

IPMA GUIDANCE NOTES / PRESS STATEMENTS

GUIDANCE NOTE 19

NEW SAFEKEEPING STRUCTURE FOR REGISTERED NOTES

CHANGES TO LEGAL DOCUMENTATION

From 1 October 2010, registered form global securities, which are cleared through an ICSD¹ and intended to constitute eligible collateral for Eurosystem monetary policy operations, will need to be issued under a new safekeeping structure (“**NSS**”). Securities issued under the NSS will be registered in the name of a nominee of the ICSD acting as common safekeeper (“**CSK**”). Asset servicing functions will be performed by an agent of the ICSDs acting as common service provider (“**CSP**”).

The NSS is based substantially on the New Global Note (“**NGN**”)² structure for bearer notes³ and introduces, among other things; (i) delivery arrangements (to the CSK); (ii) requirements regarding effectuation by the CSK and (iii) reconciliation requirements with respect to the records of the Registrar and the ICSDs. Certain (albeit more limited) changes will therefore, be required to standard legal documentation.⁴

With respect to the NSS, the ICSDs published in early December 2009 (i) a set of FAQs⁵, (ii) a revised CSK election form⁶, (iii) a revised issuer effectuation instruction⁷, (iv) a revised Issuer-ICSD Agreement for programmes⁸ and (v) a revised Issuer-ICSD Agreement for standalone securities⁹. The ICSDs also published (x) two revised issuer effectuation authorisations requiring note destruction on maturity¹⁰ and (y) two revised issuer effectuation authorisations requiring note sending back on maturity¹¹. Specific NSS webpages have been created by each of Euroclear¹² and Clearstream¹³ listing these documents and other information. The ICSDs may publish parallel versions of some of these documents (for example with interactive fields for completion), all of which are equally valid despite some minor differences in wording. The ICSDs may also update these documents from time to time.

Registered form global securities issued under the existing Classic Safekeeping Structure (“CSS”) before 1 October 2010 will continue to be potentially eligible as collateral for Eurosystem operations until final maturity.

CHANGES AFFECTING DOCUMENTATION¹⁴

1. EFFECTUATION¹⁵

(Documents to be amended: Trust Deed, Agency Agreement, Form of Registered Global Note/Certificate, Operating and Administrative Procedures Memorandum, Signing and Closing Memorandum, Form of Effectuation Authorisation)

Where any reference is made to authentication in any of the transaction documents referred to above, an additional reference to effectuation will need to be added.

The form of Effectuation Authorisation will need to be slightly amended to cater for notes held under the NSS as well as for NGNs.

2. PROCEDURAL CHANGES

(Documents to be amended: Agency Agreement, Offering Circular, Operating and Administrative Procedures Memorandum, Signing and Closing Memorandum)

Appropriate amendments will be required to the documents referred to above to reflect relevant NSS procedures namely, the delivery of Registered Global Notes/Certificates and effectuation instructions to the CSK; the effectuation confirmation from the CSK; the payment instructions to the CSP and the confirmations from the CSK regarding the deposit and effectuation of the Registered Global Notes/Certificates. The procedures currently in place for the NGN structure may be replicated for this purpose.

For standalone issues under the NSS (or a programme which contemplates the NSS structure only), references in the Agency Agreement to the common depository will need to be amended to reflect the fact that the Registered Global Notes/Certificates will be registered in the name of a

nominee of the entity appointed by the ICSDs as their CSK and held by such ICSD CSK and that the other common depositary functions will be performed by the entity appointed by the ICSDs as their CSP.

For a programme which contemplates both the CSS and the NSS, references to the common depositary will need to be replaced by references to "the common depositary or, as the case may be, common [safekeeper/service provider]" depending on the function which is being referred to.

3. NAME OF ENTITY ON THE REGISTER AND GLOBAL NOTE/CERTIFICATE

(Documents to be amended: Form of global Note/Certificate)

The nominee of the ICSD CSK will be named on the register as the registered holder of the registered form global security. A cross-reference should be included in the Registered Global Note/Certificate to the name on the register substantially to the following effect:

“This certifies that the person whose name is entered in the Register is [registered as] the holder of the aggregate nominal amount of [*specify currency and amount*] of [Notes specified therein / an issue of Notes of the nominal amount, specified currency and specified denomination specified in the Final Terms applicable to the Notes].”¹⁶

4. RECONCILIATION OF THE ISSUE OUTSTANDING AMOUNT RECORDS OF THE ICSDS WITH THE REGISTER

(Documents to be amended: Issuer-ICSD Agreement, Agency Agreement, Trust Deed)

As with the CSS, under the NSS, the register will be conclusive as to the issue outstanding amount.

The current forms of the Issuer-ICSD Agreement for programmes and standalone issues have been amended by the ICSDs to cater for both NGNs and securities held under NSS. In particular, a provision requiring the Registrar to provide information enabling the ICSDs to reconcile their records with the register has been added. A provision clarifying that the register will be conclusive as to the issue outstanding amount may also be

included (either in the Terms and Conditions of the notes or in the form of Registered Global Note/Certificate, as appropriate).

The schedule to the Agency Agreement/Trust Deed setting out the additional duties of the Fiscal/Principal Paying Agent will also need to reflect the additional reconciliation requirements to be included in the Issuer-ICSD Agreement.

5. THE ICSD AS CSK

Similar to the current practice with NGNs, the ICSDs will only agree to safekeep registered form global securities under the NSS if:

- (i) the securities meet the Eurosystem's eligibility criteria as to country of incorporation of the issuer;
- (ii) the securities are denominated in a Eurosystem eligible currency; and
- (iii) the issue documentation indicates that the securities are to be held in a manner that would allow Eurosystem eligibility. The "intention" wording currently used in Part B of Final Terms in the context of NGNs may be replicated for this purpose (see paragraph 6 below).¹⁷

Additionally, and in line with equivalent current practice with NGNs, registered form global securities that fail to meet the above criteria will be registered in the name of a nominee of a common depositary. However, where criteria (i) and (ii) above are subsequently met, the ICSDs may, at their discretion and on request by the issuer, arrange for the transfer of the global certificate to an ICSD CSK and for the transfer of title to the issue on the register to a nominee of such ICSD CSK.

6. SECURITIES TO BE HELD IN A MANNER WHICH WOULD ALLOW EUROSISTEM ELIGIBILITY¹⁸

(Documents to be amended: Offering Circular, Final Terms)

The section of the Final Terms relating to “General Provisions Applicable to the Notes” may be amended substantially as follows (insertions underlined against the ICMA ‘PD non-exempt’ standard form¹⁹):

<< PART A – CONTRACTUAL TERMS

[...]

GENERAL PROVISIONS APPLICABLE TO THE NOTES

[...]

24. Form of Notes: Bearer Notes:

[Temporary Global Note exchangeable for a Permanent Global Note which is exchangeable for Definitive Notes in the limited circumstances specified in the Permanent Global Note]

[Temporary Global Note exchangeable for Definitive Notes on [] days' notice]

[Permanent Global Note exchangeable for Definitive Notes in the limited circumstances specified in the Permanent Global Note]

Registered Notes:

[Regulation S Global Note (US\$/€ [] nominal amount) registered in the name of a nominee for [DTC/a common depository for Euroclear and Clearstream, Luxembourg/a common safekeeper for Euroclear and Clearstream, Luxembourg]]

[Rule 144A Global Note (US\$ [] nominal amount) registered in the name of a nominee for [DTC/a common depository for Euroclear and Clearstream, Luxembourg/a common safekeeper for Euroclear and Clearstream, Luxembourg]]²⁰

[...]

PART B – OTHER INFORMATION

[...]

9. OPERATIONAL INFORMATION

Intended to be held in a manner which would allow Eurosystem eligibility²¹:

[Yes][No]

[Note that the designation “yes” simply means that the Notes are intended upon issue to be deposited with one of the ICSDs as common safekeeper[, and registered in the name of a nominee of one of the ICSDs acting as common safekeeper.] [include this text for registered notes] and does not necessarily mean that the Notes will be recognized as eligible collateral for Eurosystem monetary policy and intra-day credit operations by the Eurosystem either upon issue or at any or all times during their life. Such recognition will depend upon the ECB being satisfied that Eurosystem eligibility criteria have been met.][*Include this text if “yes” selected, in which case bearer Notes must be issued in NGN form]*

[...] >>

The above insertions assume programmes catering for both bearer and registered options.

7. Rule 144A ISSUES

Note that the Eurosystem eligibility requirements require all securities to be settled in the Euro area. Therefore, securities cleared through DTCC will not be eligible. In order for securities sold into the US pursuant to Rule 144A to be eligible, such securities will need to be cleared through

Euroclear/Clearstream i.e. the structure in Annex 1 will need to be followed. Those involved in selling securities pursuant to Rule 144A that are intended to be Eurosystem eligible may wish to consider the implications of this for US investors. It should be noted, however, that this is no different to the position that existed prior to the introduction of the NSS arrangements.

Notes:

¹ *The international central securities depositories: Euroclear Bank S.A/N.V. and Clearstream Banking, société anonyme.*

² *Further detail on the NGN structure can be found at http://www.icmagroup.org/Regulatory-Policy/new_global_note_structure.aspx.*

³ *However, unlike NGNs, registered form global securities issued under NSS will retain the same legal form as standard registered securities issued under the existing Classic Safekeeping Structure. As a result, the ICSDs will not be requiring a legal opinion as condition precedent to acceptance of securities issued under the NSS.*

⁴ *It is assumed that, on programmes, issuers will wish to retain the flexibility to issue registered form global securities to be held either under the NSS structure or under the existing structure.*

⁵ *<http://www.icmagroup.org/ICMAGroup/files/55/558196e6-2970-4b9d-8cdb-fc8f68494b95.pdf>.*

⁶ *<http://www.icmagroup.org/ICMAGroup/files/45/45348f55-1d09-4160-a557-d7afd87c3c59.pdf>.*

⁷ *<http://www.icmagroup.org/ICMAGroup/files/23/23de6df5-0060-41d6-97a9-cce249ba3815.pdf>.*

⁸ *<http://www.icmagroup.org/ICMAGroup/files/26/265f04e3-7ed8-48c0-93a3-ac2ef6fc2d56.pdf>.*

⁹ *<http://www.icmagroup.org/ICMAGroup/files/61/61c2b4ff-e9a5-47f5-b021-dee260d1cdd2.pdf>.*

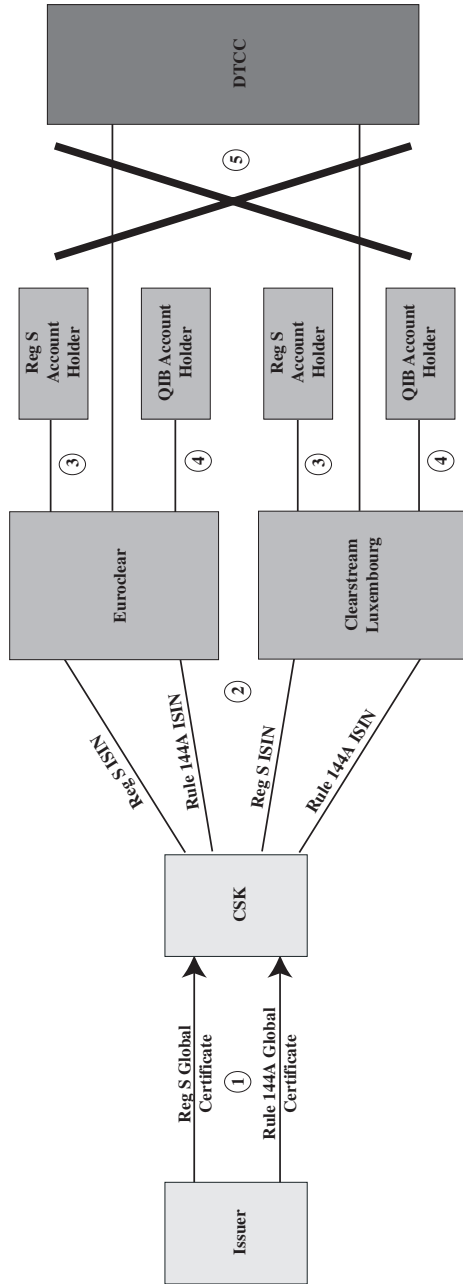
¹⁰ *For standalone securities: <http://www.icmagroup.org/ICMAGroup/files/60/6011438e-9395-4656-83d6-a01b22b51df6.pdf>; for programme securities: <http://www.icmagroup.org/ICMAGroup/files/a3/a3105f74-062e-4f4a-b89f-d69dbf27f0dc.pdf>.*

- ¹¹ For standalone securities: <http://www.icmagroup.org/ICMAGroup/files/37/3733a6c0-64ee-46da-b591-ea375a2b87ee.pdf>; for programme securities: <http://www.icmagroup.org/ICMAGroup/files/54/54a73b50-1639-4175-bee7-cf1384b35ed3.pdf>.
- ¹² <https://www.euroclear.com/site/public/EB/nss>.
- ¹³ http://www.clearstream.com/ci/dispatch/en/kir/ci_nav/1_settlement/030_new_issues/015_nss.
- ¹⁴ Note that if the programme has already been amended to provide for NGNs to be issued, many of these changes will already be incorporated in that context and will merely require the addition of references to NSS.
- ¹⁵ The new structure requires effectuation of the Registered Global Note/Certificate (for operational purposes). Under English law, legal title to registered notes is obtained through registration. The Registered Global Note/Certificate does not confer title.
- ¹⁶ To assist the operational requirements of the ICSDs, this formulation is preferred to naming the holder in the Certificate itself.
- ¹⁷ As with NGNs, note that the designation that securities are "intended to be held in a manner which would allow Eurosystem eligibility" simply means that the securities are intended upon issue to be deposited with one of the ICSDs as common safekeeper and does not necessarily mean that the securities will be recognised as eligible collateral for Eurosystem monetary policy and intra-day credit operations by the Eurosystem either upon issue or at any or all times during their life. Such recognition will depend upon satisfaction of the Eurosystem eligibility criteria.
- ¹⁸ The ICSDs have indicated that they will only accept under the NSS securities (a) that initially meet two of the Eurosystem's eligibility criteria (i.e. those relating to currency of the issue and incorporation of the issuer) and (b) for which the documentation indicates the securities are intended to be held in a manner which would allow Eurosystem eligibility (see paragraph 5 "The ICSDs as CSK" above).
- ¹⁹ See Section 7-II(b) of the IPMA Handbook (<http://www.icmagroup.org/getdoc/01bdc622-7bb3-4406-90b9-70ed8fecd836/contents.aspx>).

²⁰ *The form of FTs in Section 7-II(b) of the IPMA Handbook does not currently address registered notes in detail but will be considered for amendment in due course.*

²¹ *Include if the programme allows a choice between NGNs or CGNs or if the Programme specifies NGNs only.*

ANNEX 1



- 1 Reg S Global Certificate and Rule 144A Global Certificate delivered to CSK
- 2 CSK notifies ICSDs of issue of Notes
- 3 Reg S Notes credited to accounts of non-US persons
- 4 Rule 144A Notes credited to accounts of QIBs
- 5 No linkage between ICSDs and DTCC, so no DTCC participants