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Medium Term Note Programs

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Overview

Medium term note (MTN) programs are designed to allow fast market access by frequent issuers without the burden of negotiating a suite of takedown documents for each issuance.

- MTN Programs may be either registered with the Securities and Exchange Commission or exempt from registration thereunder:
  - Section 3(a)(2) bank note programs
  - Rule 144A / Regulation S programs
  - Regulation S EMTN programs

- At the launch of an MTN program, a set of program documents are executed: a distribution agreement (which provides a framework for continuous offerings, as opposed to an underwriting agreement used in individual offerings), a fiscal agency agreement or indenture, and ancillary documents, such as a calculation agency agreement and an exchange rate agency agreement.

Offering Documents

- The offering documents for an MTN program will include:
  - A base prospectus with a general description of the issuer's debt securities that may be issued under the issuer's existing debt indenture,
  - For an exempt program, the base offering document will be an offering circular or offering memorandum, rather than a base prospectus,
  - A more detailed prospectus supplement describing the notes to be issued under the MTN program, and
  - Free writing prospectuses and/or pricing supplements, each of which will include the specific details of each offering.
  - The prospectus supplement will usually include a description of the issuer's fixed and floating rate notes, and the various underlying rates for floating rate notes (e.g., SOFR, the constant maturity swap rate (CMS), the Euro Interbank Offered Rate (EURIBOR), the federal funds rate, and others).

Distribution Agreement

- The issuer will usually have multiple agents execute the MTN distribution agreement. The agents may act in the role of principal (i.e., underwriter/dealer) or as an agent for the issuer for direct sales by the issuer to the investor.

- Under the distribution agreement, the agents are entitled to receive diligence documentation from the issuer on a regular basis—usually quarterly, coinciding with the issuer's filing of its Form 10-K or 10-Q.

- The diligence documentation will consist of a comfort letter, officers' certificate of the issuer, and counsel's Rule 10b-5 letter confirming that the prospectus (which incorporates by reference the issuer's filings under the Securities Exchange Act of 1934) do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Distribution Agreement *(cont'd)*

- Often the underwriter is an affiliated broker-dealer of the issuer.
- In that case, the MTN program must be rated investment grade by a rating agency, or the issuer's debt of the same class must be so rated.
- Having that rating will perfect an exemption from the requirement to use a qualified independent underwriter under the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA")
  - This exemption is required for registered and Section 3(a)(2) MTN programs, but not Rule 144A or Regulation S programs.
- Some MTN programs are set up with only one agent signed up to the distribution agreement, which may be the issuer's affiliated broker-dealer.

Distribution Agreement *(cont'd)*

- That broker-dealer will then, in turn, execute dealer agreements with other distributors. In that situation, when notes are issued, they are sold first to the affiliated broker-dealer and then to an unaffiliated distributor.

- At the time of a note offering, the agent, acting as an underwriter, will agree on the terms of the offering with the issuer, whether through a form terms agreement or a more informal process (such as an email or other confirmation).

- Issuer's counsel usually prepares the preliminary offering document, which will be either a free writing prospectus or a preliminary pricing supplement.

Risk Factors

- The uncertainty with respect to the timing of Term SOFR as a USD LIBOR replacement and the potential differences between the USD LIBOR rate for any particular tenor and the Benchmark Replacement rate and Benchmark Adjustment call out for clear risk factor disclosure.

- Risk factors have been, and should be, updated to reflect this uncertainty and to highlight the potential conflicts of interest between the calculation agent, which may be an affiliate of the issuer, and the note holders.

Section 3(a)(2) and Offerings by Banks

- Section 3(a)(2) of the Securities Act exempts from registration under the Securities Act any security issued or guaranteed by a "bank."

- Basis: banks are highly regulated, and provide adequate disclosure to investors about their finances in the absence of federal securities registration requirements. Banks are also subject to various capital requirements that may increase the likelihood that holders of their debt securities will receive timely payments of principal and interest.

What is a "Bank"?

- Under Section 3(a)(2), the institution must meet both of the following requirements:
  - It must be a national bank or, any institution supervised by a state banking commission or similar authority; and
  - Its business must be substantially confined to banking.

- Examples of entities that do not qualify:
  - Bank holding companies
  - Finance companies
  - Investment banks
  - Foreign banks

- Regulated US branches and agencies of foreign banks may qualify.

Guarantees

- Another basis for qualification as a bank: securities guaranteed by a bank.
  - Not limited to a guarantee in a legal sense, but also includes arrangements in which the bank agrees to ensure the payment of a security.
  - The guaranty or assurance of payment, however, has to cover the entire obligation; it cannot be a partial guarantee or promise of payment, and it must be unconditional.
  - Again, guarantees by foreign banks (other than those of an eligible US branch or agency) would not qualify for this exception.
  - The guarantee is a legal requirement to qualify for the exemption; investors will not be looking to the U.S. branch for payment/credit. Investors will look to the home office.
  - Finance companies can issue under Section 3(a)(2), if the securities are guaranteed by a bank.

Non-US Banks/US Offices

- US branches/agencies of foreign banks are conditionally entitled to rely on the Section 3(a)(2) exemption.

- 1986: The SEC takes the position that a foreign branch/agency will be deemed to be a "national bank" or a "banking institution organized under the laws of any state" if "the nature and extent of federal and/or state regulation and supervision of that particular branch or agency is substantially equivalent to that applicable to federal or state chartered domestic banks doing business in the same jurisdiction."

- As a result, US branches/agencies of foreign banks are frequent issuers or guarantors of debt securities in the United States. Most issuances or guarantees occur through the New York branches of these banks.

FINRA Requirements

- Even though securities offerings under Section 3(a)(2) are exempt from registration under the Securities Act, public securities offerings conducted by banks must be filed with the Financial Industry Regulatory Authority for review under Rule 5110(a)(2), unless an exemption is available.

- Exemption: The issuer has outstanding investment grade rated unsecured non-convertible debt with a term of issue of at least four years, or the non-convertible debt securities are so rated.

- If an affiliated dealer is an agent for the offering, there is "prominent disclosure" in the offering document with respect to the conflict of interest caused by that affiliation and the bank notes are rated investment grade or in the same series that have equal rights and obligations as investment grade rated securities, then no qualified independent underwriter will be required.

- Transactions under Section 3(a)(2) must also be reported through FINRA's Trade Reporting and Compliance Engine. TRACE eligibility provides greater transparency for investors. Rule 144A securities are also TRACE reported.

The 2021 ISDA Definitions

Effective October 4, 2021 – new main book and annexes (*see the FRN Matrix)*

- Almost all rate descriptions in US MTN programs are copied out of the 2006 ISDA Definitions
  - They will all be wrong
  - LIBOR, SOFR and, to some extent, CMS, have already been updated

- Some new rates included that are becoming popular:
  - Ameribor
  - BSBY
  - S&P Index High Grade
  - SOFR
  - Overnight Bank Funding Rate

How do we update our MTN descriptions?

- Drafting – how?
  - Old way: Copy description out of the 2006 ISDA Definitions
  - New way: Enter the Matrix

- How do we use the Matrix?
  - Lots of columns
  - Most of the first group are just simple identification, whether the rate is overnight or term, and where do we get it (screen rates are read off of screens, including H.15(519) fed reserve daily published rates) (calculated rates involve a calculation, mainly Fed Funds and US Treasury Bills (money market yield and bond equivalent yield, respectively)
  - CMS not included

The new fallbacks

- Fallbacks:
  - Big changes – no more polling (Reference Banks)
  - Obvious problems with polling, if no quotes, end up with a fixed rate note – nobody wants that anymore

- Three situations covered: Temporary cessation, permanent cessation and "administrator/benchmark event"
  - Temporary: The "Standard Temporary Non-Publication Trigger" is to simply use the previous day's rate – super simple
  - Permanent cessation: Index Cessation Event – uses the same descriptions as currently used for USD LIBOR and SOFR – public statements by the administrator or the regulatory supervisor for the rate that it will cease
  - Has a third option, used in USD LIBOR, that the regulatory supervisor says that the rate is no longer representative, even if being published – zombie LIBOR

New option – Administrator/Benchmark Event

Administrator/Benchmark event:

- You receive a notice from the issuer or the trustee that under law or regulation, it's illegal to continue using the rate
- Now what?
- "Generic Fallback Provisions"
  - Agreement between the parties;
  - Application of Alternative Pre-nominated Index;
  - Application of Alternative Post-nominated Index;
  - Application of Calculation Agent Nominated Replacement Index; and
  - No fault termination
- For FRNS, only alternative pre-nominated index will work
- We will see issuers including fallback rates in their offering documents
- Goal is to get to an amendment to the FRN that allows the FRN to continue under the new rate

Rule 144A – Overview

- Rule 144A provides a clear safe harbor for offerings to institutional investors.
- Does not require extensive ongoing registration or disclosure requirements.
- "Benchmark" sized issuances have good liquidity in the Rule 144A market.
- A US bank may use a Rule 144A program for marketing reasons — a desire to be clearly identified with the QIB market.
- Rule 144A provides a non-exclusive safe harbor from the registration requirements of Section 5 of the Securities Act for resales of restricted securities to "qualified institutional buyers" (QIBs).
- The premise: not all investors are in need of the protections of the prospectus requirements of the Securities Act.
- The rule applies to offers made by persons other than the issuer of the securities (i.e., "resales").
- The rule applies to securities that are not of the same class as securities listed on a US securities exchange or quoted on an automated inter-dealer quotation system.
- A reseller may rely on any applicable exemption from the registration requirements of the Securities Act in connection with the resale of restricted securities (such as Regulation S or Rule 144).

Conditions for Rule 144A Offerings

- Reoffers or resales only to a QIB, or to an offeree or purchaser that the reseller reasonably believes is a QIB.
- The QIB must purchase for its own account or for the account of another QIB
- Reseller must take steps to ensure that the buyer is aware that the reseller may rely on Rule 144A in connection with such resale.
- The securities reoffered or resold (**a**) when issued were not of the same class as securities listed on a US national securities exchange or quoted on a US automated inter-dealer quotation system and (**b**) are not securities of an open-end investment company, UIT, etc.
- For an issuer that is not an Exchange Act reporting company or exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, the holder and a prospective buyer designated by the holder must have the right to obtain from the issuer, upon the holder's request, certain reasonably current information.

What is a QIB?

- The following qualify as "QIBs":
  - Any corporation, partnership or other entity (but not an individual) that owns and invests on a consolidated basis $100 million in the aggregate in securities of non-affiliates (other than bank deposits and loan participations, repurchase agreements and securities subject thereto, and currency, interest rate and commodity swaps);
  - Registered dealers that own or invest $10 million of such non-affiliate securities or are engaged in "riskless principal transactions" on behalf of QIBs (to qualify, the QIB must commit to the broker-dealer that the QIB will simultaneously purchase the securities from the broker-dealer);
  - Any investment company that is part of a "family" that has the same investment adviser and together own $100 million of such non-affiliate securities; and
  - Any US or foreign bank or S&L that owns and invests on a consolidated basis $l00 million in such non-affiliate securities and has a net worth of at least $25 million
  - Institutional Accredited Investors when these entities meet the $100 million in securities owned and invested Rule 144A threshold

- A QIB can be formed solely for purpose of conducting a Rule 144A transaction

How can a reseller ascertain a person is a QIB?

- A reseller may rely on the following (as long as the information is no more than 16 months old for a domestic entity or 18 months for a foreign entity):
  - The purchaser's most recent publicly available annual financial statements;
  - Information filed with the SEC or another government agency or self-regulatory organization;
  - Information in a recognized securities manual, such as Moody's or S&P;
  - Certification by the purchaser's chief financial or other executive officer specifying the amount of securities owned and invested as of the end of the purchaser's most recent fiscal year; and
  - A QIB questionnaire.

- The SEC acknowledges that the reseller may use other information to establish a reasonable belief of eligibility.
  - If alternative procedures are used, these should be documented.

Rule 144A – Legending

- The reseller will make the buyer aware that the security is a Rule 144A security by:
  - Legending the security (i.e., the security must include language that it is not registered under the Securities Act);
  - Including an appropriate statement in the offering memorandum;
  - Obtaining an agreement that the purchaser understands that the securities must be resold pursuant to an exemption or registration under the Securities Act; and
  - By obtaining a restricted CUSIP number.

Current Information Requirements

- For securities of a non-public company, the holder and a prospective purchaser designated by the holder have the right to obtain from the issuer, upon request, the following information:
  - A brief statement of the nature of the business of the issuer, and its products and services;
  - The issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for such part of the two preceding fiscal years as the issuer has been in operation; and
  - The financial statements should be audited, to the extent reasonably available.

- The information must be "reasonably current."

Rule 144A – The basic offering structure

- The issuer initially sells restricted securities to investment bank(s) in a Section 4(a)(2) or Regulation D private placement
- The investment bank immediately resells the securities to QIBs under Rule 144A

  Issuer → Initial Purchaser → QIBs
- Often combined with a Regulation S offering and referred to as a Rule 144A/Reg S offering
- QIBs acquire restricted securities
  - May resell immediately to other QIBs
  - May resell in accordance with Rule 144 requirements

Rule 144A – MTN Programs

- Used for repeat offerings, often by financial institution and insurance company issuers, to institutional investors.
- Often used for structured products sold to QIBs.
- Advantages over a public MTN program:
  - No need to publicly disclose innovative structures or sensitive information such as underwriter compensation, investor's strategies.
  - Limit FINRA filing and other compliance requirements.
  - For financial institution issuers, greater flexibility as to timing of programs when the stock of an underlying security is on a "watch list."
  - No SEC filing fees.
  - In principle, lower liability profile, and reduced possibility of regulatory review.

MTN Program Participants

- **Issuer/Guarantor** (in some cases)
- **Investment banks**, which underwrite/place the notes from time to time under a framework set forth in a ***Dealer Agreement/Distribution Agreement*** entered into at program commencement and updated as needed.
- **Law Firms** – Two law firms, one acting as US counsel to the Issuer and one acting as US counsel to the investment banks. At program establishment there is also typical outside counsel for the trustee or fiscal and paying agent.
- **Accounting Firm –** The issuer's accountants who audit its financial statements will need to deliver a comfort letter.
- **Rating Agencies –** Two ratings are typically required
- **Fiscal and Paying Agent**
- **Listing Agent -** To the extent notes are listed.
- **Clearing Systems** **-** Such as DTC, Euroclear, and Clearstream
- **Financial Printer** – To the extent printing is required

European/UK Areas of Interest on GMTN Programs Established in the US

- Offers of Securities and relevant private placement exemptions
- Marketing and financial promotion rules
- Participation of EU/UK Agents in the Syndicate
  - Product governance and disclosures to distributors and investors
  - Contractual recognition of bail-in
- MTN and ECB Eligibility/Collateral Recognition

Offers of Securities in the EEA and the UK

- Regulation (EU) 2017/1129 (as amended) – EU Prospectus Regulation

- Regulation (EU) 2017/1129 (as amended) as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018 (as amended) – the UK Prospectus Regulation
  - Basic rule: Where there is an offer to the public in the EEA/UK of securities or securities are being admitted to a regulated market in the EEA/UK, a prospectus is required
  - The definition of "offer" is extremely broad and covers any "*communication to any person which presents sufficient information on the transferable securities to be offered and the terms on which they are offered so as to enable an investor to decide to buy or subscribe to these securities*"

Offers of Securities in the UK

- "*Transferable securities*" includes bonds, other forms of securitised debt and depositary receipts (but excludes money market instruments, such as commercial paper)

- Number of exemptions from the requirements to publish a prospectus apply (so called "public offer exemptions") for securities which, although being offered to the public, are not being admitted to trading on a regulated market in the UK – these include:
  - Offer solely to "qualified investors"
  - Offer where the minimum denomination of the securities is equal to or greater than Euro 100k
  - Offer to fewer than 150 natural or legal persons in the UK

- NB: There will still be a need to comply with rules of any other listing venue on which the securities are to be listed

PRIIPs Regulation and UK PRIIPs Regulation

- Regulation (EU) No 1286/2014 (as amended) on Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs)

- "*Investment … where, regardless of the legal form of the investment the amount repayable to the investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the investor*"

- Regulation applies to issuers and other persons selling PRIIPs – such person must provide a Key Information Document (KID) to retail investors in good time (free of charge) before he/she is bound by any contract of offer relating to the PRIIP

- KID intended to aid comparability of pre-contractual information across different types of product

PRIIPs Regulation and UK PRIIPs Regulation *(cont'd)*

- Certain categories of product expressly excluded, such as securities guaranteed by an EEA member state
- BUT plain vanilla MTN is not on the exclusion list:
  - standard features (e.g., make-whole protection) where the pay-out on the MTN may be subject to fluctuation because of exposure to a reference obligation/value
  - types of notes (credit/equity/commodity-linked securities) issued under MTN programmes?
- Lack of clarity as to scope of Regulation has resulted in many cases in prohibition of sales to EEA and UK retail investors
- Post-Brexit: UK Financial Conduct Authority recognised this problem and Financial Services Act 2021 provides FCA with power to clarify scope of regime
- No similar recognition by the European Securities and Markets Authority (ESMA) at this time

UK Financial Promotion

- Section 21 UK Financial Services and Markets Act 2000 (as amended):
  - A person must not, in the course of business, communicate an invitation or inducement to engage in investment activity unless:
    - The promotion is exempt
    - the promotion is communicated or approved by an authorised person
- Consequences of contravention of s.21 by unauthorised person:
  - Criminal offence (s.25 FSMA)
  - Unenforceability (s.30 FSMA)
- UK focus
  - In the UK
  - Originating overseas, but "capable of having an effect in the UK" (s21(3)) and directed at persons in the UK

UK Financial Promotion *(cont'd)*

- Promotion communicated or approved by an authorised person
  - s.21 does not restrict communication by authorised persons, however, they must comply with FCA Handbook requirements in relation to the standard of communications (COBS 4)

- Promotion is exempt under The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "FP order")
  - Key exemptions in FP Order include:
    - **Article 12** – Communications to overseas recipients
    - **Article 19** – Investment professionals
    - **Article 49** – High net worth companies, unincorporated associations etc.
    - **Article 70** – Promotions contained in listing particulars

Product Governance – MiFID II/UK MiFIR

- Markets in Financial Instruments Directive (2014/65/EU) (UK post-Brexit domestic version) created a new EU-wide and UK product governance regime

- Scope
  - All investment firms established in the EEA (and its EEA branches) and to branches of non-EEA entities
  - All types of clients (retail, professional and eligible counterparties)
  - All financial instruments, including structured products

- Covers both sides of the product development and sales process, namely to (if different):
  - Product manufacturers: Investment firms that create, develop, issue and/or design investment products, including investment firms advising corporate issuers on the launch of new securities; and
  - Product distributors: Investment firms that offer and/or recommend investment products and services

Product Governance – MiFID II/UK MiFIR *(cont'd)*

- Objective: Ensure that firms which manufacture and distribute financial instruments act in the clients' best interests during all the stages of the life-cycle of products

- Target Market:
  - The product approval process must specify an identified target market of end clients within the relevant category of clients for each financial instrument
  - Product manufacturers must provide sufficient information to distributors so they can understand and sell properly (disclosure of target market in prospectuses/pricing supplements/announcements of the offering, etc.)
  - Firms are required to review products on a regular basis to assess whether the product remains consistent with the needs, characteristics and objectives of identified target market (feed-back loop)
  - Mutual responsibilities must be outlined in writing where non-EEA/UK issuer/other parties used to create/ manage product (usually in the distribution or terms agreement)

Contractual recognition of Bail-in

- Article 55 of the Bank Recovery and Resolution Directive (BRRD)
- Post-Brexit, Article 55 "onshored" in UK by Part I of UK Banking Act 2009
- Part of comprehensive powers given to EU/UK resolution authorities to deal with failing banks
- Bail-in tool allows resolution authority to write-down or convert to equity a failing bank's liabilities (actual debt liabilities and other unsecured liabilities)
  - Dealers based in the EU27 and the UK required to include "contractual recognition of bail-in" clauses in various MTN contracts (Distribution Agreements, Terms Agreements, Agency Agreements etc.) that are governed by a non-EEA or non-English law (as applicable)
  - New York-law contracts will need to include (a) Article 55 bail-in language in their terms if an EU incorporated Dealer is party to the contracts and/or (b) Part I UK Banking Act bail-in language in their terms if a UK incorporated Dealer is party to the contracts

ECB Eligibility

- The European Central Bank (ECB) together with national central banks of the EU Member States (NCBs) who have adopted the Euro make up the Eurosystem
- Monetary policy of the Eurosystem includes providing standing facilities to / conducting open market operations with eligible counterparties, but credit operations must be based on the Eurosystem's assessment of credit risk and adequate collateral
  - Assets for use as collateral in Eurosystem credit operations must fulfil certain specified criteria to be included on the ECB's Single List of Eligible Assets
  - Eligible assets may be marketable assets such as MTN, subject to the ECB Eligibility Criteria for marketable assets being met (*see* Marketable assets (europa.eu) – these include:
    - Issuer established in the EEA or non-EEA G10 country
    - Senior debt securities
    - Must be denominated in Euro (but occasionally currency scope widened)
    - MTN must be listed on a regulated market in the EEA or traded on certain noon-regulated markets (Post Brexit: London Stock Exchange's (LSE) Main Market no longer meet ECB criteria, but can maintain ECB collateral eligibility via admission to MTS BondVission Europe MTF – Italian MTF majority owned by the LSE)
    - Settled in the euro area (i.e. Euroclear/Clearstream, Luxembourg) and (a) Bearer Notes: issued in the form of New Global Notes (NGN) and, once authenticated, deposited with and effectuated by a common safekeeper (CSK) - either Euroclear or Clearstream, Luxembourg – and held in dematerialised / book-entry form and (b) Registered Notes: effectuated and held by a common safekeeper under the New Safekeeping Structure (but not dematerialised – a physical global note is retained)
    - Credit rating requirements of the debt instrument

ECB Eligibility *(cont'd)*

- NCB of the country where security is listed responsible for assessing and reporting eligible assets to the ECB

- Assessment procedure starts only after the asset as been issued and all relevant documents have been delivered to the NCB (e.g. ISIN codes and brief description of the issuer)

- NCBs/ECB will not confirm eligibility of an MTN before it is issued, though clarification on eligibility criteria can be obtained on a "no names basis" from NCBs.

Appendix A

MTN Timeline

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Typical MTN Program Time & Responsibility Outline

Date	Activity	Responsibility
MTN Program Establishment		
Week 1	Select/confirm counsel, agent, listing agent (if applicable) and accountants	Issuer, U.S. counsel, local counsel, accountants
	Schedule and conduct organizational call to discuss offering, timing, options	
	Discuss existing issuer disclosure and updates to be included in the transaction documentation	
	Initiate discussions with any local regulators required to approve the program and/or benchmark issuance	
Week 2	Distribute Timetable and Working Group List to all parties	Agent(s)
	Preliminary list of management and business due diligence questions prepared	Agents(s) and Agent(s) counsel
	Contact rating agencies to advise of intentions to establish program	Issuer
	Schedule legal, business and accounting due diligence	Issuer, Agents(s) and Agent(s) counsel
	Circulate drafts of Program Documents (Distribution Agreement, Administrative Procedures, Fiscal and Paying Agency Agreement, Calculation Agency Agreement)	Agent(s) counsel
	Draft comfort letter	Accountants
	Prepare offering memorandum	Issuer, U.S. & local counsel

Typical MTN Program Time & Responsibility Outline
(cont'd)

Date	Activity	Responsibility
MTN Program Establishment		
Week 3	Circulate draft Preliminary Offering Document	U.S. counsel
	Finalize business and management due diligence questions	Agent(s) and Agent(s) counsel
	Working group to provide comments on Offering Document and Program Agreements	All
	Provide comments to the Comfort Letter and finalize form SAS 72 Rep Letter / Arrangement Letter	Agent(s) and Agent(s) counsel, Auditors
Week 4	Circulate and review revised drafts of Offering and Program Documents	All
	Contact Listing Agent and Stock Exchange (if applicable)	U.S. counsel
	Begin preparation of marketing materials and roadshow presentation	Issuer, all counsels, Agent(s)
	Conduct business, legal and accounting due diligence	All
Week 5	Working group to submit final comments on Offering Document and Program Documents	All
	Finalize Offering Document and Program Documents	
	All necessary documents are signed	
	Comfort Letter, officer's certificate and legal opinions delivered	

Typical MTN Program Time & Responsibility Outline
(cont'd)

Date	Activity	Responsibility
MTN Program Takedown		
Week 6	Organizational call to discuss details of offering, timing, price guidelines and marketing strategy	Agent(s) and Issuer
	Finalize marketing materials and roadshow presentation	Agent(s) and Agent(s) counsel
	Engage printer (if applicable)	
	Circulate draft Preliminary Pricing Supplement	
	Receive confirmation of ratings	Issuer
	Conduct research analyst call with Issuer	Issuer, Agent(s)
	Roadshow meetings and investor conference call scheduled	
	Conduct business, legal and accounting due diligence	
	Announce transaction and circulate Preliminary Pricing Supplement	
	Conduct pre-pricing due diligence call	Agent(s)
	Transaction launched, allocated and priced	Issuer, Agent(s)
	Notify fiscal agent; request CUSIPs/ISINs	Issuer, Agent(s) and Agent(s) counsel
	Prepare Final Pricing Supplement, inserting pricing terms and circulate to investors	
Week 7	Bring-down due diligence call	All
	Close Transaction (T+5)	

Typical MTN Program Time & Responsibility Outline
(cont'd)

Document	Parties	Drafting Policy	Summary
Offering Memorandum	Issuer	Issuer/Agent(s)/All Counsel/Auditors	Document for distribution to investors, also doubles as the listing document. Includes a description of the issuer, three years' financial statements, any interim results, results of operations, terms of the notes and capitalization table.
Dealer/Distribution Agreement	Issuer/Agent(s)	Agent(s) Counsel	Governs the relationship between Issuer and the Agent(s) relating to the program establishment, maintenance and use.
Fiscal and Paying Agency Agreement	Issuer/Fiscal Agent	Agent(s) Counsel	The Fiscal and Paying Agency Agreement will govern the relationship between the Issuer and the Fiscal Agent. The Fiscal Agent acts on behalf of the Issuer and is involved in interactions between the Issuer and the Noteholders
Board Resolution (or other authorization)	Issuer	Issuer and local counsel	Evidences the Issuer's ability to legally establish the program and issue notes thereunder.
Forms of the Notes	Issuer	Agent(s) Counsel	The actual bonds, typically annexed to the Fiscal and Paying Agency Agreement . The originals are delivered to the Fiscal Agent for use as and when Notes are issued.

Appendix B

New Accredited Investor Definitions

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August 2020 Amendments to the Accredited Investor Definitions

New categories of natural persons:

- Licensed Persons - a natural person may qualify as an accredited investor, regardless of net income or net worth, if the person holds certain professional certifications, designations or credentials that arise out of an examination administered by a self-regulatory organization or other industry body, which examination is intended to demonstrate comprehension and sophistication in the areas of securities and investing, and if information regarding holders of the certification, designation or credential is publicly available.

- Knowledgeable Employees - knowledgeable employees may qualify as accredited investors for purposes of investing in the funds sponsored by their employers.

- Spousal equivalents - in calculating income and net worth, as well as in the context of knowledgeable employee joint investments, an investor can aggregate the investor's income or net worth, as the case may be, with that of his or her spouse or spousal equivalent.

August 2020 Amendments to the Accredited Investor Definitions *(cont'd)*

New categories of natural entities:

- SEC- and state-registered investment advisers
- Rural business investment companies
- Limited liability companies (or any similar business entity) that satisfy the other requirements of the definition of "accredited investor" (i.e., total assets in excess of $5 million and not formed for the specific purpose of acquiring the securities being offered)
- Any entity that does not otherwise qualify as an accredited investor owning investments as defined in Rule 2a51-1(b) under the Investment Company Act in excess of $5 million that is not formed for the specific purpose of acquiring the securities being offered
- Any family office with at least $5 million in assets under management and its family clients

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