NEW GLOBAL NOTE STRUCTURE

On 30 June 2006, Euroclear Bank and Clearstream Banking, Luxembourg, (the “ICSDs”) in association with the International Capital Market Association (“ICMA”) and the International Capital Market Services Association (“ICMSA”), launched a new legal and holding structure for international debt securities. This New Global Note (“NGN”) structure is now mandatory for newly issued international bearer debt securities to be recognised as eligible collateral for Eurosystem monetary policy and intraday credit operations since 1 January 2007.

GLOBAL NOTES

Under the Classic Global Note (“CGN”) structure, which continues to exist alongside the NGN structure, issuers of debt securities issue a single global note to be held by a common depositary for, and traded through, the ICSDs, rather than issuing individual notes ("definitive notes"). Global notes include provisions enabling them to be exchanged into definitive notes, but these provisions would not usually become applicable save in the exceptional circumstances of issuer default or the shutting down of the ICSDs.

The NGN structure can be utilised by all issuers of notes held in the ICSDs, whether or not they intend their securities to be recognised as Eurosystem eligible.

The key features of the NGN structure are as follows:

- Since 30 June 2006, international debt securities in global bearer form may be issued using a form of global note, the “NGN”;
- Under the terms of the NGN securities, the outstanding amount of debt in issue is determined from the ICSDs’ records (rather than being noted on the schedules to the (CGN) physical global note held by the common depositary);
- Each issuer enters into a new agreement between the issuer and the ICSDs governing the acceptance of the NGN securities by the ICSDs;

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1 At present, this list of European-eligible securities, as well as collateral eligibility criteria are available on the ECB website at: www.ecb.int.
2 Those securities which are not Eurosystem eligible but use the NGN structure will need to employ a Commercial Common Safekeeper rather than using the ICSDs as the Common Safekeeper.
NGN securities are held and "serviced" by two separate entities: the "Common Service Provider" or "CSP", and the "Common Safekeeper" or "CSK" (as custodian), both appointed by the ICSDs, instead of being held and serviced, as under the CGN structure, by a common depositary and an agent respectively; and

NGNs that are potentially eligible as collateral for the Eurosystem must be deposited for safekeeping with an ICSD.

It is possible to build flexibility into an issuer's debt issuance programme documentation so that, in respect of any issue of notes, it may select whether notes will be issued in NGN form or CGN form.

NEW SAFEKEEPING STRUCTURE FOR REGISTERED NOTES

On 22 October 2008 the European Central Bank (the "ECB") announced that the NGN structure was extended to securities in global registered form. This registered global note structure is commonly referred to as the 'New Safekeeping Structure' or 'NSS' 3. Global registered securities issued after 30 September 2010 will only be eligible under the ECB framework if the NSS structure is used. Securities issued before or on that date have been grandfathered. In addition, securities in definitive note form will no longer be eligible. 4

In September 2010 the ICSDs implemented changes in the way in which registered global notes are held by or on behalf of the ICSDs. Registered global notes which are intended to be eligible as ECB 5 collateral need to be registered in the name of a nominee for the ICSDs as CSK (as opposed to being registered in the name of a nominee for the common depositary). This is the main change to registered global notes which causes consequential changes to documentation. Many of these changes are similar to those required for NGNs 6, but need to be tracked into underlying documentation, such as Global Notes, Agency Agreements, Final Terms and in the description of global notes and holding structures in Prospectuses and Base Prospectuses. In addition, 'Issuer – ICSD Agreements' are required and there is also a concept of 'effectuation' of registered global notes, with the resulting need for effectuation authorisations.

3 Debt securities issued in registered form will not be eligible as collateral in Eurosystem credit operations unless, inter alia, they are held through the NSS. NSS status is necessary but not sufficient to confer eligibility. Debt securities issued in registered form before October 1, 2010 do not need to be held through the NSS in this respect. Actual eligibility depends on the Eurosystem eligibility criteria applicable from time to time (and generally published on the website of the European Central Bank).

4 Securities issued before that date are eligible for use as collateral until their maturity.

5 Securities issued before that date are eligible for use as collateral until their maturity.

6 However, unlike NGNs, registered form global securities issued under NSS retain the same legal form as standard registered securities issued under the existing Classic Safekeeping Structure. As a result, the ICSDs do not require a legal opinion as condition precedent to acceptance of securities issued under the NSS.
REQUIREMENTS RELATING TO EUROSYSTEM ELIGIBILITY – NGN

Although all notes intended to be Eurosystem eligible and issued on or after 1 January 2007 must be issued in NGN form, there are certain additional criteria which must be satisfied to obtain the "collateral eligibility" benefit referred to above. In particular the securities must:

- be issued by issuers established in the EEA or the G10 (the non-EEA members of the G10 are Canada, Japan, Switzerland and the United States) or by supranational issuers, in each case, meeting "high credit standards" (the ECB releases this criteria on their website from time to time);
- be listed or quoted on an EEA regulated market or an ECB approved non-regulated market;
- be denominated in euro, pounds sterling, yen or US dollars; and
- be settled in the Eurozone and held within a securities settlement system complying with Eurosystem criteria.

OTHER ECB ELIGIBILITY CRITERIA – NGN

Eligibility criteria can be found in Chapter 6 of 'The Implementation of Monetary Policy in the Euro Area - General Documentation on Eurosystem Monetary Policy Instruments and Procedures', applicable from January 2012. In respect of an issue under a debt issuance programme, the final terms document (or, if applicable, the pricing supplement) should indicate whether or not the notes being issued are intended to be Eurosystem-eligible.

ASSET-BACKED SECURITIES

The eligibility of asset-backed securities for use in the Eurosystem is assessed by the following criteria:

- the structure of the transaction;
- the composition of the pool of assets;
- the seniority of the tranches;
- the issuer’s country of residence;
- the eligibility assessment;

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7 The European Central Bank have modified their criteria for Eurosystem eligibility. NGNs and NSS notes denominated in pounds sterling, yen or US dollars are now Eurosystem eligible along with euros. However, those notes must use Euroclear or Clearstream as the CSK and not a private CSK. Eurosystem eligibility criteria is amended from time to time and is published on the website of the European Central Bank.
• the Eurosystem will require a rating at the AAA/Aaa level from an accepted external credit assessment institution (ECAI) at issuance⁸;

• the minimum rating threshold would have to be retained; and

• the underlying pool should not consist of tranches of other ABSs⁹.

TIMING NGN

The NGN structure has prospective application only, and securities issued in CGN form prior to 1 January 2007 will continue to be potentially Eurosystem eligible during their lifetimes. However, since 1 January 2007, all newly issued global bearer form securities with the ICSDs as place of primary deposit have to be issued in NGN form and deposited with a CSK in order to be Eurosystem-eligible. The effective date of these new requirements was 1 January 2007.

Bearer form securities issued in CGN form with the ICSDs as place of primary deposit after 31 December 2006 are not Eurosystem eligible, unless they were fungible securities issued with the same ISIN as securities issued before 1 January 2007. All determinations of actual eligibility are made by the Eurosystem and its members.

TIMING NSS

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

The NSS is based on the New Global Note (“NGN”) structure for bearer notes 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 are therefore, required to standard legal documentation.

⁸ With regard to asset-backed securities (ABSs), the Eurosystem will require a rating at the AAA/Aaa level from an accepted external credit assessment institution (ECAI) at issuance as an additional eligibility criterion for all ABSs issued as of 1 March 2009. Over the lifetime of the ABS, the previously existing single A minimum rating threshold would have to be retained. Moreover, for ABSs issued as of 1 March 2009, the underlying pool should not consist, in whole or in part, of tranches of other ABSs.

⁹ With regard to uncovered bank bonds, the Eurosystem introduced limits to their use. As of 1 March 2009, the value assigned to uncovered bank bonds issued by an issuer, or any entity with which this issuer has close links must be less – after the application of haircuts – than a share of 10% in the value of the collateral pool of a counterparty, unless the market value of the assets referred to above does not exceed EUR 50 million. This limitation does not apply to uncovered bank bonds that are guaranteed by a public sector entity with the right to levy taxes.
ISSUANCE AND DISTRIBUTION – NGN

The issuance and distribution process for securities in NGN form is similar to the issuance and distribution process for CGNs. However, the deposit of a security in NGN form requires two additional actions before the securities can be credited to the ICSDs’ records and distributed to investors:

- the issuer or its agent must deposit the NGN certificate with the CSK. The CSK will, in the case of notes intended to be Eurosystem eligible, “effectuate” the global note.\(^\text{10}\) For securities expected to meet Eurosystem eligibility criteria, the CSK must be one of the ICSDs; and

- the issuer’s agent (who may be the CSP selected by the issuer) informs the ICSD (via the CSP) of the initial issue outstanding amount (“IOA”) of the securities to be issued and to be credited on the ICSDs’ books.\(^\text{11}\)

In addition, the NGN structure supports electronic transmission of the NGNs to the CSK, via secured communication means, prior to distribution of the new issue. When electronic transmission is used, the issuer or its agent must provide the CSK with an effectuation authorisation.\(^\text{12}\)

NGNs which are intended to be Eurosystem eligible collateral need to be both authenticated by the Agent in the traditional manner and, after delivery to the common safekeeper, effectuated by the common safekeeper before becoming live. The delivery of an effectuation authorisation is mandatory before any NGN which is intended to be held in a manner which would allow Eurosystem eligibility will be accepted by the ICSDs. Once this general authorisation is in place, the Agent needs to give a specific effectuation instruction to the common safekeeper on each issue under the programme of such NGNs.

However, effectuation may not be necessary in the limited number of cases where: (1) an NGN bearing an original signature of the issuer or authentication agent can be physically delivered to the common safekeeper; or (2) where the NGN format is used but the notes are not intended to be Eurosystem eligible collateral.

In a limited number of cases the common depositary currently is a different entity from the Agent. Where this is the case for a common safekeeper (who is not one of the ICSDs) and the NGN is delivered electronically to that common safekeeper after having been authenticated by the Agent, the parties may consider it appropriate to effectuate such NGN.

ISSUANCE AND DISTRIBUTION IN NSS

For the NSS 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;

\(^{10}\) “Effectuation” is the final act of physically signing the NGN to make it a valid security. The effectuation process applies to securities sent electronically to the CSK by the lead manager, the issuer, or its agent or legal counsel. In such cases, the issuer uses an effectuation authorisation to authorise the CSK to sign the NGN in order to make it a valid security.

\(^{11}\) The following is a list of common service providers jointly appointed by Clearstream Banking and Euroclear Bank: Deutsche Bank AG Hong Kong Branch; The Hong Kong & Shanghai Banking Corporation Ltd Hong Kong; Deutsche Bank AG, London Branch; Societe Generale Bank & Trust, Luxembourg; The Bank of New York; Deutsche Bank AG; Banque et Caisse d’Epargne, Fortis Banque Luxembourg S.A.; Dexia - Banque International a Luxembourg S.A.; Caceis Bank Luxembourg; Mizuko Trust & Banking (Luxembourg) SA; Royal Bank of Canada, London; BNP Paribas Securities Services, Luxembourg Branch; The Bank of Tokyo-Mitsubishi UFJ, Ltd, Citibank N.A., London; HSBC Bank PLC; Kredietbank S.A. Luxembourgeoise, JPMorgan Chase Bank; Bank of England; and DBS Bank Ltd. Singapore.

\(^{12}\) Standard form effectuation authorisations are available on the ICSDs’ websites.
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. However, the ICSDs will not need a legal opinion for the NSS because, unlike the NGN, registered form notes to be held under the NSS are not issued in a new form of security. Further, the form of Effectuation Authorisation will need to be slightly amended to cater for notes held under the NSS as well as for NGNs.

**AMENDMENTS TO DOCUMENTS GOVERNING DEBT ISSUANCE PROGRAMMES – NGN AND NSS**

The NGN structure does not provide for the role of common depositary, but instead contemplates a common safekeeper and common service provider.\(^\text{13}\) As a result, it is necessary to amend the issuance and delivery procedure described in the dealer and agency agreements relating to the programme. Each issuer is required to enter into an additional agreement in a standard form with the ICSDs which sets out the ICSDs’ rights and responsibilities in respect of notes in NGN form to be issued by that issuer.

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.

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.

**NGN LEGAL PACK**

ICMA has produced a legal pack in respect of the NGN structure. The legal pack provides suggested amendments to the package of documentation to be entered into for a stand-alone issue or in respect of a programme, namely the agency agreement, the form of global notes, the operating and procedures memorandum and the trust deed, if applicable. Subject to the incorporation of mandatory features in connection with Eurosystem-eligibility, these amendments are not intended to be mandatory but are indicative of the areas where legal documentation will typically need to be amended or developed. This suggested standard wording for all of these changes is available on the ICSDs, ICMA and ICSMA websites. Issuers should consider whether any additional disclosures should be made in the prospectus in respect of the NGN structure and the new and amended documentation.

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\(^\text{13}\) Based on the information or issue documentation provided by lead managers or issuing and paying agents when requesting acceptance of a new security, the ICSDs allocate Common Depositary and Common Service Provider mandates to the entity acting as, in order of priority: (1) registrar or transfer agent; (2) issuing and paying agent, principal paying agent or fiscal agent; (3) conversion agent, exchange agent, warrant agent; or (4) any other issuer agent function. If no entity in the ICSDs’ list of common service providers (referred to in footnote 6) has been identified in the information provided at the acceptance or in the issue documentation as performing one of the above issuer agent functions for a particular issue, the ICSDs will consider the preference of the lead manager or the issuing and paying agent, as applicable. When no such preference exists, the issue will be allocated at the joint and absolute discretion of the ICSDs based on operational criteria.
NSS LEGAL PACK

The ICSDs published in early December 2009 (i) a set of FAQs\(^{14}\); (ii) a revised CSK election form\(^{15}\); (iii) a revised issuer effectuation instruction\(^{16}\); (iv) a revised issuer-ICSD Agreement for programmes\(^{17}\); and (v) a revised Issuer-ICSD Agreement for standalone securities\(^{18}\). The ICSDs also published two revised issuer effectuation authorisations requiring note destruction on maturity\(^{19}\) and two revised issuer effectuation authorisations requiring note sending back on maturity\(^{20}\). Specific NSS webpages have been created by each of Euroclear\(^{21}\) and Clearstream\(^{22}\) listing these documents and other information.

IMPLEMENTATION AND TIMING OF PROGRAMME UPDATES

The NGN structure for bearer securities has been applicable for Eurosystem-eligibility purposes since 1 January 2007. The NGN structure for registered securities has been applicable for Eurosystem-eligibility purposes since 30 June 2010.

WHERE TO FIND MORE INFORMATION

Detailed information including a pack of legal documents can be found on the websites of Clearstream Banking; Euroclear Bank S.A./N.V; the International Capital Market Association and the International Capital Market Services Association.

Slaughter and May

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\(^{14}\) www.icmagroup.org
\(^{15}\) www.icmagroup.org
\(^{16}\) www.icmagroup.org
\(^{17}\) www.icmagroup.org
\(^{18}\) www.icmagroup.org
\(^{19}\) For standalone securities; for programme securities
\(^{20}\) For standalone securities; for programme securities
\(^{21}\) www.euroclear.com
\(^{22}\) www.clearstream.com

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