



EUROPEAN CENTRAL BANK

EUROSYSTEM

Workshop on Documentation and Global Note

outcome

6th Debt Issuance Market Contact Group meeting
15 April 2021

1. Background

- From the 27 January DIMCG plenary, members recognised that streamlining the steps of the issuance process may short the settlement cycle, being one of the steps the documentation drafting and global note signing and authentication. In this regard, it was considered to held a dedicated workshop session to discuss these topics
- On 12 April 2021 a workshop was held with participants from volunteering DIMCG member organisations to debate what the pain points in these area are and how harmonisation can help
- The following slides aim to provide a background and a summary of the workshop discussion to the DIMCG plenary

2. Documentation – What is the Issue?

- Issue statement:

There is a need for efficient, secure and digital way of creating, maintaining storing and exchanging operational and legal documents in the issuance process

To note: preparing, managing and finalising issue documentation was highlighted in all surveys as a key bottleneck to speeding up / digitise the issuance process – the magnitude of the task differs very significantly between frequent and non-frequent issuers








- Potential for improvement:

- Documents should be harmonised (where there is no economic / legal reason to differ)
- Emails should be replaced by more standardised and automated means of communication
- Harmonisation could potentially help in three areas: i) common templates ii) machine readability and iii) streamlining processes related to creation, storage, exchange and other workflows







3. List of Documents / templates

- From ICMA – International Capital Market Association
 - ✓ *Primary Market Handbook:*
 - *Chapters (Ch) that follow the chronology of a new bond issue with recommendations and guidance for drafting documents*
 - *Annexes (A) with legal document templates*
 - ✓ *Legal Pack 1 that was prepared as part of the New Global Note (NGN) Structure provides templates in Annexes 2 and 10 for Agency agreement and Issuer-Issuer CSD agreement, respectively*

3. List of Documents / templates

Document / activity name	Description	Template / Guidance ICMA
Initial Syndicate Communication	Communication of the basic terms of an issue to the prospective managers	 Ch4-3
(Base) Prospectus / Offering Circular / information memorandum	Finalised base document of disclosure to the public on the offering of securities (by issuer or issuer agent)	 A7-44
ISIN / common code allocation request	Official request from the issuer's agent to the numbering agency (often the issuer CSD, depending on market) to allocate ISIN (arranged by issuer agent)	
Listing request	Official request to trading venue / stock exchange for listing the issue (arranged by issuer agent)	
Dealer / subscription agreement	Signing of final agreement between issuer and managers that sets out the the terms and conditions upon which the managers agree to subscribe the securities	 A7-4
Final terms / pricing supplement	the document that, together with the offer document, sets out the terms and conditions of the issue. Used to set the commercial terms which includes the actual pricing of the transaction	 A8
Confirmation to managers	Communication sent by a lead manager to the co-managers confirming their participation	 Ch8

3. List of Documents / templates

Document / activity name	Description	Template / Guidance ICMA
ECB eligibility (if applicable)	Requesting ECB eligibility / providing documents to NCB of place of listing to assess eligibility for Eurosystem collateral and/or asset purchase programme purposes	
Agreement among managers	Signing of final agreement among managers which defines the amount each manager agree to subscribe and the distribution of commissions	 A1-1
Agency agreement	Signing of final agreement between Issuer and its agent (can be a trustee via Trust deed or fiscal agent via fiscal agency agreement) – <i>(not needed for issuance under existing programme)</i>	 Annex 2*
Conditions precedent	Package that includes Comfort letter, legal opinion and certificate signed by SM or the issuer. Documentation prepared by issuer's auditors and legal counsels to be provided to the dealers	 A2 (Auditor letters)
Issuer-Issuer CSD agreement	Signing of agreement between issuer and the issuer (I)CSD (generally arranged by issuers agent) – <i>(not needed for issuance under existing programme)</i>	 Annex 10*
Global note / certificate	Finalise, authenticate and deliver global note (where relevant) to Issuer CSD or common depository / safekeeper (usually arranged by issuer agent)	 A7-60

* Annexes of the ICMA Legal Pack 1 as part of the NGN structure

4. Machine readability / taxonomy

- The general objective of machine readability is to make the preparation and processing of documents part of a seamless data flow
- Machine readability requires at least a common template with a single taxonomy, name conventions and standard versioning
- The ultimate form of machine readability can imply representing a document in a fully code-able (mark-up) language (e.g. GLML) complemented by digital authentication methods
- Certain elements of machine readability (templates, taxonomy, name conventions) are already applied in the industry (with varying intensity)

4. Machine readability / taxonomy

- ISMAG - International Securities Market Advisory Group
 - ✓ Operational market practice Book
 - ❑ Provides detailed flow descriptions (from ICSDs point of view) for draft and final documents whether an issue is a stand-alone or under a programme
 - ❑ Lists minimum information requirements (checklists) by providing standards for field names
 - ❑ Recommends naming convention for final documents and guides on how to structure an e-mail and its document name(s) attached to send to ICSDs:

Naming Conventions for Subjects and Files	<i>Mandatory_Optional_Conditional</i>
E-mail Subject	Identifier + Code_Type_Category_Function_Date_Provider_Multiple
File naming	Identifier + Code_Type_Category_Function_Date_Provider_Multiple.File Extension

File Naming Examples	Description
IXS1234567890_F_PR_N.pdf	For ISIN XS1234567890, Final Prospectus New, in PDF form.
P000009889_F_BP_N.pdf	For Programme 000009889, Final Base prospectus New, in PDF form.

AA	Agency Agreement
AG	Issuer-ICSD Agreement
BP	Base Prospectus
GN	Global Note
IM	Information/Offering Memorandum
OC	Offering Circular
PC	Pricing Supplement / Final Terms
PP	Private Placement Document/Note Agreement
PR	Prospectus
PS	Prospectus Supplement
SK	CSK Election Form
TC	Terms and Conditions
TD	Trust Deed / Indenture
WA	Warrant Agreement

Applicability:
For each final document that is sent, the category has to be defined

5. Fully digital processing and authentication

The ultimate form of machine readability / digital handling implies representing a document in a fully code-able (mark-up) language complemented by digital authentication methods

Two ingredients:

- Use of mark-up language – long way away but recent initiatives indicate strong industry interest – see Generalised Legal Mark-up Language initiative by major law-firms active in primary markets
- Electronic authentication (e-stamp, e-signature) – despite long-lasting efforts still a very heterogeneous e-signature landscape across EU Member States with no cross-border interoperability between national e-signature / authentication schemes

Documentation - Summary of the WS discussion ECB-UNRESTRICTED

- The recommendations and document templates provided in ICMA Primary Market Handbook as well as the ISMAG document standards and naming convention constitute a good basis for potential further harmonisation. However, further information could be sought on the extent to which these standard templates are used in practice
- The key pain point lies in exchanging and processing / reviewing documents including extracting and inserting the relevant data for the issuing process which remains a heavily manual process
- New technologies are available to facilitate moving away from emails and achieve a fully digital document workflow. However, as with innovation in any area emerging Fintech solutions may introduce a fragmentation in market practices, unless a common agreement on expected outcomes is obtained
- Over the short-term adaptations (move away from emailing PDFs) can be costly which may limit the incentives or business case for stakeholders to change. To facilitate such adaptation over the mid- / longer term common regulatory or open industry standards should be in place (at least in the technical layer, i.e. e-signatures, data language) on the basis of which new technologies and third-party providers can provide a solution
- Using e-signature rather than wet ink requires an EU legal common approach and adoption
- The notion of standardising documents has link also to the idea / discussion of a standard ‘model’ / ‘template’ of plain vanilla high-quality EUR debt issuance (incl. potential designated ISIN pre-fix, etc.)

6. What are Global Notes ?

- ❑ Physical certificate representing the security (issued normally in ‘bearer’ form) which is deposited upon issuance in a CSD or a common depository. After this initial deposit or “immobilisation”, securities are exclusively transferred by book entry (i.e. by means of debiting and crediting securities holders’ accounts), in a similar way to dematerialised securities.
- ❑ In some key European jurisdictions, incl. the Eurobond market global notes in bearer form continue to be the predominant legal form of debt securities
- ❑ Represents all in *rem* titles of the securities owners.
- ❑ The Global Note needs to be signed by the Issuer and authenticated by its agent, which in turn delivers to the depository upon issuance
- ❑ By their nature global notes require physical handling and authentication – this also caused a headache at several agents during the COVID-19 lockdowns

7. Why are global notes used ?

The choice of the legal form of a security obviously stems from legal / compliance considerations:

- Full lack of possibility of dematerialisation
 - Robustness with regards to conflict of laws
 - Avoiding registration requirements under law of issuance
 - Tax reasons and selling restrictions
 - Legacy / historical reasons
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- Full lack of possibility of dematerialisation
 - Only a in a few remaining countries in Europe, but there are still jurisdictions which simply do not allow a security not to be represented by a piece of paper (e.g. Germany)

7. Why are global notes used (continued)?

- Robustness with regards to conflict of laws
 - There are several laws to consider when setting up an international debt security (law of issue, law of issuer CSD, law of establishment of issuer, law of establishment of investors, etc.).
 - To manage potential conflicts of laws the lowest common denominator is used – a physical security in bearer form which is acknowledged (not challenged) under most of the jurisdictions
- Avoiding registration requirements under the law of issuance
 - The available forms of a security are primarily governed by the law of issuance (law under which the security is issued, i.e. under which the claim on the issuer represented by the security is construed)
 - Under the most chosen governing laws for international debt securities issuance (i.e. English or New York law) one can only issue registered securities in fully dematerialised form
 - In order to avoid attached registration requirements (which would probably annoy investors) there is a preference for a bearer instrument which in turn can only exist in physical form under these laws (hence the global note)

8. Dematerialisation across jurisdictions

No dematerialisation allowed, requirement to represent securities via paper certificates	DE (except for government bonds)
Only registered dematerialised, i.e. need for physical global note if securities to be issued are not in registered form	UK (except for gilts), NY (?), NL
Also bearer (non-registered) dematerialised, i.e. no need for global note for issuing non-registered securities	FR, IT, ES, BE, LU

9. Why are global notes used (continued)?

- Tax reasons and selling restrictions
 - E.g. for securities issued by US entities to non-US investors US tax law favours bearer form (narrower reporting requirements)
 - On the other hand in other aspects US tax law (TEFRA) prohibits / restricts bearer form within US or for securities marketed to US investors
- Historical / legacy reasons
 - Historically bearer form of a security was considered by the investors more robust to banking secrecy (i.e. their privacy and their identity remaining hidden also from the issuer) – however by today there is no practical difference with regards to global registered and global bearer forms in this respect
 - Some investors perceived physical bearer form to be more robust to potential operational disruptions / going out of business by the issuer CSD or the depositories

Global Notes - Summary of the WS discussion

- Use of global notes with wet ink signatures and physical transfer / depositing has been a pain point highlighted also during the COVID-19 lockdowns
- Global notes are used for a variety of reasons (outlined above). Legal robustness with respect to an eventual conflict of laws and legacy market practices for the international market seem to be the two key factors.
- Issuing debt in a global note format has been a current practice for high quality and high liquidity international issuances and could be perceived by issuers / investors as a pre-requisite or even legal requirement to enter the international market - this may also create a perceived link between the global note format and certain ISIN pre-fixes
- Although the CSDR in spirit supports dematerialisation in the EU it will not phase out the use of global notes in itself
- Phasing out global notes is a complex challenge and dependent on multiple jurisdictions (even outside EU) and it requires a full understanding of why stakeholders prefer to use this form
- A first step to ease the burden on stakeholders could be to facilitate digitally authenticated / e-signed global notes (although this will require also that the law under which the debt instrument issued acknowledges the validity of such e-signatures)
- The idea of creating a new model / template for pan-European high-quality debt issuance was raised also as a potential opportunity to move away from the use of physical global notes. The discussion on such a template also has a link to the use of ISIN pre-fixes as a potential branding as well as many other aspects going beyond the area of documents / global note
- Need for further research / discussion on the use and prospect of phasing out the global notes (also on the basis ICMSA input)