. Should this occur, underwriters would reduce the loss deriving from the securities purchase.

Figure 1.



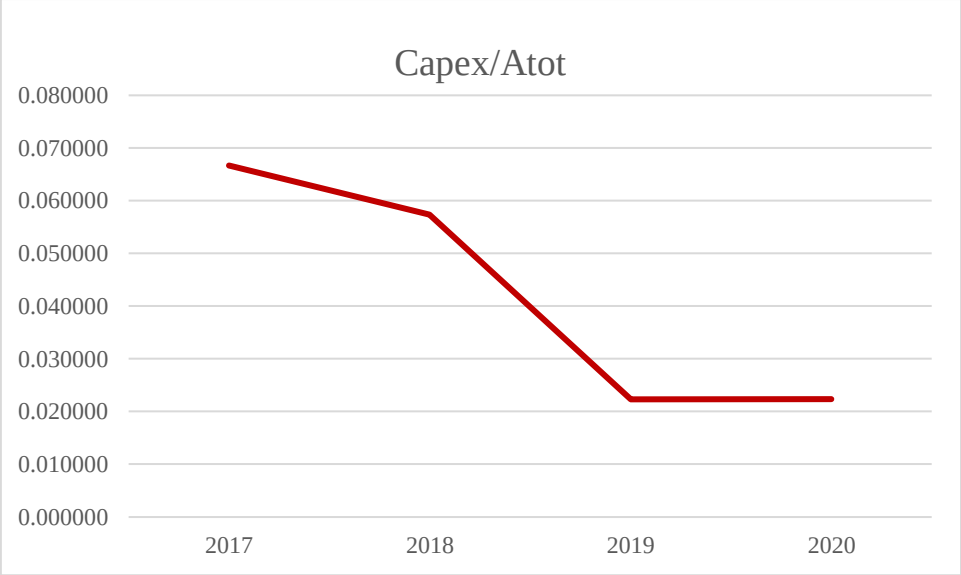
The graph tracks the 2 years-long Spotify's stock performance. Following the global technology stock retreat in October 2018, Spotify announced a stock buy-back in order to signal confidence to its investors. The company's CFO Barry McCarthy stated that as the business was overcapitalised, the move seemed to be necessary[184]. The plan will last until April 2021.



[184] https://www.bloomberg.com/news/articles/2018-11-05/spotify-s-buyback-seen-as-reassurance-bid-after-earnings.

Comparing Spotify's stock price to that of Nasdaq 100 Index, which tracks technology stocks in the U.S., we see that the Swedish firm's stock price has been more volatile. Nevertheless, the firm's executives had foreseen that such event may occur and explicitly stated it in its prospectus: because there are no underwriters, there is no underwriters' option to purchase additional shares to help stabilize, maintain, or affect the public price of the public price of our ordinary shares may be volatile, and could, upon listing on the NYSE, decline significantly and rapidly[185].

Figure2.



I combined Spotify's and Slack's capital expenditures and divided it by their combined total assets. Taking the average, it results that Capex/Total Assets is a decreasing ratio over time. This indicates that the companies' investments over time decrease with respect to their total assets which grow at a faster rate. Although it may seem a negative trait, we need to consider that firms performing direct listings have already invested plenty of money raised through private placements markets, whereas companies listed through traditional IPOs are more likely to be collecting large enough funds for the first time, hence their capital expenditure over total asset ratio might be higher.
Data have been downloaded from Refinitiv Eikon.

185 https://perma.cc/S7ZD-9K6G - rom494294_28.

Spotify Cash Flow:

Period End Date	31-12-2019	31-12-2018	31-12-2017
Period Length	12 Months	12 Months	12 Months
Statement Date	31-12-2019	31-12-2018	31-12-2017
Update Type	Original	Original	Original
Standardized Currency	EUR	EUR	EUR
Reporting Currency	EUR	EUR	EUR
Reporting Unit	Millions	Millions	Millions
Source	20-F	20-F	USA PROSPECTUS
Source Date	12-02-2020	12-02-2019	28-02-2018
Original Announcement Date	05-02-2020 11:14	06-02-2019 11:13	28-02-2018 12:00
Complete Statement	Complete	Complete	Complete
Flash Update	Full Update	Full Update	Full Update
Consolidated	Consolidated	Consolidated	Consolidated

Auditor Name	Ernst & Young AB	Ernst & Young AB	Ernst & Young AB
Auditor Opinion	Unqualified	Unqualified	Unqualified
Acc. Std	IFRS	IFRS	IFRS
Template Type	Industrial - Indirect	Industrial - Indirect	Industrial - Indirect
Cash Flow - Standardized (Currency: As Reported)			
Field Name	31-12-2019	31-12-2018	31-12-2017
	Operating Cash Flow - Indirect		
Profit/(Loss) - Starting Line - CF	-186,0	-78,00	-1.235,0
Non-Cash Items & Reconc Adj - CF	335,0	162,0	973,0
Eq Inc/(Loss) in Net Earnings - CF		1,00	-1,00
Inc Tax Expn - CF	55,00	-95,00	2,00
Fin Inc/(Expn) - CF	58,00	129,0	856,0
Oth Non-Cash Items & Reconc Adj - CF	13,00	7,00	-3,00
Depr, Depl & Amort incl Impair - CF	87,00	32,00	54,00
Depr & Depl - PPE - CF	71,00	21,00	46,00
Amort - Intang & Def Chrg - CF	16,00	11,00	8,00
Share Based Paymt - CF	122,0	88,00	65,00

Inc Taxes - Paid/(Reimb) - Indirect CF	4,00	9,00	-2,00
Intr Paid - Cash	37,00		
Intr & Div - Received - Tot - CF	14,00	18,00	19,00
Cash Flow from Op Bef Chg in Wkg Cap	122,0	93,00	-241,0
Wkg Cap - Incr/(Decr) - CF	451,0	251,0	420,0
Acct Rcvbl - Decr/(Incr) - CF	-27,00	-61,00	-112,0
Acct Pble - Incr/(Decr) - CF	454,0	291,0	447,0
Taxes Pble - Incr/(Decr) - CF			0
Oth Liab - Incr/(Decr) - Tot - CF	24,00	21,00	85,00
Net Cash Flow from Op	573,0	344,0	179,0
	Investing Cash Flow		
CAPEX - Net - CF	135,0	125,0	46,00
PPE - Purch/(Sold) - Net - CF	135,0	125,0	36,00
PPE - Purch - CF	135,0	125,0	36,00
Intang - Purch/(Sold) - Net - Tot - CF			10,00
Intang - Purch/Acq - CF			10,00
CAPEX - Tot	135,0	125,0	46,00
Acq & Disp of Biz - Assets - Sold/(Acq) - Net - CF	-331,0		-49,00
Acq of Biz - CF	331,0		49,00
Invst excl Loans - Decr/(Incr) - CF	262,0	157,0	-306,0

Invst Sec Sold/(Purch) - Net - Tot - CF	262,0	157,0	-306,0
Invst Sec - Sold/Matured CF	1.163,0	1.226,0	1.080,0
Invst Sec - Purch CF	901,0	1.069,0	1.386,0
Invst - Assoc Co & JVs - Sold/(Purch) - CF			0
Oth Invst Cash Flow - Decr/(Incr)	-14,00	-54,00	-34,00
Net Cash Flow from Invst	-218,0	-22,00	-435,0
	Financing Cash Flow		
Stock - Tot - Issuance/(Ret) - Net - CF	-195,0	91,00	38,00
Stock - Issuance/(Ret) - Net - excl Options/Warrants - CF	-438,0	-72,00	0
Stock - Com - Issuance/(Ret) - Net - CF	-438,0	-72,00	0
Stock - Com - Issued/Sold - CF			0
Stock - Com - Repurch/Retired - CF	438,0	72,00	
Options Exercised - CF	154,0	163,0	29,00
Warrants Converted - CF	89,00		9,00
Debt - LT & ST - Issuance/(Ret) - Tot - CF	-17,00		-4,00
Debt - Issued/(Reduced) - LT & ST - CF			-4,00
Debt - Reduced - LT & ST - CF			4,00
Debt - Issued/(Reduced) - LT - CF	-17,00		0
Debt - Issued - LT - CF			0
Debt - Reduced - LT - CF	17,00		

Oth Fin Cash Flow - Incr/(Decr)	9,00	1,00	
Net Cash Flow from Fin	-203,0	92,00	34,00
	Foreign Exchange Effects		
FX Effects - CF	22,00	0	-56,00
	Change in Cash		
Net Chg in Cash - Tot	174,0	414,0	-278,0
Net Cash from Cont Ops	174,0	414,0	-278,0
Net Cash - Beg Bal	891,0	477,0	755,0
Net Cash - Ending Bal	1.065,0	891,0	477,0
	Supplemental		
Inc Taxes - Paid/(Reimb) - CF - Suppl	4,00	9,00	-2,00
Intr Paid - CF - Suppl	37,00		
Intr & Div - Received - CF - Suppl	14,00	18,00	19,00
Non-GAAP Free Cash Flow	440,0	209,0	109,0
Com Stock Buyback - Net	438,0	72,00	0
Depr, Depl & Amort - CF	87,00	32,00	54,00
Free Cash Flow to Eq	421,0	219,0	129,0
FOCF	438,0	219,0	133,0
Levered FOCF	438,0	219,0	133,0

Slack Technologies, Inc. Cash Flow:

	Period End Date	31-01-2019	31-01-2018	31-01-2017
	Period Length	12 Months	12 Months	12 Months
	Statement Date	30-04-2019	30-04-2019	30-04-2019
	Update Type	Original	Original	Original
	Standardized Currency	USD	USD	USD
	Reporting Currency	USD	USD	USD
	Reporting Unit	Thousands	Thousands	Thousands
	Source	PROSPECT US/A	PROSPECT US/A	PROSPECT US/A
	Source Date	31-05-2019	31-05-2019	31-05-2019
	Original Announcement Date	31-05-2019 15:29	31-05-2019 15:29	12-03-2019 13:17
	Complete Statement	Complete	Complete	Complete
	Flash Update	Full Update	Full Update	Full Update
	Consolidated	Consolidated	Consolidated	Consolidated
	Auditor Name	KPMG LLP	KPMG LLP	KPMG LLP
	Auditor Opinion	Unqualified	Unqualified	Unqualified
	Acc. Std	US	US	US
	Template Type	Industrial - Indirect	Industrial - Indirect	Industrial - Indirect

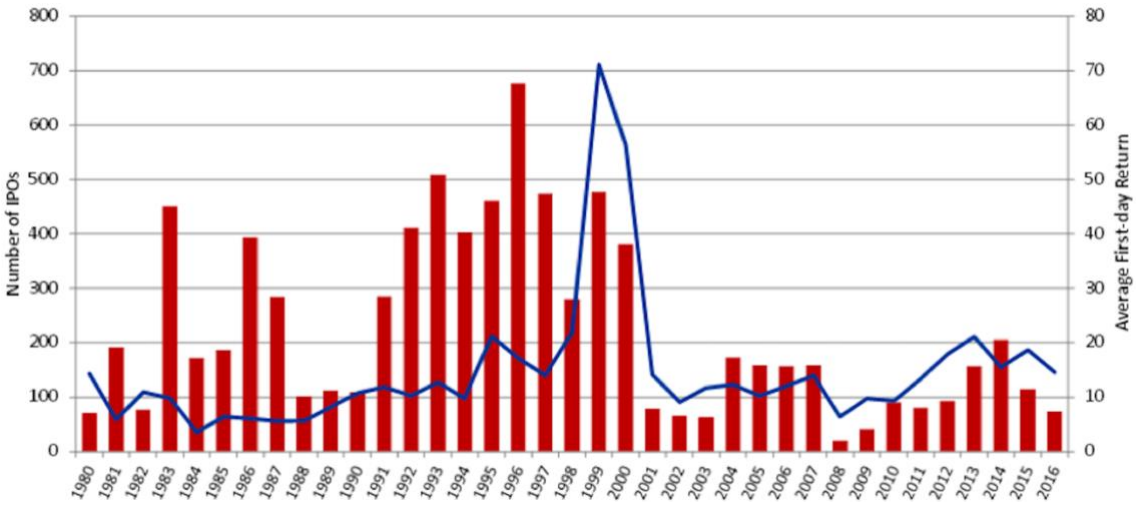
	Cash Flow - Standardized (Currency: As Reported)			
FCC	Field Name	31-01-2019	31-01-2018	31-01-2017
	Operating Cash Flow - Indirect			
SPLS	Profit/(Loss) - Starting Line - CF	-138,9	-140,1	-146,9
SNCR	Non-Cash Items & Reconc Adj - CF	39,17	25,33	51,26
SOCF	Oth Non-Cash Items & Reconc Adj - CF	-2,51	1,72	2,31
SDAI	Depr, Depl & Amort incl Impair - CF	19,97	14,93	6,80
SDEP	Depr & Depl - PPE - CF	16,82	14,32	6,79
SAMI	Amort - Intang & Def Chrg - CF	3,15	0,61	0,01
SRGL	Assets Sale - G/(L) - CF	2,28	0	0,03
SUGL	Fin Assets - Unreal G/(L) - CF	-3,70	-0,03	0,07
SEBE	Share Based Paymt - CF	23,13	8,71	42,06
SONC	Cash Flow from Op Bef Chg in Wkg Cap	-99,73	-114,7	-95,64
SCWC	Wkg Cap - Incr/(Decr) - CF	58,67	79,11	5,84
SACR	Acct Rcvbl - Decr/(Incr) - CF	-50,30	-21,96	-12,03
SPPY	Prepaid Expn - Decr/(Incr) - CF	-53,07	6,36	-31,55
SAPB	Acct Pble - Incr/(Decr) - CF	2,85	4,85	-1,36

SAEX	Accrued Expn - Incr/(Decr) - CF	22,50	12,47	9,62
SCOL	Op Lease Liab - Incr/(Decr) - CF			
SOLB	Oth Liab - Incr/(Decr) - Tot - CF	136,7	77,40	41,17
STLO	Net Cash Flow from Op	-41,06	-35,62	-89,81
	Investing Cash Flow			
SCAP	CAPEX - Net - CF	58,64	22,09	24,82
SPPN	PPE - Purch/(Sold) - Net - CF	55,42	22,04	24,23
SCEP	PPE - Purch - CF	56,18	22,04	24,23
SSFA	PPE Sold - CF	0,76	0	0
SIAN	Intang - Purch/(Sold) - Net - Tot - CF	3,22	0,05	0,58
SIAQ	Intang - Purch/Acq - CF	2,38	0	0
SSDC	S/W Dev Costs - CF	0,84	0,05	0,58
SCEX	CAPEX - Tot	59,40	22,09	*24,82*
SBAS	Acq & Disp of Biz - Assets - Sold/(Acq) - Net - CF	-45,31	0	0
SBAQ	Acq of Biz - CF	45,31	0	0
SIVN	Invst excl Loans - Decr/(Incr) - CF	-229,5	-218,3	-16,95
SIVT	Invst Sec Sold/(Purch) - Net - Tot - CF	-229,5	-218,3	-16,95
SINS	Invst Sec - Sold/Matured CF	739,9	295,3	333,9

SINP	Invst Sec - Purch CF	969,3	513,7	350,9
STLI	Net Cash Flow from Invst	-333,4	-240,4	-41,77
	Financing Cash Flow			
SPSS	Stock - Tot - Issuance/(Ret) - Net - CF	437,7	297,0	208,3
SSNU	Stock - Issuance/(Ret) - Net - excl Options/Warrants - CF	432,9	294,1	203,6
SCSN	Stock - Com - Issuance/(Ret) - Net - CF	6,01	-40,51	-4,30
SSIC	Stock - Com - Issued/Sold - CF	6,08	0	0
SSRC	Stock - Com - Repurch/Retired - CF	0,07	40,51	4,30
SPSN	Stock - Pref - Issuance/(Ret) - Net - CF	426,9	334,6	207,9
SPSI	Stock - Pref - Issued/Sold - CF	426,9	412,4	207,9
SPSR	Stock - Pref - Repurch/Retired - CF	0	77,73	0
SOPX	Options Exercised - CF	4,78	2,91	4,74
SMJN	Minority Intr & JVs - Net - CF	0	0	5,76
SFCF	Oth Fin Cash Flow - Incr/(Decr)			
STLF	Net Cash Flow from Fin	437,7	297,0	214,1
	Change in Cash			
SNCC	Net Chg in Cash - Tot	63,20	20,98	82,52

SCNC	Net Cash from Cont Ops	63,20	20,98	82,52
SNCB	Net Cash - Beg Bal	138,1	117,1	34,56
SNCE	Net Cash - Ending Bal	201,3	138,1	117,1
	Supplemental			
SSTN	Inc Taxes - Paid/(Reimb) - CF - Suppl	0,88	0,95	0,05
SNGF	Non-GAAP Free Cash Flow	-97,24	-57,66	-114,0
SCSBN	Com Stock Buyback - Net	-6,01	40,51	4,30
SDDAA	Depr, Depl & Amort - CF	19,97	14,93	6,80
SFCFE	Free Cash Flow to Eq	-99,70	-57,71	-114,6
SFCFO	FOCF	-100,5	-57,71	-114,6
SFCFL	Levered FOCF	-100,5	-57,71	-114,6

Figure 3.



The graph is taken from an abbreviation of Professor Coffee's testimony before the House Financial Services Committee's Subcommittee on Capital Markets, Securities, and Investments[186]. Professor Coffee commented the basic pattern: "shows that not only have the average number of IPOs declined (from 310 a year in 1980-2000 to 108 from 2001-2016), but the first day returns (and thus the returns that attract investors and underwriters) have declined dramatically".

[186] https://clsbluesky.law.columbia.edu/2018/05/29/the-irrepressible-myth-that-sec-overregulation-has-chilled-ipos/.

Table 2.

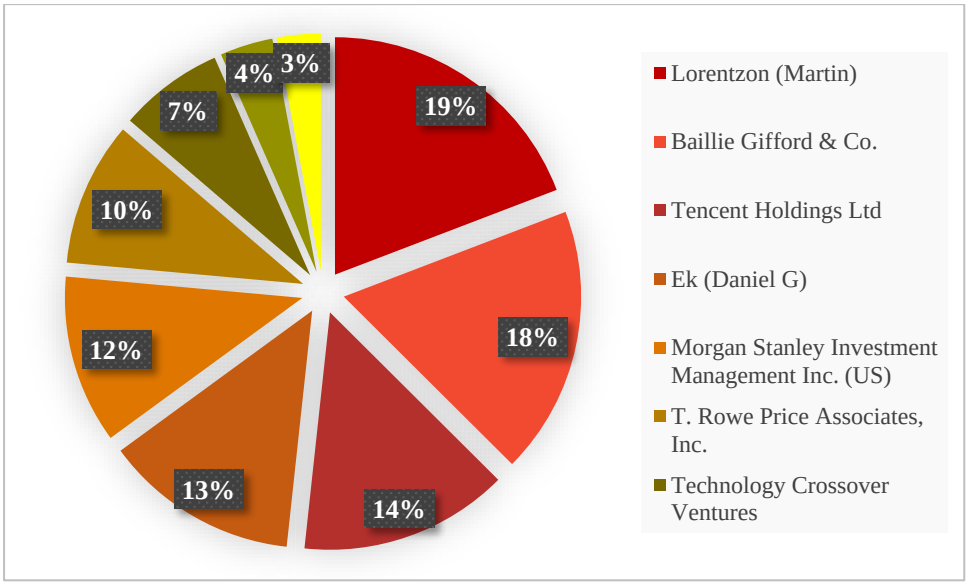
	IPO	Direct Listing (Pure)	Direct Listing (Spotify)
Purpose	Raise capital, liquidity, consideration for later acquisitions	Liquidity, consideration for later acquisitions	Liquidity, consideration for later acquisitions
Required SEC filings	Securities Act registration statement (S-1) followed by Exchange Act registration statement (8-A)	Exchange Act registration statement (Form 10)	Securities Act registration statement (F-1) followed by Exchange Act registration statement (8-A)
Restrictions on communications	Quiet period applies	No restrictions	Quiet period applies
Required NYSE filings	Listing application	Listing application	Listing application
Role of investment banks	Underwriter	Financial advisor	Financial advisor
Amount exceptionally large company pays to investment bank	$130.5 million[28] (large companies pay on average $37 million)[29]	N/A	$35 million

In this way, Professor Horton summarises the main characteristics of the three types of listing that we can contemplate: a traditional initial public offering, a pure direct listing and a non-pure direct listing. Since Spotify SA was required to file a Securities Act registration statement Form F-1 and thus to observe the ensuing limitations (quiet period, regulation M, reporting requirements), the author deems it to be a non-pure listing.

Figure 4.

The picture illustrates Spotify's path leading to its listing. Talks with the Exchange begun in early 2017, but it was not until the summer that the SEC started considering allowing amendments to the NYSE's Company Listing Manual. On February 28th, Spotify submitted its prospectus, which has been amended multiple times before the SEC declared its effectiveness. Usually, underwriters commence trading immediately after the statement is made effective, whereas Spotify decided to take some ten days more in order to give time to its employees to deposit their stock into brokerage accounts and to settle for the debut, which started on April 3rd.

Figure 5.



CEO and Chairman Daniel Ek and Martin Lorentzon are the founders of Spotify Technologies SA and together they own 33% of the company's whole public float. Chinese social media company Tencent Holdings at the time of listing was subject to a previous lock-up agreement, as specified in Spotify's prospectus[187], therefore it was not eligible to sell out its stake in the Swedish firm, that eventually grew from 9% to a current 14%.

187 https://perma.cc/S7ZD-9K6G, p. 8.

REFERENCES

1. Arleen Jacobius. (July 8, 2019). Direct listings open new avenues for institutions; New opportunities possible for managers and their clients - but there could be pitfalls, too. *Pensions & Investments.* Retrieved from advance.lexis.com.

2. Arthurs, J. D., Busenitz, L. W., Hoskisson, R. E., & Johnson, R. A. (2009). Signalling and initial public offerings: The use and impact of the lockup period. Journal of Business Venturing, 24(4), 360-372.

3. Benveniste, L. M., & Wilhelm Jr, W. J. (1997). Initial public offerings: going by the book. Journal of Applied Corporate Finance, 10(1), 98-108.

4. Bodie, Z. (2009). Investments. Tata McGraw-Hill Education.

5. Brown, K. C., & Wiles, K. W. (2015). In search of Unicorns: Private IPOs and the changing markets for private equity investments and corporate control. Journal of Applied Corporate Finance, 27(3), 34-48.

6. Chang, X., Dasgupta, S., & Hilary, G. (2006). Analyst coverage and financing decisions. The Journal of Finance, 61(6), 3009-3048.

7. Chemmanur, T. J., He, J., Ren, X., & Shu, T. (2020). The Disappearing IPO Puzzle: New Insights from Proprietary US Census Data on Private Firms.

8. Chen, C. R., & Mohan, N. J. (2002). Underwriter spread, underwriter reputation, and IPO underpricing: A simultaneous equation analysis. Journal of Business Finance & Accounting, 29(3-4), 521-540.

9. Clarke, J. J., Weber, R. D., & Chatfield, K. M. (2020). Practical Law. Retrieved May 17, 2020, from

https://content.next.westlaw.com/Document/I7670357512f211e798dc8b09b4f043e0/View/FullText.html?transitionType=Default.

10. Coffee, J. C., Jr. (2018, January 16). The Spotify Listing: Can an "Underwriter-less" IPO Attract Other Unicorns? Retrieved May 15, 2020, from https://clsbluesky.law.columbia.edu/2018/01/16/the-spotify-listing-can-an-underwriter-less-ipo-attract-other-unicorns/.

11. Coffee, J., Jr. (2018, May 29). The Irrepressible Myth That SEC Overregulation Has Chilled IPOs. Retrieved May 16, 2020, from https://clsbluesky.law.columbia.edu/2018/05/29/the-irrepressible-myth-that-sec-overregulation-has-chilled-ipos/.

12. Colombo, M. G., Cumming, D. J., & Vismara, S. (2016). Governmental venture capital for innovative young firms. *The Journal of Technology Transfer*, *41*(1), 10-24.

13. Cook, W. W. (1921). " Watered Stock": Commissions:" Blue Sky Laws": Stock without Par Value. Michigan Law Review, 19(6), 583-598.

14. Cornerstone. (2017). Securities Class Action Settlements. Retrieved May 17, 2020, from https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2017-Review-and-Analysis.

15. Davies, P. L., & Gower, L. C. (2008). Principles of modern company law (Vol. 17511). London: Sweet & Maxwell.

16. Davis, E. P., & Steil, B. (2004). Institutional investors. MIT press.

17. De Fontenay, E. (2016). The deregulation of private capital and the decline of the public company. Hastings LJ, 68, 445.

18. Exchange, L. S. (2010). A guide to listing on the London Stock Exchange (LSE). November, London.

19. Ferrara, R. C., Thomas, H., & Nagy, D. M. (2019). Ferrara on insider trading and the wall. Law Journal Press.

20. Fuchita, Y., & Litan, R. E. (Eds.). (2007). Financial Gatekeepers: Can They Protect Investors?. Brookings Institution Press.

21. Garfinkle, N., Malkiel, B. G., & Bontas, C. (2002). Effect of underpricing and lock-up provisions in IPOs. The Journal of Portfolio Management, 28(3), 50-58.

22. George, A. (1970). The Market for Lemons: Quality Uncertainty and the Market Mechanism. The Quarterly Journal of Economics.

23. Grabar, N., Lopez, D., Basham, A., & C. (2018, April 26). Spotify's Direct Listing – A Look Under the Hood. Retrieved June 14, 2020, from https://corpgov.law.harvard.edu/2018/04/26/a-look-under-the-hood-of-spotifys-direct-listing/.

24. Horton, B. J. (2019). Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure. SMUL Rev., 72, 177.

25. Jaffe Marc D., Greg Rodgers, and Horacio Gutierrez, Latham & Watkins LLP (2018). Spotify Case Study: Structuring and Executing a Direct Listing. Harvard Law School Forum on Corporate Governance and Financial Regulation, July 5, 2018.

26. Kahan, M., & Tuckman, B. (1993). Private vs. public lending: Evidence from covenants.

27. Kecskés, A. (2018, March 01). Spotify's Direct Listing in the U.S. and Lessons from the UK. Retrieved May 15, 2020, from https://clsbluesky.law.columbia.edu/2018/03/01/spotifys-direct-listing-in-the-u-s-and-lessons-from-the-uk/.

28. Lazear, E. P. (2004). Balanced skills and entrepreneurship. *American Economic Review*, *94*(2), 208-211.

29. Ljungqvist, A. (2007). IPO underpricing. In Handbook of Empirical Corporate Finance (pp. 375-422). Elsevier.

30. Ljungqvist, A., Nanda, V., & Singh, R. (2006). Hot markets, investor sentiment, and IPO pricing. *The Journal of Business*, *79*(4), 1667-1702.

31. Ljungqvist, A. P., & Wilhelm Jr, W. J. (2002). IPO allocations: Discriminatory or discretionary? Journal of Financial Economics, 65(2), 167-201.

32. Lucas Jr, R. E. (1978). On the size distribution of business firms. *The Bell Journal of Economics*, 508-523.

33. Maynes, E., & Pandes, A. (2008). Private placements and liquidity. Schulich School of Business, York University.

34. Narayanan, R. P., Rangan, K. P., & Rangan, N. K. (2004). The role of syndicate structure in bank underwriting. Journal of Financial Economics, 72(3), 555-580. doi:10.1016/s0304-405x(03)00187-9

35. Neupane, S., & Poshakwale, S. S. (2012). Transparency in IPO mechanism: Retail investors' participation, IPO pricing and returns. Journal of banking & finance, 36(7), 2064-2076.

36. Nickerson, B. J. (2019). The Underlying Underwriter: An Analysis of the Spotify Direct Listing. U. Chi. L. Rev., 86, 985.

37. Ofek, E. (2000). The IPO lock-up period: Implications for market efficiency and downward sloping demand curves.

38. Oesterle, D. A. (2006). The high cost of IPOs depresses venture capital in the United States. Entrepreneurial Bus. LJ, 1, 369.

39. Posner, C. S. (2020, January 02). NYSE Proposal for Primary Direct Listings. Retrieved May 10, 2020, from Harvard Law School Forum on Corporate Governance.

40. Ran Ben-Tzur and James D. Evans, *United States: IPO vs. Direct Listing: What's Right For Your Company?,* Mondaq Business Briefing, December 9, 2019 *www.advance.lexis.com.*

41. Ritter, Jay R., Cordell Eminent Scholar, Warrington College of Business, https://site.warrington.ufl.edu.

42. Securities and Exchange Commission. (1963). Report of Special Study of Securities Markets of the Securities and Exchange Commission. US Government Printing Office, Washington, DC Retrieved July 4, 2012.

43. Shiller, Robert J. "Stock prices and social dynamics." Advances in behavioural finance 1 (1993): 167-217.

44. Simon, P. (2020). *Slack for Dummies.* John Wiley & Sons

45. Sjostrom Jr, W. K. (2007). PIPEs. Entrepreneurial Bus. LJ, 2, 381.

46. Sjostrom Jr, W. K. (2007). The truth about reverse mergers. Entrepreneurial Bus. LJ, 2, 743.

47. Zheng, M. (2020). Direct Listing or IPO? The Choice of Going Public and Welfare Implications Under Adverse Selection (February 29, 2020).