

BULLETIN – 170803/41

ICMSA Bulletin with respect to a Recommendation for the Paperless Processing of Put Options

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It has come to our members' attention that there are many instances where put options are being requested and processed in paper form, when this is unnecessary. This is due to some issue documentation¹ for notes being unclear with regards to the provisions under which a noteholder can exercise a put option, when such note is held in global form and deposited within the ICSDs². It should be noted that approximately 99% of issues in the international capital market are currently represented in this form.

The standard rules and procedures of the ICSDs provide that most corporate action instructions (of which put options are one type) and notices can be provided electronically, which results in greater efficiency and reduces risk of delayed or failed trades due to missing or incorrectly completed paperwork.

Background

This recommendation proposes a move to electronic instructions only in relation to put option events for notes held in global form and deposited in the ICSDs³. Issuers should continue to consult with their legal advisors in order to satisfy themselves as to the requirement of a paper form put option notice for their transaction which may still be relevant for reasons relating to a particular jurisdiction, or where exercise is conditional on other criteria being met (e.g. where representations and warranties have to be provided by a noteholder in writing in order for the option to be validly exercised⁴). The intention of this recommendation is to substantially reduce or eliminate the need for paper instructions for put option events on future issuances of global notes within the ICSDs.

¹ Issue documentation here refers, but is not limited, to the base prospectus, offering memorandum, final terms, terms & conditions, agency agreement pro-forma templates and global notes.

² ICSDs: International Central Securities Depositories, jointly Clearstream Banking Luxembourg S.A and Euroclear Bank S.A./N.V.

³ It should be noted that other markets and clearing systems may still require paper instructions to be submitted by noteholders in addition, or as an alternative, to electronic instructions.

⁴ In exceptional circumstances, e.g. where physical paper forms are required for local jurisdiction or structural purposes, it is understood that paperless event processing may not be possible. In such circumstances, the information to be provided should at all times be in accordance with Section 3 (Corporate Actions) of the ISMAG Market Practice Book.



Recommendations for put options

- Legal counsel, issuers and their agents should consider, and adopt where appropriate, the suggested clarifications to issue documents in relation to put option instructions and notices (see below).
- Agents and ICSDs should ensure that there is appropriate education as to how the legal documentation works to ensure paper form notices are not inadvertently specified as being required in order to exercise a put option where notes are held in global form.
- All put events should be defined in an easily analysable and comprehensible form in the terms and conditions, including a detailed description of the applicable regime, procedures and restrictions relating to the put event.

Agency agreement form of put option notice

It should be made clear on the form of put option notice, typically set out in the schedules to the agency agreement, that a paper form put option notice is only required for notes while in definitive or individual note form.

Prospectus / offering document - conditions applicable while notes are held in global form

It should be made clear that while notes are held in global form and deposited with the ICSDs, standard rules and procedures will apply in relation to any put option notices and instructions required to be submitted by noteholders / accountholders.

The conditions applicable to notes while in global form are typically set out in a section of the prospectus/offering document that is separate from the terms and conditions. The terms and conditions are usually drafted for notes in definitive or individual note form, and so should be read alongside any summary of conditions applicable to such notes while in global form.

Global Notes

The global notes themselves may also need to reflect the changes made to the conditions applicable while notes are in global form, as set out in the prospectus / offering documents.

Market participants should consider reflecting these suggested clarifications, where appropriate, in relevant standalone documentation and as part of regular annual programme updates and programme establishments.

ICMSA will monitor the market reaction to this recommendation and look at the possibility of encompassing other corporate actions into a paperless electronic medium.