# FREQUENTLY ASKED QUESTIONS ABOUT EUROPEAN MEDIUM-TERM NOTE PROGRAMS

***What are "Euro medium-term note programs"?***

Euro medium-term note ("EMTN") programs are MTN programs (*see* "Frequently Asked Questions about Medium-Term Note Programs"), which are intended primarily for securities offerings outside the United States, and particularly in Europe. Many large U.S. companies and banks with an ongoing need for capital may establish both U.S. MTN and EMTN programs. However, large European companies and banks with an ongoing need for capital may only have an EMTN program, and may only have a U.S. MTN program if they are registered under the U.S. Securities Exchange Act of 1934. In addition, non-European and non-U.S. issuers may also establish EMTN programs in order to issue debt securities in the European market.

***What is the framework for the regulations governing EMTN programs in Europe?***

The key pieces of legislation governing EMTN programs were enacted pursuant to the Financial Services Action Plan ("FSAP"), which was intended to improve the single market for financial services in the European Economic Area (the "EEA"). The FSAP's strategic objectives are to ensure a single market for wholesale financial services, to develop open and secure retail markets, and to implement up-to-date prudential supervision rules. In addition, the Capital Markets Union Action Plan ("CMU Action Plan") was launched in 2015 with an objective to, amongst others, establish a genuine single market in the EEA and facilitate cross border investments.

The principal European legislation governing the offering of securities under EMTN programs is the Prospectus Directive 2003/71/EC (the "PD"). It is a "maximum harmonization directive," meaning that EEA member states are, subject to limited exceptions, unable to impose more stringent prospectus requirements than those contained within the PD. It has created a single regime governing the content, format, approval and publication requirements for prospectuses in the EEA, including the ability to "passport" a prospectus approval from one EEA member state to another.

On 24 November 2010, the European Union (the "EU") Parliament and Council passed a directive making certain proposed amendments to the PD. The amending directive (the "Amending Directive") has entered into force and was required to be implemented by Member States by 1 July 2012.

In November 2015, as part of the CMU Action Plan, the European Commission published a legislative proposal for a regulation to replace the existing, amended PD. Regulation (EU) 2017/1129 ("PD III Regulation") entered into force on 20 July 2017 and will apply from 21 July 2019 (save for several specific provisions, which apply from 2017 or 2018). The PD III Regulation makes several changes to the existing prospectus regime, including:

- subject to individual member states deciding to implement it into their national laws, an additional exemption from publishing a PD-compliant prospectus for an offer of securities with a total consideration of up to a maximum of €8,000,000 over a period of 12 months;
- introduction of a new annual universal registration document for frequent issuers with existing securities listed on a regulated market or multi-lateral trading facility, allowing for shorter prospectus approval times;
- certain restrictions and prescriptions as to risk factors in the prospectus;
- elimination of the "base prospectus summary" and a much more prescriptive format for the summary for individual issuances, including limitation on the length, the categories of information to be included and the number of risk factors that may be included; and
- merging the two existing sets of minimum disclosure standards ("retail" and "wholesale") into one set of minimum standards.

***What are the principal documents used to create an EMTN program and to conduct a drawdown?***

To establish an EMTN program, the principal documents include:

- Base prospectus, *i.e.*, the disclosure document which contains, among other disclosures, the "master" terms and conditions of the notes.
- Program agreement between the issuer and the dealer or dealers (which provides for the establishment of the program and the issue of the notes thereunder).
- Procedures memorandum (which sets out procedures for issue and settlement of the notes).
- Pro forma final terms (the commercial terms of the particular notes being issued, to be read together with the "master" terms and conditions).
- Agency agreement and deed of covenant, if a fiscal agency structure; or trust deed and agency agreement, if a trustee structure (which appoint agents and set out, *inter alia*, the payment mechanics, issuer's covenants, rights of noteholders, and the duties of the trustee (if any)).
- Master global notes (*i.e.*, a single note instrument representing the entire notes issue to be held by a depositary bank on behalf of the clearing systems).
- Legal opinions, auditor's comfort letter, the issuer's board resolutions, process agent appointment letter and powers of attorney.
- Calculation agency agreement.

To conduct a drawdown under a EMTN program, the following documents are typically required:

- Invitation telex/confirmation to managers or term sheet.

- Subscription agreement or dealer confirmation.
- Completed final terms.
- Global note.
- Prospectus supplement, if required.
- Issuer's certificate of no material adverse change.
- In the case of a syndicated transaction involving several dealers, legal opinions and auditor's comfort letter and powers of attorney.

Note that the specific documents required in connection with a drawdown may vary, depending upon a variety of factors, including, without limitation:

- whether the offering is syndicated or non-syndicated;
- the specific requirements of the applicable dealers; and
- the specific terms and complexity of the offering.

***What exemption from registration under the U.S. Securities Act do issuers rely upon when offering securities under an EMTN program?***

Most EMTN programs are designed to comply with the exemption from registration provided by Regulation S under the U.S. Securities Act of 1933 (the "Securities Act"). Debt securities of a non-U.S. issuer or a non-U.S. foreign government are offered under Category 1 of Regulation S (where there is no "substantial U.S. market interest" in its debt securities). Debt securities of a U.S. reporting issuer (or a non-U.S. issuer that cannot offer the securities under Category 1) are offered under Category 2 of Regulation S. Debt securities of a non-reporting U.S. issuer are offered under Category 3 of Regulation S. In addition, some EMTN programs provide for the ability to sell securities to "qualified institutional buyers" in the United States under Rule 144A.

***Are the EMTN program documents of a U.S. issuer subject to filing and review with FINRA?***

No. Because EMTN securities are offered outside of the United States (and sometimes in the United States only under Rule 144A), they are not subject to any filing or review requirements with The Financial Industry Regulatory Authority ("FINRA").

***Can an issuer that is publicly traded in the United States incorporate by reference its periodic filings and financial statements into its prospectus?***

Under the PD, issuers may incorporate by reference within a prospectus documents that have already been filed with the relevant "competent authority" of the "home" member state (*e.g.*, the UK Listing Authority, or "UKLA," where the United Kingdom is the "home" member state). This does not cover documents filed by U.S. issuers with the U.S. Securities and Exchange Commission, unless these have been previously filed with the competent authority. This is set to change under the PD III Regulation, and issuers may incorporate by reference some additional categories of documents, where they have been published electronically, either previously or simultaneously.

***What are the "terms and conditions," and what function do they serve?***

The terms and conditions are part of a set of master documents containing the standard terms and conditions to be used for any number of bond issues under the EMTN program in the future, subject to a maximum program limit. The terms and conditions are a somewhat lengthy document that sets forth virtually all of the potential provisions for issuances under the EMTN, such as fixed and floating rate note provisions, restrictive covenants on the issuer, notice requirements, and events of default.

The relevant final terms must be read together with the "master" terms and conditions set out in the base prospectus. *See also "What do the final terms for a takedown contain?"* below.

***What are ISINs and common codes, and how are they obtained?***

ISINs and common codes are security identification codes; a specific one is applied to each issuance under an EMTN program. Euroclear Bank SA/NV, as operator of the Euroclear System ("Euroclear"), in Brussels and Clearstream Banking, société anonyme ("Clearstream"), in Luxembourg are the two principal clearing systems in Europe, and are known as International Central Securities Depositories ("ICSDs"). An ISIN (International Security Identification Number) and the common code are required for eurobonds and EMTN notes which are to be cleared through Euroclear and Clearstream. The agent of the EMTN program would normally obtain the ISIN numbers and common codes for the relevant EMTN notes from Euroclear and Clearstream on behalf of the issuer. By comparison, CUSIP (Committee on Uniform Security Identification Procedures) numbers are required for securities which are to be cleared through the U.S. depository, The Depository Trust Company ("DTC").

***When is a PD-compliant prospectus required?***

Publication of a PD-compliant prospectus is required for an offer of securities in the primary or secondary market which is either:

- a "non-exempt" offer of securities to the public in any EEA member state; or
- to be admitted to trading on a regulated market in the EEA.

The definition of "offer of securities to the public" is very wide. It catches the vast majority of securities offerings, even if the securities are not offered to the "public" as that term might normally be understood.

The term is defined as "a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries." "Securities" means transferable securities which are negotiable on the capital market; and the PD expressly excludes from this definition money-market instruments with a maturity of less than 12 months, such as commercial paper.

***What is an exempt offer of securities?***

Among other types of securities, the PD does not apply to:

- issues of securities where the total size of the offer is less than €5 million over a 12-month period;
- non-equity securities (which do not include convertible or exchangeable bonds) issued or guaranteed by a member state or one of its regional or local authorities;

- units issued by collective investment undertakings (such as unit trusts, investment companies and other funds) except for closed-end undertakings; and
- non-equity securities issued in a continuous or repeated manner by credit institutions (as defined in the Banking Consolidation Directive 2000/12/EC) where the total consideration in the EU is less than €75 million over a 12-month period and the securities:
    - are not subordinated, convertible or exchangeable; and
    - do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument.

Even if the PD applies to an offer of securities, publication of a PD-compliant prospectus is not required if the offer qualifies for one or more of the following exemptions, unless the securities are to be admitted to trading on a regulated market in the EEA:

- the offer is made solely to "qualified investors." This is similar to the definition of QIB in the United States under Rule 144A and was conformed by the Amending Directive to that of "professional clients" under the Markets in Financial Instruments Directive; or
- the offer is a private placement made to fewer than 150 natural or legal persons (which has increased from 100 persons following implementation of the Amending Directive) (other than "qualified investors") in each EEA member state in which securities are offered; or
- the offer has a minimum total consideration per investor or a minimum specified denomination per unit of at least €100,000; or
- the offer has a total consideration of less than €100,000 in the EU in any 12-month period.

Note that the first two exemptions above can be "combined" to exempt an offer which is made simultaneously to an unlimited number of qualified investors and up to 149 non-qualified investors per member state, (which has increased from 99, following implementation of the Amending Directive). Under the PD III Regulation, certain of these exemptions are further extended, including an exemption for securities fungible with those already admitted to trading on the same regulated market (provided that they represent less than 20% of the number of securities admitted to trading on the same regulated market over a period of 12 months).

***What are "regulated markets"?***

Examples of regulated markets are the London Stock Exchange's regulated market (but not the AIM or PLUS markets) in the United Kingdom and the regulated markets of the Frankfurt, Irish and Luxembourg Stock Exchanges. A listed of EEA regulated markets may be found on the ESMA website: https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_rma.

***What is a PD-compliant prospectus?***

A prospectus for the purpose of the PD is a disclosure or offering document which complies with the minimum content requirements laid down in the PD and the Prospectus Regulation (EC) No.809/2004 implementing the PD (the "PD Regulation") (or, from 21 July 2019, the

PD III Regulation). The prospectus must be approved by the competent authority of the issuer's home member state in respect of the particular issue of securities and must be published in accordance with the PD (or, from 21 July 2019, the PD III Regulation).

***Which country is the "home member state" for an issuer?***

The home member state is established as follows:

- issuers of non-equity securities can choose the home member state in respect of each EMTN program, from among the jurisdictions in which (a) the issuer has its registered office, (b) its securities are being offered to the public, or (c) its securities are admitted to trading on a regulated market, provided that the minimum denominations of securities under the EMTN program are at least €1,000 (or are cash-settled convertible securities);
- an EEA-incorporated issuer of equity securities (which include securities convertible into equity, but not cash-settled convertibles) or debt securities with a denomination below €1,000 must have the base prospectus for its EMTN program approved by the competent authority in the member state where its registered office is located; and
- a non EEA-incorporated issuer of equity securities or debt securities with a denomination below €1,000 must make a choice of home member state the first time that any such securities are offered to the public or listed on a regulated market in the EU.

For the purposes of these requirements, "equity securities" are shares or transferable securities equivalent to shares, including securities that are exchangeable or convertible into shares of the issuer or a group company. However, cash-settled convertibles are treated for this purpose as non-equity securities, even if linked to one or more equity securities.

***What is the timeframe for approval?***

The prospectus review should be completed by the relevant competent authority within 10 business days (with an extension to 20 business days in the case of a new issuer).

Where the securities are to be listed on the London Stock Exchange, the UKLA will review and provide its technical comments on the draft prospectus, with an opportunity for the issuer and its advisers to respond to the comments raised and submit a revised draft. The length of the listing process will necessarily depend on the complexity of the transaction and the completeness of the listing documents submitted for approval. However, appointing advisers with extensive listing experience on the particular stock exchange should help shorten the process.

Once the base prospectus has been approved, each subsequent prospectus supplement triggers a new review period of up to seven business days (to be shortened to five business days under the PD III Regulation). However, many EEA competent authorities are significantly quicker than this.

***What should the prospectus contain?***

At present, the framework of the prospectus requirements are set out in the PD, and the detailed minimum content requirements are set out in the

PD Regulation. The prospectus must contain (at minimum) the information specified in the appropriate annex(es) to the PD Regulation - which annexes are relevant depends on the securities potentially being offered/listed under the EMTN program, such as whether they are debt or equity, whether their minimum denomination is greater or less than €100,000 and whether they are asset-backed, derivative-linked, guaranteed, depositary receipts, etc. We expect further technical standards setting out the prospectus content requirements under the PD III Regulation to be published before the PD III Regulation becomes effective.

The PD establishes a single registration system and a "shelf registration" system for debt securities, in which the issuer may use a "base prospectus" for its EMTN program. The base prospectus is approved by the competent authority and then valid for shelf takedowns for up to 12 months thereafter. Each takedown is then made under "final terms" (effectively a pricing supplement), which must be filed with, but need not be approved or reviewed by, the relevant competent authority.

There are three principal components of a prospectus:

- a summary note (describing, in non-technical language, the essential characteristics and risks associated with the issuer, any guarantor and the securities);
- a registration document (containing information relating to the issuer of the securities);
- a securities note (containing information relating to the securities to be issued).

A base prospectus for an EMTN program combines the summary note, the registration document and the securities note, and the filing of the final terms "completes" the securities note.

Following implementation of the Amending Directive, the summary note (or prospectus summary) is required to contain certain prescribed "key information," designed to provide investors with the essential information (in a concise format) they need to understand the nature and risks of the issuer, the guarantor and the securities being offered.

In addition, the European Commission, on 30 March 2012, proposed legislation (the Commission Delegated Regulation (EU)(486/2012) of 30 March 2012 (the "Amending Regulation")) which prescribes a precise format in which the summary note has to be produced. The Amending Regulation was adopted by the European Commission on 11 June 2012 and became directly applicable in the laws of Member States from 1 July 2012. As mentioned, the content requirements for a prospectus will be further amended once the PD III Regulation becomes effective.

There are provisions in the PD which allow the competent authority to accept a prospectus drawn up in accordance with non-EEA rules, *e.g.*, an SEC approved prospectus, if it meets International Organization for Governmental Securities Commission ("IOSCO") standards and provides information, including financial information, which is "equivalent" to that under the PD. However, the European Commission has yet to establish the relevant details. Accordingly, a non-EEA issuer that wishes to use its non-EEA prospectus must utilize a "wrapper" to include any additional information or disclosure required by the PD.

***What details of a guarantor of the securities must be disclosed?***

The disclosure requirements in respect of any guarantor of the securities are the same as for the issuer (for the avoidance of doubt, including the requirements as to financial statements). The PD does not currently have a provision, such as Rule 3-10 of U.S. Regulation S-X, which permits the omission of certain guarantor financial statements if the applicable conditions are satisfied. The definition of a "guarantor" is very wide and potentially includes other providers of credit support, expressly providers of keep-well agreements and monoline insurance policies.

***Who is responsible for the contents of the prospectus?***

Under the PD, the persons liable for the content of a prospectus are the issuer and its directors, the offeror or the person requesting admission to trading or the guarantor, as the case may be. The PD does not prescribe any civil or criminal liability in this regard, and it is left to individual member states to prescribe and enforce provisions relating to prospectus liability. However, member states are required under the PD to ensure that no civil liability shall attach to any person solely on the basis of the summary note (or any translation thereof) unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus or it fails to provide the key information to aid investors when considering whether to invest.

In the United Kingdom, the Financial Services and Markets Act 2000 provides that "any person responsible for the listing particulars" is liable for damages to an investor who purchases the relevant securities and suffers a loss as a result of any untrue or misleading statement in or omission from the particulars. The issuer is so liable only if a person discharging managerial responsibilities within it knew that the statement was untrue or misleading or was reckless in that regard or knew the omission to be a dishonest concealment of a material fact.

Under the Prospectus Rules introduced by the FSA (which was replaced by the Financial Conduct Authority in this function as the markets regulator as of 1 April 2013) to implement the PD in the United Kingdom (the "Prospectus Rules"), the persons responsible for a prospectus include "each person who accepts, and is stated in the prospectus as accepting, responsibility for the prospectus" and "each person who has authorised the contents of the prospectus." Accordingly, the directors of an issuer will be liable for misstatements or omissions in a prospectus.

In accordance with the Prospectus Rules, auditors generally accept responsibility (where required) in relation to specified parts of a prospectus or in specified respects only and further limit their responsibility to the persons contemplated by the Prospectus Rules (including the investors in the securities in particular) and not to any third parties.

***What documents should accompany the application for approval that is submitted to the relevant competent authority?***

Depending on the particular competent authority, each draft of the prospectus may need to be annotated, and accompanied by a disclosure checklist, to demonstrate compliance with the relevant paragraphs of the appropriate PD annexes. Where documents are incorporated by reference, certain competent authorities may require such documents to be re-submitted as well.

***How must the prospectus be published?***

Once the final form of the prospectus has been formally approved by the relevant competent authority, it must be filed with the home member state competent authority (and notified to the host member states, if the prospectus is passported (see below)), and made available to the public as soon as practicable prior to, or at the launch of, the relevant offering or listing of securities, as the case may be. The prospectus may be made available in a number of ways, such as the following:

- electronically on the website of the issuer or, any applicable financial intermediary or, under the PD III Regulation from 21 July 2019 onwards, the person seeking admission to trading on a regulated market, or
- electronically on the website of the relevant regulated market or competent authority of the home Member State, or, under the PD III Regulation from 21 July 2019 onwards, if no admission to trading on a regulated market is sought, the website of the operator of the MTF on which the securities are to be traded (if applicable); or
- by publication in a newspaper circulated throughout the EEA or in the EEA member states where the securities are offered or admitted to trading; or
- in printed form (free of charge) at the offices of the regulated market, the issuer's registered office and at the offices of each of the financial intermediaries placing or selling the securities, including the paying agents.

Additional publication must be made on the website of the issuer or a financial intermediary if publication has only taken place in the manner specified in the third or fourth bullet points above. Under the PD III Regulation from 21 July 2019 onwards, publication in the manner specified in the third or fourth bullet points above will no longer satisfy the publication requirement.

***Are there any advantages under the PD to issuing only high-denomination debt securities?***

Securities with a minimum denomination of at least €100,000 (or its equivalent) (increased from €50,000 following implementation of the Amending Directive):

- do not require publication of a PD-compliant prospectus (unless listed on a regulated market);
- if listed on a regulated market, currently have to comply with less onerous prospectus content requirements; and
- are exempt from the majority of the provisions of the Transparency Directive (*see* "Frequently Asked Questions about European Securities Legislation").

***What does passporting a prospectus in Europe involve?***

Following approval of the prospectus by the competent authority of the home member state then, under the PD's passporting regime, non-exempt offers of the securities can be made to investors and/or listing of the securities can take place on a regulated market in one or more additional EEA member states ("host member states"). The issuer needs to request the competent authority in the home member state to confirm its approval of the prospectus to the competent authorities of the relevant host member states and to deliver the prospectus to them. The host member states may require the issuer to translate the summary section of the prospectus into the national language of such state. However, the competent authorities of host member states may not undertake any approval or administrative procedures relating to prospectuses and may not require any additional disclosure.

***Are there any ongoing obligations on an issuer under the PD?***

A prospectus supplement is required to be approved by the competent authority of the home member state, and published, in respect of every new factor, material mistake or inaccuracy which is capable of affecting the assessment of the securities, and which occurs between the time of approval of the prospectus and the closing of the offer to the public or, as the case may be, the time when the trading of the securities begins on a regulated market, whichever is later. For the avoidance of doubt, in the case of an EMTN program, a prospectus supplement must be approved and published in respect of each such item between the time of approval of the base prospectus and the closing of any issuance off the program.

Where the prospectus relates to an offer of securities to the public (as opposed to an admission to listing), the publication of a prospectus supplement allows any investor who has agreed to purchase securities, prior to the publication of the supplement, to withdraw its acceptance of the offer within two business days after the publication of the supplement, provided that the new factor, mistake or inaccuracy arose before the final closing of the offer to the public and the delivery of the securities. Accordingly, issuers and dealers must be careful to ensure, to the maximum extent possible, that the base prospectus is complete and accurate prior to the making of any offers, and that no updates are required.

***What do the final terms for a takedown contain?***

Final terms can include only trade-specific information. The final terms document cannot be used to circumvent the requirement for a supplemental prospectus (discussed above under "*Are there any ongoing obligations on an issuer under the PD?*"). The final terms complete the prospectus once they are filed with the competent authority of the home member state and communicated to the competent authority of the host member state in which the offer of securities is being made. The final terms must be read alongside the "base" terms and conditions contained in the base prospectus (which are incorporated by reference into the final terms), and the two together provide the specific terms for an individual takedown. They set out the specific commercial terms (for example, currency, interest rate, maturity) of a particular drawdown. They identify the conditions in the base terms and conditions that apply to the issue, without the need to reproduce the entire set of terms and conditions.

The final terms usually take the form of a template that is included in the base prospectus, with the specific terms of the particular issue filled in at the time of the takedown.

The Amending Regulation limits the type and amount of information that can be contained in a final terms document, as opposed to the base prospectus to be approved by the relevant competent authority. In "Annex XX" to the PD Regulation, types of information are divided up into three categories (A, B & C), indicating where such information should be presented. Category A, for example, contains information (such as risk factors) which is known at the time of approval of the Base Prospectus and therefore should be included in the Base Prospectus. Category B information must, as to its general principles, be included in the base prospectus, with only the details unknown at the time of approval of the base prospectus being left blank for later insertion in the Final Terms. Category C information is generally unknown at the time of approval of the Base Prospectus and such information can be left blank for later insertion in the Final Terms. The Final Terms should therefore only contain issue-specific information determined at the time of issue in an easily analysable and comprehensible form. A summary of the individual issue should also be completed and annexed to the Final Terms.

***When must the final terms be filed with the competent authority?***

If the final terms of the offer are not included in either the base prospectus or a prospectus supplement, they must be provided to investors and filed with the relevant competent authorities when each public offer is made as soon as practicable and, if possible, in advance of the beginning of the offer or the admission to trading (as the case may be).

***How does the issuer list the EMTN program once the base prospectus has been duly approved?***

Listing is made by the issuer applying to the regulated stock exchange in the home member state, and/or in any host member state to which the base prospectus has been passported (*see "What does passporting a prospectus in Europe involve?"* above), and completing the relevant exchange's application requirements. In certain jurisdictions, such as Ireland and Luxembourg, a local listing agent is required to be appointed to liaise with the exchange on the issuer's behalf. In other jurisdictions, such as the United Kingdom, the issuer or the lead manager or their legal counsel will liaise directly with the FCA and any applicable exchange.

***Which clearing systems are used for EMTN programs?***

Euroclear and Clearstream, Luxembourg are the two predominant clearing systems for Euromarket debt securities. They hold securities for their customers and facilitate clearance and settlement through electronic book-entry transfer between their respective accountholders. Their accountholders are sometimes the ultimate investors, but often are custodians or sub-custodians for the ultimate investors. They provide services of safekeeping, administration, clearance and settlement, as well as securities lending and borrowing. The two clearing systems have established an electronic "bridge" between themselves, so that securities will only have one ISIN code, irrespective of which system's accountholders are the securities' owners, and accountholders can settle securities freely across the two systems.

***Upon each takedown, what documents are delivered to the clearing systems?***

On closing of the takedown issuance, temporary and permanent global notes (or a registered global certificate in respect of an issuance of notes in registered (rather than bearer) form) executed by the issuer, and authenticated (countersigned) by the fiscal agent or principal paying agent, will be delivered to the common depository if the bearer global note is a Classic Global Note or the registered global certificate has been issued under the Classic Safekeeping Structure (meaning the structure governing registered notes not intended for use as collateral for the European Central Bank's securities lending facilities). Where the relevant note is a New Global Note, or where it is a global registered certificate issued under the New Safekeeping Structure, (in each case meaning that the note is intended for use as collateral for the European Central Bank's securities lending facilities), the notes will be delivered to a common safekeeper (which may be a clearing system itself), in return for the credit of the subscription proceeds to the issuer's account. This completes the issue of the notes.

***Who holds the notes in custody?***

Through a common depository or common safekeeper, which is typically the same entity that performs the role of principal paying agent for the program, Euroclear and Clearstream are the holder of one or more "global" notes (bearer or registered), which together represent the entire principal amount of the securities issue.

An accountholder's right to request the issue of "definitive" (or "individual") securities is often limited to narrow circumstances. However, for U.S. issuers, it is common to provide the holders with the right to convert to "definitives" at any time in light of the special rules imposed by the U.S. tax code. In practice though, this right is rarely exercised.

In any case, due to changes introduced by the Foreign Account Tax Compliance Act in the United States, issuances of bearer securities by U.S. issuers have become extremely rare.

***What is the difference between a Classic Global Note and a New Global Note?***

Both a Classic Global Note and a New Global Note are global bearer notes held on behalf of the clearing systems for the benefit of the clearing systems' accountholders. The essential difference is that payments made on, or transfers or exchanges of interests in, a Classic Global Note are annotated on a schedule to the Classic Global Note itself, and this schedule is conclusive of the principal amounts represented by such Classic Global Note at any time. In the case of a New Global Note, no such annotations are made. Instead, the records of the clearing systems themselves are conclusive of the principal amounts outstanding.

***How does the New Safekeeping Structure for registered global certificates differ from the Classic Safekeeping Structure?***

Under the New Safekeeping Structure, there is no change in the legal position of the registered global notes, which retain the same legal form as Classic Global Notes. Such notes will therefore not include language to the effect that the conclusive evidence of the issue outstanding amount is determined by the records of the clearing system (unlike a New Global Note). However, registered global notes issued under the new safekeeping structure do have to be held by one of the clearing systems, (as opposed to a common depository) serviced by a common service provider, and the registered owner will be a nominee of the relevant clearing system (as opposed to a nominee of the common depository).

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