



BULLETIN – 110428/17

ICMSA Reminder on Record Dates Bulletin

The ICMSA would like to draw members' attention to Bulletin 091116/13 of November 2009 (attached) in relation to the documentation and application of Record Dates in the International Market, relative to each of Bearer and Registered issuances.

We would also like to remind you of the benefits of applying this recommendation in a consistent manner:

- reduce risks of reversals impacting final investors due to misinterpretation of RDs by various intermediaries
- removing inconsistent rules leading to potential investor claims,
- increased transparency on the asset servicing treatment investors should expect,
- it is in line with European standards setting in the context of the removal of the Giovannini barriers

The market continues to see a significant number of new issues created which either:

- make reference to Record Dates on Bearer issues, contrary to their legal form;
- include a Record Date different from PD – 1 for issues in Global Registered Form when deposited with either a Common Depository or Common Safekeeper.

The ICMSA respectfully requests that all parties responsible for drafting issue documentation, updating templates within their organisations, or indeed updating the Base Prospectus relative to issues under Programme, make the necessary updates to reflect the content of the ICMSA recommendation referenced.



BULLETIN – 091116/13

ICMSA Recommendation for Record Dates

Issued by the International Capital Market Services Association www.icmsa.org

Introduction

The ICMSA draws attention to an ongoing practice by certain issuers of international instruments¹ in global bearer form to insert a record date in their issuing documentation. Strictly speaking such terms are incompatible with bearer instruments, with ‘record date’ terminology typically referring to registrar’s records for registered securities.

Additionally, for issues in global registered form, the ‘15 days prior’ rule to determine the distribution of Entitlement² is obsolete in the immobilised ‘book-entry’ market, highlighting a standardisation opportunity for issues both in global bearer and global registered forms.

Bearer Instruments

The beneficiaries of Entitlements are the holders of such as of the close of business³ the day prior to the Entitlement date, this day prior being referred to as the “snapshot date”⁴.

The ICMSA recommends that issuers of bearer securities no longer include definitions referring to a record date, or create provisions within the governing documentation referring to a Snapshot Date different from Payment Date minus 1 Business Day.

Registered Instruments

The below recommendations not only aim to align the treatment of record dates in the international market with the DTCC⁵, but provide clarity for trading counterparties of bifurcated structures where the Reg. S tranche is deposited in the ICSDs⁶ and the 144A tranche is deposited in DTCC⁷.

¹ Securities primarily issued and deposited with the ICSDs

² “Entitlement” is defined to include any distribution of cash or securities, being the payment due date, as determined by the terms and conditions, for cash or the settlement date for securities.

³ Business days in the ICSDs are weekdays (Monday to Friday, incl.) except December 25th and January 1st.

⁴ “snapshot date”: the effective cut-off date at which entitled positions are calculated

⁵ DTCC: The Depository Trust & Clearing Corporation

⁶ ICSDs: Clearstream Banking, Luxembourg and Euroclear Bank S.A./N.V.

⁷ DTCC Interim Accounting Service enables the DTCC to set a *de facto* record date as payment date minus one business day.



The ICMSA recommends that all instruments in global registered form with closing dates after 1st January 2010 word their legal documentation with a record date as at the 'close of the business day (in the ICSDs) prior to the Entitlement date'. Should provisions exist for the global registered note to be exchanged for registered definitive notes to be held outside the ICSDs, then an appropriate administrative period, e.g. 15 days prior, should still be specified in relation to the exchanged definitive notes.

Programme Documentation

It is important to note that the majority of all new issues are derived from Programme Documentation. As such, it is the Base Prospectus or Offering Circular, in setting out the Programme Security Terms & Conditions, which govern the determination of any Record Date.

Until such time as each Programme will reach its normal date for update/amendment and the above recommendations are reflected within the Base Documentation, consideration should be given for any changes that are required to be incorporated within the Final Terms or Pricing Supplement in relation to each individual draw down to be closed on or after 1st January 2010, providing a consistent market approach.