

9. TITRISATION⁷⁵⁴

BORGERWEERT propose à l'État congolais un projet de titrisation⁷⁵⁵ selon les principes, étapes et schémas suivants⁷⁵⁶.

L'opération de titrisation ne peut démarrer qu'au moment les deux parties se déclarent d'accord sur la valeur globale du projet de numérisation des données urbaines et cadastrales. A titre indicative, cette valeur peut être calculée comme suit :

$$\begin{array}{rcl} & 100 \text{ millions de personnes physiques} & \\ ./ & 4 \text{ personnes par parcelle privé} & \\ = & \text{nombre totale des parcelles à gérer par les bases de données estimé à} & \\ & 25 \text{ millions} & \\ \times & 50,- \text{ USD par parcelle} & \\ = & 1,25 \text{ milliard USD} & \end{array}$$

En fixant le coût total du projet, les deux parties acceptent un certain risque, car on ne connaîtra le vrai coût du projet qu'à la fin du projet. A ce moment-là, on peut se réaliser que le coût total du projet était sous- ou surestimé. Ceci veut dire que :

- L'État congolais risque de payer trop mais par contre, gagnera peut-être de l'argent en cas le coût total du projet dépasse le coût total estimé de 1,25 milliard USD
- AFRI-TERRA (RDC) risque de recevoir moins quand le coût total du projet sera plus élevé que le coût total estimé au début mais gagne de l'argent additionnel en cas le coût estimé de 1,25 milliard USD était trop élevé

Dès le coût total estimé sera fixé, l'opération de titrisation peut démarrer. Simplifié, il s'agit de trois étapes à exécuter dans l'ordre suivant :

- L'État congolais paie à BORGERWEERT, dont la dénomination sera changée à AFRI-TERRA (RDC), le montant (en une seule fois) de 1,25 milliard USD

⁷⁵⁴ Voir ESSERS, Dennis et CASSIMON, Danny, *Washing away Original Sin : Vulnerability to Crisis and the Role of Local Currency Bonds in Sub-Saharan Africa*, Université d'Anvers, 2012, 43 p., *La dette souveraine en Afrique. Chances et opportunités pour l'Afrique*, ALSF, Abidjan, HARVOLD KVANGRAVEN, Ingrid, *Bond to Happen. Recurring Debt-Crises in Sub-Saharan Africa and the Rise of Sovereign Bond Issuance*, Debt Justice Norway/Norwegian Council for Africa, octobre 2016, 80 p., LÖSCHER, Anne, *The birth of African Eurobond markets. Its causes and possible implications for domestic financial markets*, 23 p., TE VELDE, Dirk Willem, *Sovereign bonds in sub-Saharan Africa Good for growth or ahead of time ?*, ODI, avril 2014, 6 p., TYSON, Judith E., *Sub-Saharan Africa International Sovereign Bonds (Part I : Investor and Issuer Perspectives)*, Overseas Development Institute, janvier 2015, 26 p., TYSON, Judith E., *Sub-Saharan Africa International Sovereign Bonds (Part II : Risks for Issuers)*, Overseas Development Institute, janvier 2015, 44 p., HANAN, Morsy and EMAN, Moustafa, *Mispricing of Sovereign Risk and Investor Herding in African Debt Markets*, BafD, Working Paper n° 331, 2020, 27 p.

⁷⁵⁵ Cette proposition est basée sur le principe d'un 'vendor financing program' : est un mécanisme financier permettant à une entreprise (BORGERWEERT) de proposer à ses clients (la RDC) une solution de financement pour l'acquisition de ses produits et services. C'est un programme qui facilite la relation commerciale et qui offre de nombreux avantages.

⁷⁵⁶ Concernant une éventuelle compétence du CIRDI portant sur un investissement financier, voir DEN OUTER, Cornélie Marianne, *ICSID Jurisdiction over Sovereign Bonds*, juillet 2015

- AFRI-TERRA envoie ce montant à une société financière (sa société mère ROY-IMMO ou une autre société affiliée)
- la société financière souscrit à l'émission d'un emprunt obligataire pour un montant de 1,25 milliard USD, issue par l'État congolais

ou alternativement :

- une société financière souscrit à l'émission d'un emprunt obligataire pour un montant de 1,25 milliard USD, issue par l'État congolais
- L'État congolais paie à BORGERWEERT, dont la dénomination sera changée à AFRI-TERRA (RDC), le montant (en une seule fois) de 1,25 milliard USD
- AFRI-TERRA envoie ce montant à la société financière (sa société mère ROY-IMMO ou une autre société affiliée)

En réalité, les trois virements bancaires vont se réaliser au même moment, alors la différence entre les deux situations est plutôt académique.

Cette opération transformera les paiements par l'État congolais des factures d'AFRI-TERRA (RDC), dont le montant exact n'est jamais connu en avance, en paiements fixes mensuels. Ceci permet une gestion plus facile des paiements et du budget du pays.

Un grand avantage additionnel pour l'État congolais d'une opération de titrisation sera que l'État congolais peut se présenter sur les marchés financiers internationaux. Pourtant, pour garantir le succès d'une telle opération, deux éléments additionnels sont nécessaires :

- une garantie solide concernant le remboursement du montant de 1,25 milliard USD (et éventuellement les intérêts y relatés)
- une structure contractuelle détaillée

Ces deux éléments seront graduellement introduits dans les pages suivantes. D'abord, examinons la titrisation dans sa forme simple et ensuite dans sa forme détaillée.

Il sied de noter que le 28 janvier 2022, la RDC a rejoint le groupe des pays notés « B- »⁷⁵⁷ par ladite agence⁷⁵⁸ dont le Nigéria et le Cameroun.

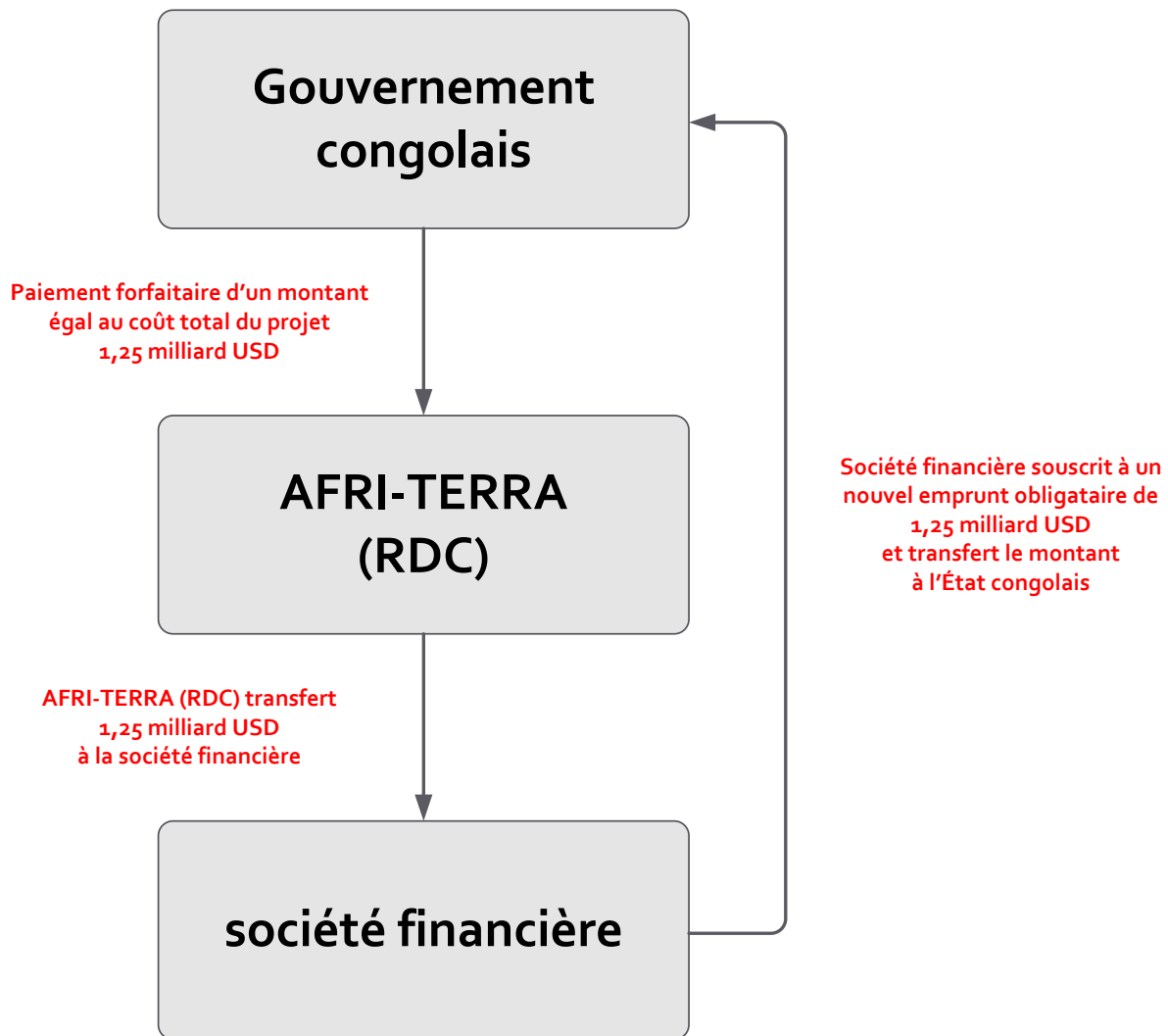
⁷⁵⁷ Voir [Section 9.3 Intérêts](#)

⁷⁵⁸ La RDC était qualifiée depuis le 04 août 2017 comme CCC+

9.1. Schéma de titrisation

9.1.1. Schéma simple

Les trois étapes présentées ci-haut dans l'introduction, peuvent être présentées dans le schéma suivant :

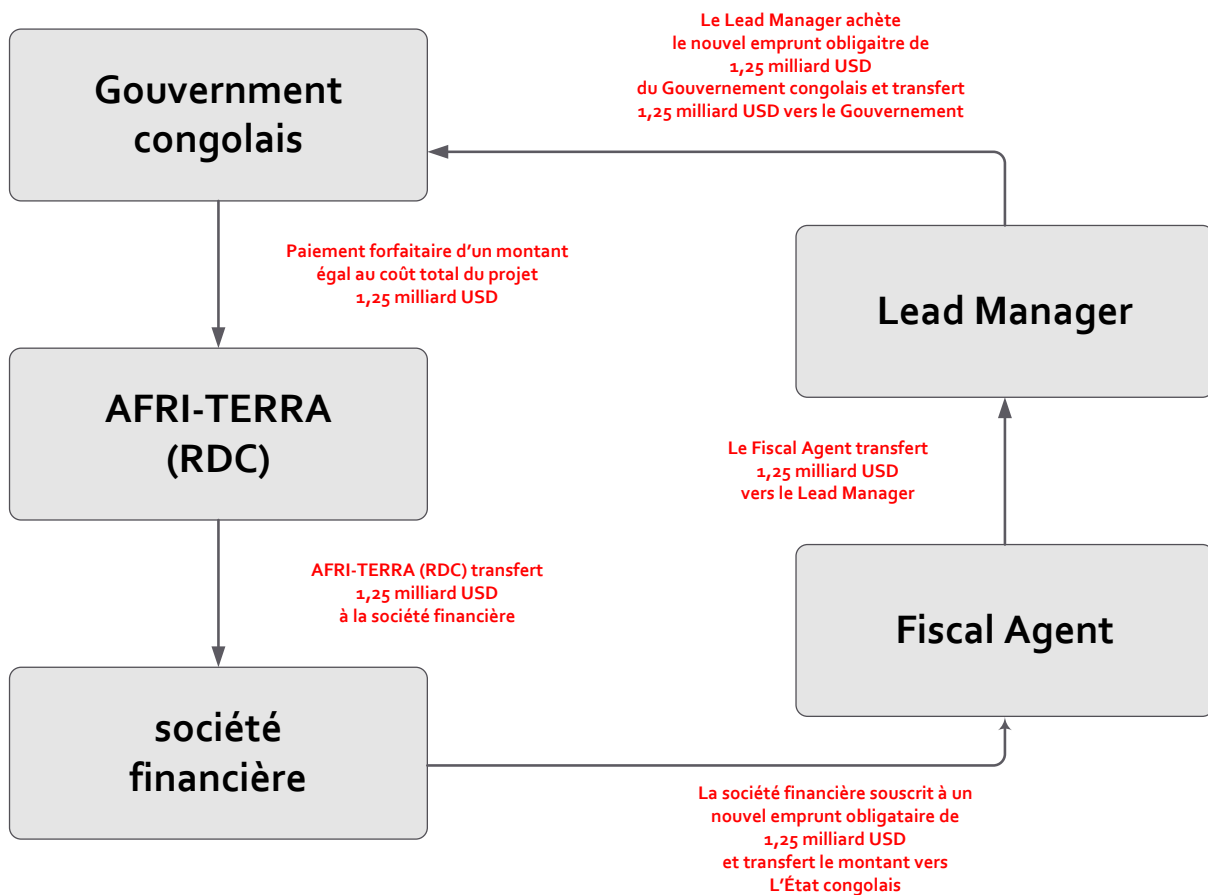


Dans une telle construction, il n'y aurait plus de paiements des factures d'AFRI-TERRA (RDC). Les prestations à livrer par AFRI-TERRA (RDC) seront rémunérées sous forme d'un montant forfaitaire au début de l'exercice du contrat et compensé par les rapports de l'emprunt obligataire. Les factures périodiques seront remplacées par des montants fixes mensuels à la société financière. Ainsi, les remboursements mensuels de l'emprunt seront déconnectés de l'exécution du projet de numérisation. Ce qui constitue l'essentiel de cette opération de titrisation.

Il sera démontré plus tard comment le projet de numérisation peut être reconnecté à nouveau à l'emprunt obligataire quand les principes de garantie et de l'assurance seront expliqués.

9.1.2. Schéma détaillé

En réalité, il y aura des banques internationales qui vont se placer entre l'État congolais d'un côté et AFRI-TERRA (RDC) de l'autre côté. Le schéma détaillé sera alors plus compliqué que le schéma simple déjà présente ci-dessus. Normalement, au moins deux banques vont intervenir dans une telle opération de titrisation : un 'Fiscal Agent' et un 'Lead manager'.

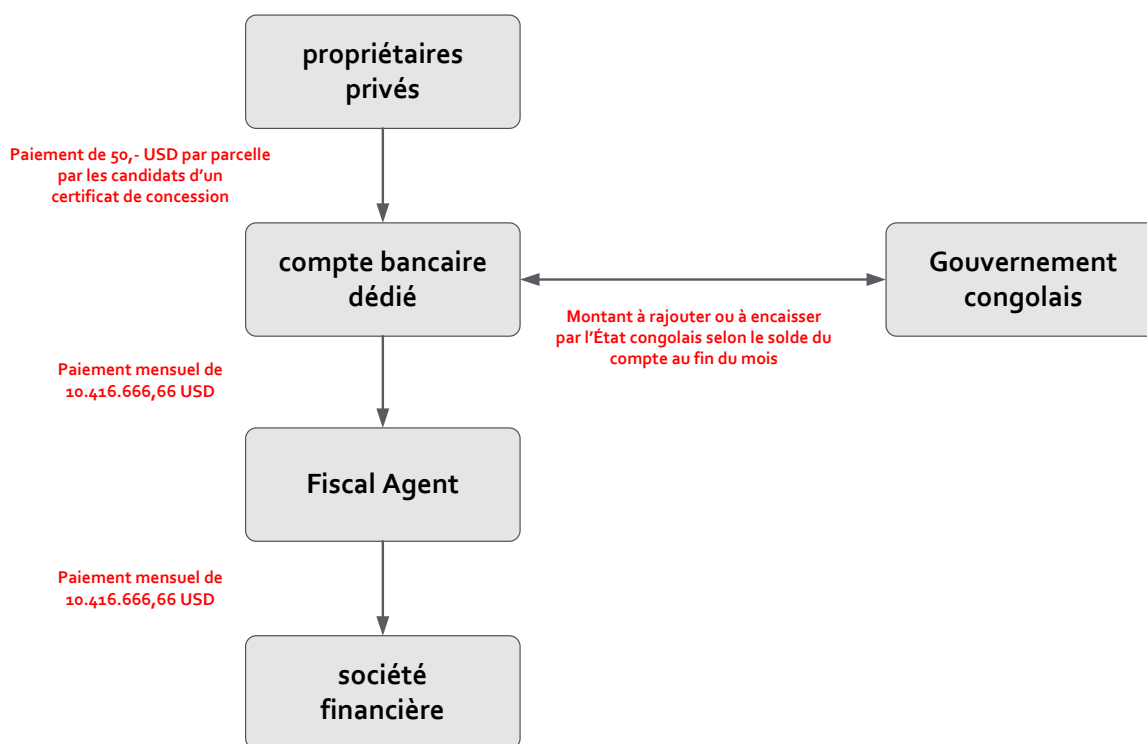


Pour l'importance et une description détaillée des fonctions des deux banques (le 'Fiscal Agent' et le 'Lead Manager'), voyez ci-après la section portant sur le droit financier américain.

9.1.3. Schéma avec compte bancaire public et dédié

Le partenariat public-privé, réalisé à travers le Contrat BOT du 16 novembre 2018 était fondé sur le paiement par l'État congolais d'un montant de 50,- USD par parcelle (étant une fraction des frais de dossier relatés à la délivrance d'un certificat de concession).

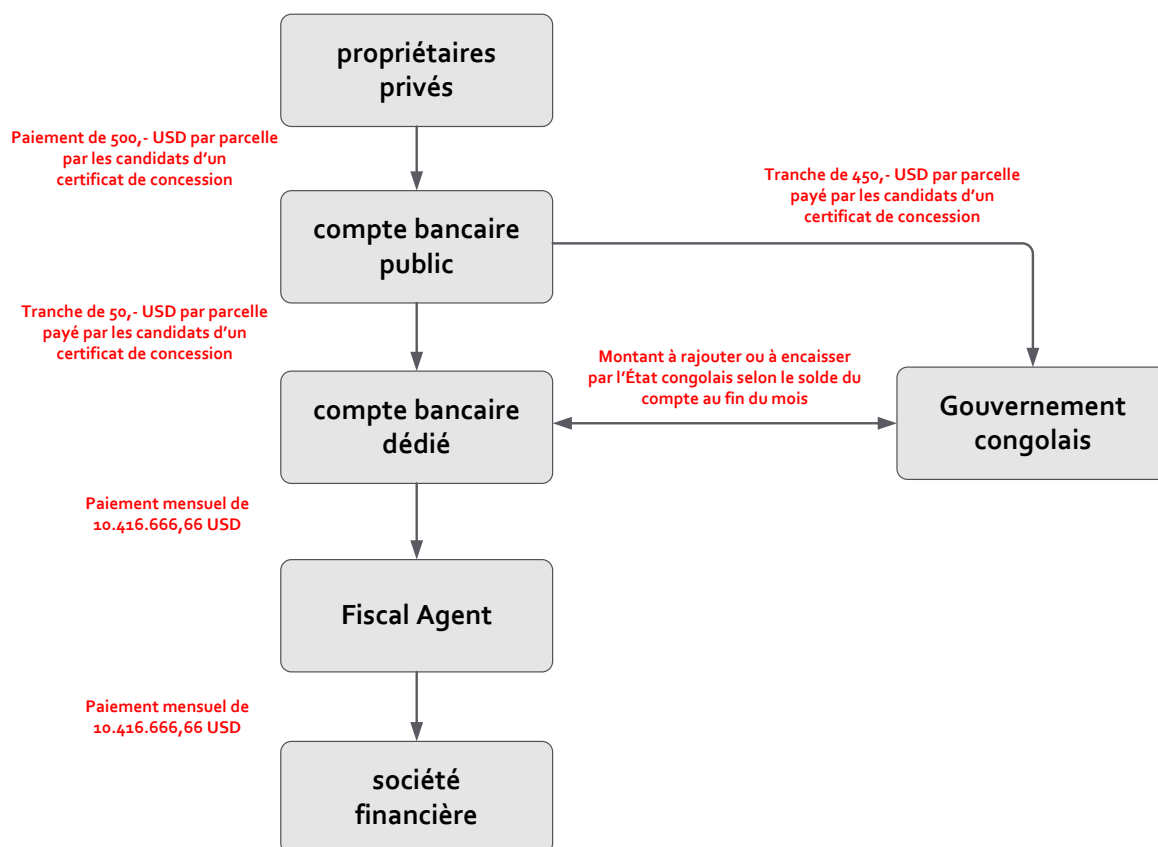
Afin de garantir le remboursement de l'emprunt obligataire (et indirect le succès d'une opération de titrisation), ce montant de 50,- USD doit être offert comme garantie. Ceci peut se réaliser par l'ouverture d'un compte bancaire dédié à recevoir ce montant par parcelle. Le solde positive de ce compte servira alors comme source primordiale pour les remboursements mensuels de l'emprunt obligataire. Ce compte peut être ouvert par (ou au nom du) le Fiscal Agent.



Vu que les frais de dossier pour obtenir un certificat de concession (ordinaire ou perpétuelle) montent à peu près à 500,- USD, il peut être plus pratique de travailler avec deux comptes bancaires séparés :

- un compte public dans lequel les concessionnaires vont payer les frais de dossier (500- USD) et d'où immédiatement 50,- USD sera transféré automatiquement vers
- le compte privé dédié pour l'opération de titrisation comme expliqué ci-dessus.

Ceci est illustré dans le schéma sur la page suivante.



Il est à noter que le prix au niveau d'à peu près 500,- USD actuel afin d'obtenir un certificat de concession est composé de plusieurs frais séparés, normalement à virer individuellement dans le compte du Bureau de Circonscription foncière concerné⁷⁵⁹ selon le progrès de l'évolution du dossier. Il sera mieux d'intégrer alors tous ces frais divers en une seule somme, payable au début de la procédure.

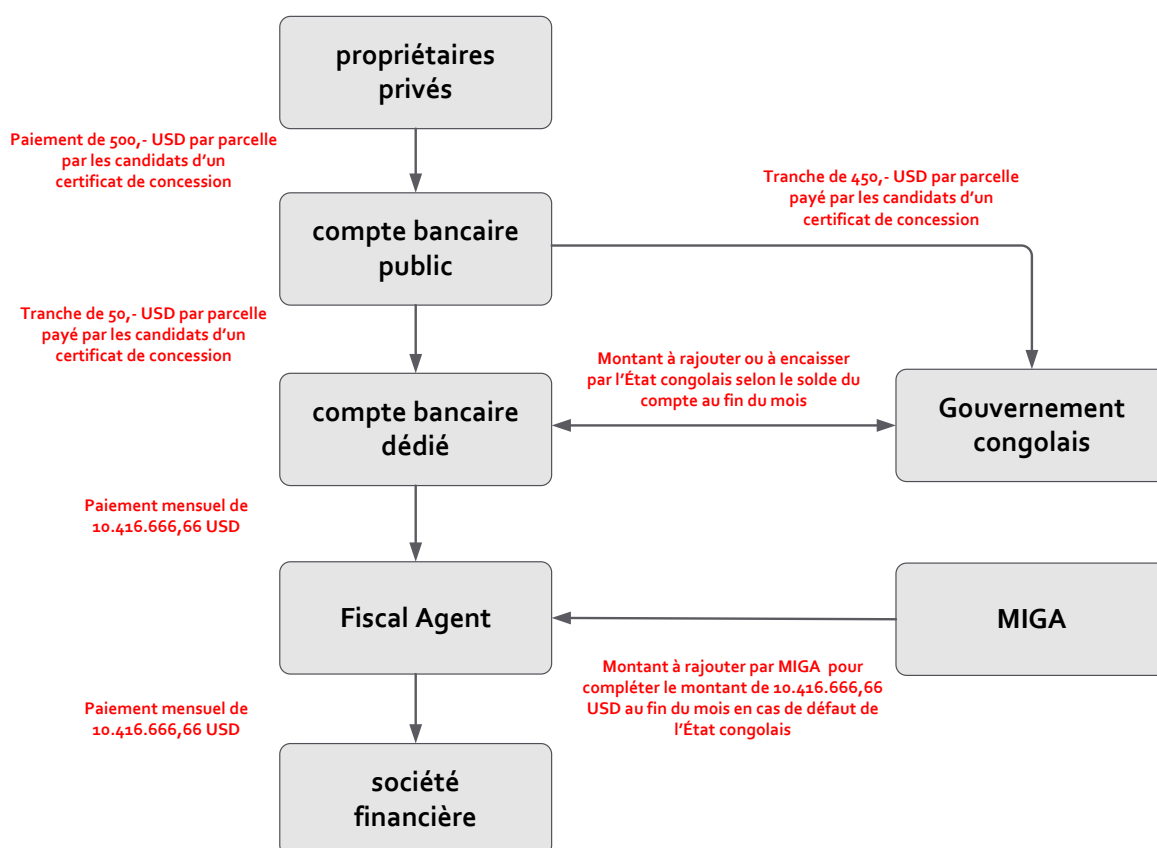
⁷⁵⁹ Mais souvent encaissé par les fonctionnaires eux-mêmes sans le virer dans le compte du Bureau de Circonscription foncière.

9.1.4. Schéma avec compte bancaire public et dédié + garantie MIGA

L'Agence multilatérale de garantie des investissements ⁷⁶⁰ (MIGA - *Multilateral Investment Guarantee Agency*), filiale du Groupe de la Banque mondiale, est une agence internationale dont la mission est de favoriser l'investissement direct à l'étranger (IDE) dans les pays en développement afin de favoriser la croissance économique, réduire la pauvreté et améliorer les conditions de vie des populations. L'agence est basée à Washington et a été fondée en 1988.

La MIGA soutient les investissements qui contribuent au développement en offrant des garanties contre les risques politiques, lesquels peuvent se manifester sous la forme d'inconvertibilité des monnaies et de restriction aux transferts ; d'expropriation, de guerre, de terrorisme et de troubles civils ; de rupture de contrat ; et de non-respect des obligations financières souveraines.

MIGA peut par exemple intervenir pour garantir (totalement ou partiellement) les remboursements des paiements mensuels par le Fiscal Agent à la société financière comme montré dans le schéma suivant.



⁷⁶⁰ <https://www.miga.org/>

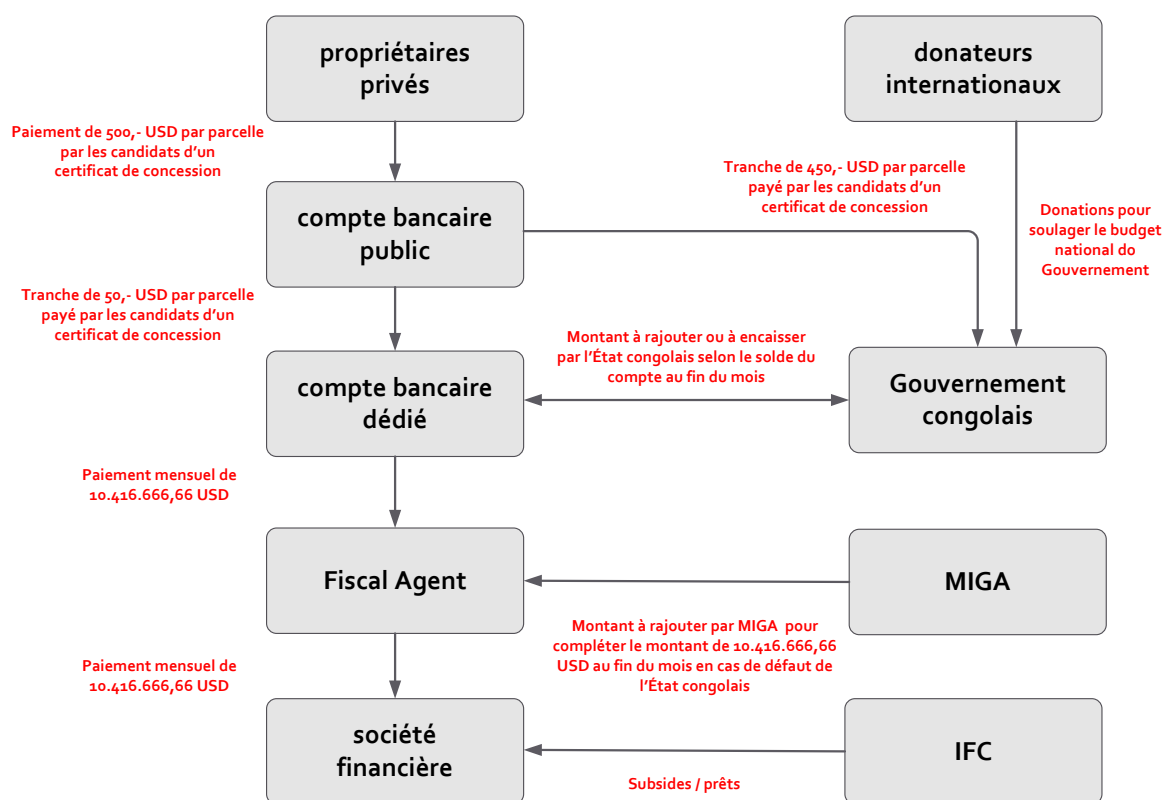
9.1.5. Schéma avec participation des tierces parties

Le schéma précédent peut être complété avec deux parties additionnelles :

- les donateurs internationaux, et
- l'International Finance Corporation⁷⁶¹ (Group Banque mondiale)

Les donateurs internationaux sont assez connus (par exemple la Banque Mondiale, la Banque Africaine de Développement, l'Union européenne, la Belgique, ... etcétera).

La Société financière internationale (anciennement SFI, désormais IFC par son abréviation en anglais) est une organisation du Groupe de la Banque mondiale consacrée au secteur privé. Créée en 1956, son capital est détenu par 185 pays membres. Sa création s'avère nécessaire car la Banque internationale pour la reconstruction et le développement ne peut accorder de prêts à des investisseurs privés. Son rôle est de faciliter le développement des entreprises dans les pays en développement, en particulier dans les marchés émergents (création d'emplois, de recettes fiscales, d'amélioration de la gouvernance).



⁷⁶¹ <https://www.ifc.org/>

9.2. Droit américain

Il est à noter que les banques ainsi que les marchés financiers pour réaliser une telle opération de titrisation se retrouvent à Londres ou mieux encore à New York. Par conséquent, la documentation et les documents relatifs à une telle opération, seront constitués en anglais⁷⁶². Cette Section donnera un résumé du droit américain concerné.

Il ne s'agit pas d'un résumé complet, mais plutôt d'une initiation dans le droit financier des États-Unis.

9.2.1. Bond issues : a step-by-step guide

This section provides a step-by-step guide to raising finance by issuing bonds.

It describes the key stages involved in a bond issue, gives practical tips specific to each stage and contains links to detailed materials relevant to the transaction. It also discusses matters to be considered after closing.

9.2.1.1. Structure of a bond issue

The structure and terms of a bond issue can vary considerably depending on the financing needs of the borrower. However, the stages in any bond issue are broadly the same whatever the complexity of the particular transaction, and the main documents used are common to most bond issues.

This section provides a step-by-step guide to doing a simple bond issue. It describes the key stages involved in a transaction, gives practical tips specific to each stage and contains links to detailed materials. It also discusses matters to be considered post-closing.

This section envisages the situation where a single bond issuer issues bonds that will be sold (and eventually resold) to international investors through a syndicate of banks.

If any of the parties is a foreign entity, advice from lawyers in the appropriate jurisdiction should be taken and appropriate amendments will need to be made to the transaction documents.

9.2.1.2. How to do a bond issue

9.2.1.2.1. The stages of a bond issue

The following stages set out the life of a bond in chronological sequence and serve as a guide to doing a bond issue. The life of a bond can be broken down into four stages:

⁷⁶² Une traduction en français peut être réalisée après paiement des factures de Borgerweert (RDC).

- Pre-launch. The issuer considers preliminary matters and decides what type of bonds to issue and how to structure the issue. The issuer mandates a lead manager (*see below*) and they both instruct their lawyers. This document can be considered to be part of such a Pre-launch period.
- Launch and roadshow. The lead manager announces the bond issue publicly and promotes the transaction to prospective investors, inviting them to buy the bonds once they are issued. This stage however will be skipped in the event of a private placement where only one single investor is involved, as determined in the Pre-launch period.
- Issue. This involves two stages:
 - Signing. The managers sign the subscription agreement, agreeing to subscribe the bonds on closing.
 - Closing. The fiscal agency agreement or trust deed are signed and the bond instrument is created. The investors receive the bonds from the issuer in exchange for payment of the purchase price of the bonds.
- Post-issue. The issuer pays interest and may reimburse capital to the bondholders as agreed until the bonds reach maturity, when the issuer will repay the remaining principal amount of their original investment to the bondholders (if any).

9.2.1.2.2. Timetable a bond issue

The timetable of a bond issue can vary from a few days to several months depending on the complexity of the terms and conditions, the parties and their jurisdictions, whether the issuer is a first-time issuer and whether and where the bonds are to be listed. While the details of each bond issue differ, most follow a similar structure. The timetable and stages set out below are for a standard plain vanilla eurobond issue.

9.2.1.2.3. ICMA recommendations

The International Capital Market Association (ICMA) is the trade association for investment banks and securities firms in the international capital markets. It makes recommendations and produces guidance notes for issuers and lead managers to follow when doing a bond issue. These recommendations are market standard and should be followed, where possible. The recommendations and guidance notes are contained in the ICMA Primary Market Handbook (formerly known as the IPMA Handbook), which is available to ICMA members and subscribers from the ICMA Handbook webpage.

9.2.1.3. Stage 1: pre-launch

Once the issuer has identified a need to borrow and decided to do so by issuing bonds, there are a number of things that it should do before launch.

9.2.1.3.1. Can the issuer issue ?

Before embarking on a bond issue, an issuer needs to ensure that there are no legal barriers to the issue. An issuer should check that:

- The issue is within the powers of the issuer as set out in its memorandum and articles of association.
- An issuer needs to ensure there are no legal barriers in its jurisdiction. For this, lawyers in the issuer's jurisdiction need to be appointed.
- There are no borrowing restrictions in the articles of association or in agreements to which the issuer is a party.
- The issuer can give a negative pledge (an undertaking not to create security for its other indebtedness or, more narrowly, for its other bond issues) in an acceptable form.

In case of a corporate entity, the issuer may need to convene a board meeting to approve the issue. In case of a Sovereign state entity, a cabinet meeting to formally approve the issue may be in order.

9.2.1.3.2. Can the guarantor guarantee ?

If the bond issue is to be guaranteed by the foreign parent company of the issuer, similar questions to those for the issuer need to be addressed by the parent company in relation to the giving of the guarantee.

9.2.1.3.3. Structuring the issue

Various factors need to be considered by the issuer when structuring the bonds. For example, the bonds may be:

- Bearer or registered. Bonds can be issued in one of two forms: bearer or registered. Bonds were traditionally issued in bearer form but now often appear in registered form to satisfy legal requirements in a number of jurisdictions, which require securities to be registered.
- Global or definitive. When bonds are issued, the bond document can be either in global or definitive form.
- Listed on a stock exchange. An issuer may decide to list and trade the bonds on a stock exchange.
- Rated by a credit rating agency. The issuer may decide to seek a rating for its bonds, which indicates the relevant agency's views of the likelihood of the issuer defaulting on repayment, and is therefore an indicator of the risk of investing in its bonds.

9.2.1.3.4. Appointment of parties

The issuer appoints the relevant parties for the transaction. These include:

- **Lawyers.** The issuer and lead manager instruct lawyers to draft the documents (usually the lead manager's lawyers), comment on the drafts and prepare the legal opinions.
- **Lead manager and managers.** A financial institution usually arranges the entire transaction, including the sale of the bonds, legal documentation and settlement procedures. This is the lead manager. It then contacts other financial institutions (called managers) to form a syndicate that agrees to buy the bonds (to sell to investors).
- **Paying agents.** Paying agents are financial institutions that act as the agents of the issuer in making payments of interest and principal to the bondholders throughout the life of the bonds.
- **Trustee (or fiscal agent).** A bond issue usually has either a trustee or a fiscal agent. There is never both a trustee and a fiscal agent. A fiscal agent acts for the issuer as a principal paying agent while a trustee acts on behalf of the bondholders as an intermediary between them and the issuer.
- **Printers.** Specialist financial printers may need to be instructed to print the prospectus and, if applicable, the definitive bonds.
- **Auditors.** The issuer's (and, if applicable, guarantor's) auditors need to be informed of the bond issue and provide comfort letters to the managers at signing and closing.

Other parties may also need to be appointed depending on the type of bond issue. For example:

- **Registrar.** For registered bonds only. A financial institution that maintains a register of the names and addresses of registered bond owners and any change in ownership when bonds are sold.
- **Transfer agent.** For registered bonds only. A financial institution that maintains a record of the names and addresses of registered bond owners and any change in ownership when bonds are sold.
- **Calculation agent.** A financial institution that makes certain calculations under a debt security (usually only required to calculate floating rates of interest on a floating rate note or in a complex transactions involving derivatives).
- **Listing agent.** For bonds listed on a stock exchange. The listing agent advises the issuer on the procedure for listing and submits the documents for listing to the relevant stock exchange.
- **Rating agent.** An agency (such as Fitch, Moody's or Standard & Poor's) that assesses the financial position and creditworthiness of an issuer and assigns a rating to its bond issue.
- **Process agent.** Only required where the issuer is a non-UK issuer. An agent appointed by the issuer to receive any legal documents that are served on the issuer in legal proceedings in the UK.

9.2.1.3.5. Role of the lawyers

During the pre-launch period, the issuer and the lead manager contact their respective lawyers about the proposed issue.

If the issuer is foreign issuer, or if any aspects of the issue or any of the transaction documents are governed other than by the law of the jurisdiction in which the bond is issued, lawyers in the relevant jurisdictions should also be appointed.

9.2.1.3.6. Documents

The lead manager's lawyers are often instructed by the lead manager sending them a draft of the invitation telex (see *Invitation telex* below) to be reviewed before it is sent to the managers. Alternatively, the lead manager's lawyers may be asked to draft the invitation telex, if the issuer is a first-time issuer or if there are unusual terms to be included.

The lead manager's lawyers normally prepare the main legal documents for the issue. The lawyers start to prepare the documents as soon as they are notified of the proposed issue, based on the information in the invitation telex. They then circulate first drafts to the issuer and other parties' lawyers for comments. The terms of the issue are negotiated over the following weeks and further drafts produced until all documents have been agreed, which must be before signing. The documents that are prepared are:

- Prospectus.
- Subscription agreement.
- Agreement among managers.
- Fiscal agency agreement and deed of covenant.*
- Trust deed and paying agency agreement.*
- Global note.
- Legal opinion.
- Signing and closing memorandum.
- Note that either a fiscal agency agreement (and deed of covenant) is produced, or a trust deed (and paying agency agreement). There is never both a fiscal agency agreement and trust deed.

Other documents that are prepared include:

- Engagement/mandate letter.
- Auditors' comfort letters.
- Issuer's board minutes.
- Process agent appointment letter.

9.2.1.3.7. Due diligence

The lawyers for both the issuer and the lead manager carry out a due diligence exercise on the issuer. The issuer's lawyers need to do this as they give a legal opinion on the capacity of the issuer to issue the bonds.

The lead manager's lawyers need to do the due diligence as the lead manager will be selling the bonds and will want to know whether the issuer is creditworthy, and any other risks associated with the issuer.

The due diligence exercise involves carrying out a number of searches including at:

- Companies House, to obtain the issuer's certificate of incorporation, articles of association and a copy of entries in the charges register.
- The Central Registry of Winding Up Petitions to check whether the issuer or guarantor is about to go insolvent.

9.2.1.4. Stage 2 : launch

This stage of a bond issue involves the issuer announcing its intention to issue its bonds. Unless the issuer intends to sell the bonds to a specific investor (as is the case when selling to a single investor such as the bond holding company presented in this document), it will need to find investors to buy the bonds when they are issued. This is a key stage for the parties' lawyers because this is when drafts of the documents are sent to the parties, the terms and conditions are negotiated, and revised documents are produced.

9.2.1.4.1. Launch date

The day of launch is the day the lead manager publicly announces the issue, which then appears on the electronic screen pages that are used to trade securities in the capital markets.

9.2.1.4.2. Invitation telex

On or just after launch, the lead manager sends an invitation telex containing the proposed terms of the bond issue to the prospective managers, who review it and decide whether to join the syndicate and act as managers. Sometimes, if the managers and lead manager have previously underwritten similar issues together, the lead manager may just send a term sheet instead of an invitation telex.

The invitation telex usually includes the following:

- Terms. Proposed terms of the bond issue.
- Selling restrictions. Any relevant selling restrictions that apply to the issue.
- Fees. The fees of the managers.
- Agreement among managers. Which version of the two industry-standard agreements among managers is to be used.

The prospective managers then decide whether they want to join the syndicate of banks and underwrite the issue. If they join the syndicate, the sales desks at the manager banks start seeking investors by telephoning their contacts or conducting roadshows (meetings with investors) and selling the bonds to them (this is called pre-selling the bonds).

9.2.1.4.3. Informing clearing systems and listing authority

If, as is usual, the bonds are to be cleared and settled through a clearing system, the lead manager contacts the relevant clearing system with the details of the bond issue and the arrangements for closing.

If the bonds are to be listed on a securities exchange, it is usually the lead manager (or the lead manager's lawyers) who contact the exchange to request a listing and agree the timetable. The lead

manager then sends the draft prospectus, usually by e-mail, to the relevant "reader" appointed by the exchange or regulator.

If the bonds are to be listed abroad, the rules of the relevant listing authority need to be followed and, if necessary, a local listing agent may need to be appointed to liaise with the listing authority and stock exchange.

9.2.1.4.4. Negotiating the terms of the issue

The lead manager's lawyers send the documents to the relevant parties. Terms of the issue are negotiated between the parties, and further drafts are produced of the documents until all documents have been agreed.

9.2.1.5. Stage 3 : issue-signing and closing

Issue of the bonds is usually between one and three weeks after launch. On issue, the legal documents are signed by the relevant parties, the issuer delivers the bonds to the bondholders and the bondholders pay the issuer. This stage is divided into :

- Signing. The subscription agreement is signed and prospectus approved by the listing authority.
- Closing. Other documents are signed, the bonds are signed (authenticated and, if applicable, effectuated) and delivered to the bondholders and payment is transferred to the issuer.

9.2.1.5.1. Before signing

The following steps should be completed prior to the signing meeting:

- The signing and closing memorandum should be prepared and distributed to all parties.
- The prospectus should be in its final form and have been approved by the authorities or relevant stock exchange.
- The subscription agreement should be finalized and in a form ready to be signed on the signing date. This, and the agreement among managers are the only agreements signed on the signing date. The other documents are dated and signed on the closing date.
- The forms of the legal opinions from the relevant lawyers must be agreed.
- The first comfort letter should be signed by the auditors and the form of the second comfort letter should be agreed. There is an ICMA industry standard form comfort letter that is used in bond issues.

- Board minutes of the issuer (and of the guarantor, if the issue is guaranteed) should have been prepared following the board meeting where the resolutions authorizing the issue were passed.
- Any powers of attorney of the issuer, lead manager or managers (if they are not signing individually) should be prepared.
- The process agent's letter should be prepared by the process agent. It needs to be signed by the process agent and the issuer at signing, but the process agent usually signs it before the signing as it is not usually present at the signing itself.
- The forms of any other letters should be produced by the relevant party.
- Any requirements of the relevant stock exchange or listing authority should have been complied with and any documents or other information requested by it should have been provided.

9.2.1.5.2. Signing

Signing usually takes place between two days and one week before closing. Historically, signing took place at a signing meeting attended by the relevant parties. However, in recent years, the signing has frequently taken place first by fax and now by e-mail.

Ideally, documents should be signed in their original hardcopy form, but often the parties agree that faxed or scanned copies of the original signature pages will suffice as long as the original signed documents are sent back to the party that has prepared the documents (usually the lead manager's lawyers) by courier as soon as possible. A signed original is then sent to each party to the relevant document.

In 2008, the case of *R. (on the Application of Mercury Tax Group Limited and another) v HMRC [2008] EWHC 2721 (Admin)* cast doubt over this practice of virtual signings (where signature pages are signed in advance and inserted into the original at a later date). The Law Society sought to clarify what constitutes good practice by producing guidance, in May 2009, on the execution of documents at such signings. The guidance suggests a non-exhaustive range of options for dealing with virtual signings and closings for documents that are governed by English law.

If the issue is guaranteed, the guarantor needs to be a party to, and sign, the same documents as the issuer.

Signing documents

The signing and closing memorandum sets out the procedures to be followed at signing.

The documents that need to be dealt with at signing are:

- Prospectus. The prospectus is dated and published on the signing date.
- Subscription agreement. The subscription agreement is signed by the issuer and the managers. This creates a conditional contract between the issuer and the managers, under which the issuer agrees to issue and the managers jointly and severally agree to underwrite

the issue providing certain conditions precedent are satisfied. The conditions precedent are usually that:

- the warranties made by the issuer at signing are still true at closing;
 - the fiscal agency agreement or trust deed is signed;
 - the Global Note is authenticated (and effectuated, if applicable) and delivered;
 - the legal opinions are delivered;
 - the comfort letters are delivered; and
 - if the bonds are listed, that the listing has been approved by the stock exchange or listing authority.
- Agreement among managers. This is signed by the managers, but is usually done privately between them rather than at the signing. The agreement may be signed by the lead manager under powers of attorney acting on behalf of the other managers.
 - Process agent appointment letter. The process agent appointment letter is signed by the issuer and process agent, and a copy given to the process agent, together with any of the documents referred to in the letter (which are generally all the English law governed documents of the issue to which the issuer is a party).
 - Escrow documents. Documents that are dated the closing date may be signed on the signing date and held in escrow (usually by the lead manager's lawyers) until the closing date. If the lead manager's lawyers hold documents in escrow prior to closing, they should ensure the arrangements are clearly documented in an escrow letter so as to avoid any potential liability they might incur while holding the documents.

If the issue is listed and admitted to trading on a stock exchange, certain other formalities may need to be completed to conform to the rules of the listing authority and/or stock exchange.

9.2.1.5.3. Closing

At closing, the remaining documents are signed by the relevant parties. The bonds are transferred from the issuer to the bondholders and the payment for the bonds is transferred from the bondholders to the issuer.

This process is simple in theory but, in practice, involves additional parties. This is due to:

- High value of the bond. The high value of the bond instrument means transferring and holding it safely can be problematic.
- Simultaneous delivery and payment. Delivery of the bonds must be simultaneous with transfer of the bonds' sale proceeds. With numerous investors in different jurisdictions, this may logistically be difficult to achieve (for example, transferring cash from banks in different currencies, jurisdictions and time zones when banks might not be open for business in one of the jurisdictions at the required time).

9.2.1.5.4. Closing partners

The above difficulties have been overcome in the following ways:

Banks hold Global Note. An issuer usually issues a Global Note, which is deposited with a financial institution for safekeeping, rather than issuing definitive certificates directly to each investor. A Global Note is a single document that represents an entire issue of securities. This avoids the risks associated with transferring high value paper instruments to each investor.

Clearing systems. Electronic systems allow investors to hold their securities in electronic form. The transfer of ownership between securities holders is achieved by book entries in an electronic accounting system instead of through the transfer of physical certificates. This means payment and delivery can be simultaneous. Sellers and buyers (or intermediaries on their behalf) open both cash and securities accounts with the systems, which are credited or debited, as appropriate, whenever a sale or purchase is made.

9.2.1.5.5. CGN and NGN structures

There are currently two legal and holding structures that are used for issues of international debt securities in Europe:

- Classic Global Note (CGN).
- New Global Note (NGN).

CGN structure

The CGN structure involves:

- Depositing the Global Note with a common depositary.
- Paying agents then process payments under the Note, which are annotated on the Note itself.
- The electronically held securities at the clearing systems are said to be "immobilized" because a physical document exists (the global Note) that represents the issue and upon which annotations are made relating to the issue.

NGN structure

The NGN structure is similar to the CGN structure but involves:

- Depositing the Global Note with a common safe-keeper.
- A common service provider (who is usually a paying agent) then processes payments under the Note. These, together with the outstanding amount of the Notes, are noted in the records of the clearing systems (called ICSDs).

- The electronically held securities at the ICSDs are said to be partially "dematerialized" because they are held almost wholly in electronic form and there is almost no need for the physical Global Note, because the records of the clearing system provide evidence of the outstanding amount of the securities, not the Note itself.

9.2.1.5.6. Closing procedures

The closing procedures differ slightly depending on which type of Global Note is used for the issue.

The closing procedures set out below are general procedures that apply to both structures and include the documents that need to be signed at the closing meeting.

Before closing

The lead manager will already have informed the clearing systems, just after launch, of the details of the issue and the arrangements for the closing.

Before the closing date, the lead manager confirms to the clearing systems how the bonds will be allotted through accounts at the clearing systems. The lead manager instructs the clearing systems to send the net subscription amount of the issue, on the closing date, to the common depository (for the CGN structure) or common service provider (for the NGN structure), who will then forward the payment to the issuer.

Closing date

Closing usually takes place between two days and a week after signing. As with signing, the closing often takes place by fax or e-mail, but can still take place at a meeting of the parties.

As at signing, if the issue is guaranteed, the guarantor needs to be a party to, and sign, the same documents as the issuer.

At closing, the documents that were not signed at the signing are signed. The aim of closing is for the bonds to be delivered by the issuer to the bondholders in exchange for, and simultaneously with, the payment of the net subscription moneys to the issuer.

Pre-closings

Some issues are pre-closed. This means that some of the closing procedures will take place on the day before closing. An issue will be pre-closed if circumstances would not allow all the closing procedures to take place during normal London business hours on the closing date, for example, if the issuer's bank, or the currency of the issue, is in a jurisdiction where the time difference would not allow all the closing procedures to take place during London business hours.

Where an issue is pre-closed, payment instructions are given the day before the closing date and the closing documents are usually signed and held in escrow until the next day. Funds are then

transferred overnight (London time). Receipt of the funds is confirmed the next day and the documents are released.

Conditions precedent

The conditions precedent set out in the subscription agreement need to be satisfied before the closing can proceed and the managers transfer payment. It is important for the lead manager's lawyers to ensure that all the conditions precedent have been satisfied, or will be satisfied by the closing date, before the lead manager sends payment instructions.

Closing documents

The signing and closing memorandum sets out the procedures to be followed at closing.

The documents that need to be dealt with at closing are:

- The fiscal agency agreement and deed of covenant are signed.*
- The trust deed and paying agency agreement are signed.*
- The Global Note may need to be authenticated (signed) by the fiscal agent or principal paying agent as a security measure. The requirement to authenticate the Global Note means that it is not valid until the relevant agent signs it. For Notes in NGN form delivered electronically, the NGN will also need to be effectuated (signed) by the common safe-keeper.
- Legal opinions are signed and delivered.
- The bring down comfort (or second) auditors' letter is signed and delivered.
- Note that there is never both a fiscal agency agreement and a trust deed.

Transfer of the bonds and payment

Once the conditions precedent have been met, and the closing documents have been signed and delivered, the Global Note is sent to the common depositary (for the CGN structure) or common safe-keeper (for the NGN structure), acting for the clearing systems.

Once the Global Note is in their custody, the clearing systems release the payment for the securities to the issuer and amend their records accordingly.

Amount the issuer receives

The amount the issuer receives (the net subscription amount) is not simply the principal amount of the issue. It is the principal amount of the bonds plus any accrued interest, less:

- Commissions paid to the managers for managing and underwriting the issue.
- Expenses of the lead manager.
- Selling concessions allowed for selling the bonds.

In its Handbook, ICMA recommends which expenses are attributable to the lead manager (and therefore deductible) and which should be attributable to the issuer.

9.2.1.6. Stage 4 : post-issue

9.2.1.6.1. Lawyers' tasks

Once the transaction has closed, there are always a number of tasks outstanding which need to be attended to or coordinated by the parties' lawyers. It is good practice to make a list of all post-completion matters in connection with the transaction and note any relevant deadlines. The following are common post-completion matters which arise following a bond issue:

Original documents. Original documents should be signed as soon as possible (if they have not already been signed). The lead manager's lawyers should ensure this is done and that signed originals are distributed to the relevant parties promptly. It is prudent to send original documents by courier or special delivery and to ask the recipient to acknowledge receipt of the original documents.

Listing documents. Documents may need to be delivered to the relevant listing authority.

Preparing a transaction bible. Once the transaction has completed, the lead manager's lawyers start the process of gathering the main documents signed in the deal and grouping them together, for ease of reference, in a transaction bible. It is important to prepare the index carefully and group related documents together, as the bible will be the first port of call for anyone wanting to refer to specific documents or understand the transaction as a whole at a later date. The lead manager's lawyers should check with all parties and agree how many copies of the bible are needed (or how many they are happy to produce depending on cost) and in what form they are to be circulated (for example, in hard copy form or in electronic form). Care should be taken not to include any private or confidential documents or side letters (for example, fee letters) in the bibles, if the bibles are to be circulated to entities not party to the arrangements.

Internal post-completion matters. Many law firms and other institutions have their own internal procedures to follow once a transaction has completed. These include:

- Ensuring that all fee-earners' timesheets are up-to-date and all invoices are sent out on time.
- Producing electronic bibles for members of the deal team.
- Storing mark-ups of documents in a particular file.
- Archiving hard copy documents.
- Attending to any marketing or press releases.
- Passing on any "know-how" information to the relevant people so that knowledge can be shared.

9.2.1.6.2. Life of the bonds once issued

Once issued, the bonds can be sold by the subscribing bondholders to other investors in the capital markets. This is called trading the bonds. The issuer (through the paying agents) usually makes regular interest payments to the bondholders, until the bonds mature.

9.2.2. Debt capital markets in the United States : regulatory overview

A Q&A guide to debt capital markets law in the United States.

The Q&A gives an overview of legislative restrictions on selling debt securities, market activity and deals, structuring a debt securities issue, main debt capital markets/exchanges, listing debt securities, continuing obligations, advisers and documents, debt prospectus/main offering document, timetables, tax, clearing and settlement, and reform.

9.2.2.1. Main restrictions on offering and selling debt securities

1. What are the main restrictions on offering and selling debt securities in the United States ?

Offerings of debt securities must be either :

- registered with the Securities and Exchange Commission (SEC) under section 5 of the Securities Act of 1933, as amended (*15 U.S.C. § 77a et seq*) (Securities Act), or
- qualify for an applicable exemption from registration. Exemptions from registration include those under:
 - Section 4(a)(2) of the Securities Act (section 4(a)(2)).
 - Regulation D under the Securities Act (Regulation D).
 - Rule 144A under the Securities Act (Rule 144A).
 - Regulation S under the Securities Act (Regulation S).
 - Section 3(a)(2) of the Securities Act (section 3(a)(2)) (*see Question 4 hereafter*).

Each exemption from registration has its own particular requirements with respect to the number and type of eligible investors, offering size, issuer eligibility, advertising and communication restrictions and other conditions of exemption, which are discussed generally below. In addition, in the case of section 3(a)(2) offerings, registration of the offering with the Office of the Comptroller of the Currency (OCC) may be required unless an exemption from registration applies, which includes meeting the requirements of Rule 144A, Regulation S or Regulation D.

If an offering of debt securities is registered with the SEC, a registration statement, which includes the prospectus for the offering, must be filed with, and reviewed by, the SEC (*see Question 4 hereafter*). In addition, if the debt securities are being listed on an exchange (such as the New York Stock Exchange Euronext or the Nasdaq Stock Market), the offering must meet the applicable requirements of the relevant exchange (*see Question 6 hereafter*). The NYSE operates the New York Stock Exchange (NYSE), the NYSE Arca and the NYSE American. The Nasdaq Stock Market operates the Nasdaq Global Select Market, the Nasdaq Global Market and the Nasdaq Capital Market (collectively, Nasdaq).

9.2.2.2. Restrictions for offers to the public or professional investors

Investors in a section 4(a)(2) offering or a Regulation D offering are typically accredited investors (as defined in Rule 501 under the Securities Act) (*see Question 4 hereafter*). Investors in a Rule 144A offering must be qualified institutional investors (QIBs), or large institutional investors that generally have at least 100 million USD of securities under management (*see Question 4 hereafter*). Investors in a Regulation S offering must be non-US persons and there can be no “directed selling efforts” in the United States (*see Question 4 hereafter*). Investors in a section 3(a)(2) offering are typically “institutional” accredited investors (as defined in Rule 501 under the Securities Act); however, there is no investor qualification requirement. (*see Question 4 hereafter*).

2. What other legislation or guidelines do issuers and underwriters of debt securities need to be aware of in your jurisdiction?

In addition to the Securities Act provisions described above, the **Securities Exchange Act of 1934**, as amended (15 U.S.C. § 78a et seq) (Exchange Act), the **Sarbanes-Oxley Act of 2002** (Sarbanes-Oxley Act) and the **Investment Company Act of 1940**, as amended (15 U.S.C. § 80a et seq) (Investment Company Act), are the primary US statutes regulating US public offerings, US public companies and US investment funds.

Additionally, debt securities that are SEC-registered must be issued under an indenture qualified under the **Trust Indenture Act of 1939**, as amended (15 U.S.C. § 77aaa to 15 U.S.C. § 77bbbb) (Trust Indenture Act).

In the exercise of its delegated rulemaking authority, the SEC issues rules, regulations, schedules and forms under the Securities Act, Exchange Act and the Trust Indenture Act. These cover a wide array of subjects, including:

- Corporate disclosure and financial statement requirements.
- Oversight of securities firms, broker-dealers and investment advisers.
- The interpretation and enforcement of the federal securities laws.

The SEC's Division of Corporation Finance (CorpFin), in particular, provides interpretive guidance to reporting companies, including debt issuers, in the form of Compliance and Disclosure Interpretations, the Financial Reporting Manual, and no-action, interpretive and exemptive letters.

Underwriters and issuers of debt securities must also be familiar with, and comply with, the relevant rules of the Financial Industry Regulatory Authority (FINRA), including rules regarding excessive or unfair compensation of underwriters, and dealing with conflicts of interest, among other things.

9.2.2.3. Market activity, trends and deals

3. Outline the main market activity and deals in the United States in the past years. Have any trends emerged lately ?

About 1.416 trillion USD of debt securities were issued by non-governmental borrowers in the US debt markets (both public and private) in the 12 months ending 31 December 2019. This was about a 3% increase from the roughly 1.371 trillion USD issued in the comparable 2018 period. (These amounts exclude mortgage-backed and asset-backed offerings and secured debt). The 1.416 trillion USD consisted of about:

- 1.136 trillion USD of investment grade debt.
- 279 billion USD of high yield debt.
- 0.8 billion USD of convertible debt.

High yield bond issuance in 2019 rose about 64 % from the comparable 2018 period (*source: Securities Industry and Financial Markets Association, SIFMA*). Factors that contributed to the overall increase in corporate debt issuance and deal activity in the US debt markets included, among others:

- A falling interest rate environment marked by three reductions by the Federal Reserve Board of its benchmark federal funds rate totaling 75 bps in 2019.
- Negative yields in a number of European and Asian bonds that led global investors to seek US debt issues that offered relatively higher yields and kept US demand strong.
- The continued volatility brought about by the uncertainty in US-China trade relations.
- Low yield spreads that prompted a good number of both investment grade and high-yield corporate issuers to take advantage and tap into the US bond markets for their funding needs.

Some of the biggest debt deals in 2019 included Abbvie's 30 billion USD issuance of investment grade bonds in November to fund its acquisition of Allergan, IBM's 20 billion USD issuance of investment grade bonds in May to fund its acquisition of Red Hat and Bristol-Myers Squibb's 19 billion USD issuance of investment grade bonds in May to fund its acquisition of Celgene.

September was a particularly busy month that saw more than 160 billion USD in investment grade debt issuances, including from companies such as Apple, Coca-Cola and Walt Disney, buoyed by low borrowing costs and investors' continued search for yield (*source: SIFMA; Bloomberg*). 2019 also saw a marked increase in green bond offerings (proceeds of which are applied to projects that promote climate or other environmental sustainability purposes) to 50.6 billion USD (*source: Climate Bonds Initiative*).

The US debt capital markets experienced a rollercoaster ride during the first half of 2020. Debt markets froze in early March as a result of risk aversion due to COVID-19 concerns. The Federal Reserve announced two rate cuts in March, bringing the benchmark federal funds rate close to zero, at the 0 % to 0.25 % range. In response to the global health pandemic and severe economic

downturn, the Federal Reserve Bank of New York (New York Fed) established a number of emergency lending facilities, most notably, the Primary Market Corporate Credit Facility (PMCCF) and the Secondary Market Corporate Facility (SMCCF), with a combined lending capacity of 750 billion USD.

According to the New York Fed, the PMCCF will provide a funding backstop for corporate debt to investment grade companies and provide bridge financing of up to four years, while the SMCCF will support market liquidity for corporate debt by purchasing individual corporate bonds of eligible issuers and exchange-traded funds in the secondary market.

As of the first half of 2020, US investment grade bond issuances have exceeded 1.2 trillion USD, surpassing 2019 levels, and more than double the amount raised during the first half of 2019, while the high yield market had raised more than 200 billion USD, around a 40 % increase from the comparable period in 2019, as issuers focused on accelerating issuances to refinance maturing securities, shore up cash and fund capital expenditures, among other corporate purposes (*source: Refinitiv; PwC*).

In terms of updates with respect to deal terms or certain clauses in deal documents, USD LIBOR transition and Secured Overnight Financing Rate (SOFR) adoption continued to be dominant themes. In April 2019, the Alternative Reference Rate Committee (ARCC), constituted by the Federal Reserve Board and the New York Fed, released its recommended LIBOR fallback language for inclusion in contracts for syndicated loans and for new issuances of USD LIBOR floating rate Notes and recommended the use of SOFR as the alternative reference rate to replace LIBOR.

Issuers have been updating their registration statements, prospectuses, prospectus supplements, pricing supplements and related deal documents to enhance not only their LIBOR phase-out risk factors and management discussion and analysis disclosures, but have also revisited and enhanced LIBOR fall-back or replacement provisions in the Description of Notes sections or indentures to describe how interest for floating rate Notes linked to US-dollar LIBOR will be computed once LIBOR is permanently discontinued around July 2021.

Beginning late April 2019, a number of issuers, led by big banks such as JP Morgan, Citigroup and Wells Fargo, launched new issuances of floating rate Notes linked to US-dollar LIBOR, which adopted the ARCC recommended LIBOR fall-back language. Beginning late May 2019 and into the first half of 2020, a number of issuers such as Goldman Sachs, Morgan Stanley, Bank of America and Citibank have launched new issuances of floating rate Notes that use average or compound SOFR as the reference rate. In March 2020, the New York Fed began publishing SOFR averages and a SOFR Index to further facilitate the market's adoption and usage of SOFR to replace USD LIBOR. In terms of disclosure trends affecting debt issuers, the SEC, including the Division of Corporation Finance, has issued a number of public statements encouraging companies to provide more robust disclosure with respect to how they are addressing cybersecurity risks and intellectual property and technology risks related to international operations, as well as COVID-19 disclosure considerations regarding operations, liquidity and capital resources.

The SEC has also issued a number of reminders to market participants to identify, evaluate, and mitigate the consequences LIBOR discontinuation may have on their business, such as on strategy, products, processes and information system and enhance related disclosures.

9.2.2.4. Structuring a debt securities issue

4. Are different structures used for debt securities issues to the public (retail issues) and issues to professional investors (wholesale issues) ?

Larger public companies routinely finance their operations through public offerings of debt securities, which may include senior or subordinated debt securities. These securities can be offered on a stand-alone basis or offered in syndicated takedowns from a continuous offering program, such as a medium-term Note program or a bank Note program. Generally, only the largest and most frequent issuers find it economical to establish continuous issuance programs. In addition:

- Debt securities typically are offered and sold to institutional investors. However, some issuers offer their securities through retail Note programs and offer "baby bonds" or bonds having 25,- USD or 1.000,- USD denominations.
- Larger issuers, especially financial institutions, also offer structured debt securities, including securities with embedded derivatives, or that otherwise reference the performance of an underlying asset, which can include a currency, an index, an equity security or a commodity.
- Non-US domiciled financial institutions also offer covered bonds, which are debt obligations that have recourse either to the issuer or to an affiliated group to which the issuer belongs, or both. Upon default, covered bond holders have recourse to a pool of collateral separate from the issuer's other assets (cover pool), which usually consists of high quality assets such as residential mortgages or public debt.
- Smaller issuers or those whose debt securities are not investment grade rated may issue debt securities with more complex features, including secured debt or convertible debt. These securities may be offered in registered transactions or may be offered in exempt transactions to qualified institutional buyers (QIBs) in Rule 144A qualifying transactions.

The two main ways of issuing debt securities are:

- A registered offering.
- An unregistered offering (such as a section 4(a)(2), Rule 144A or section 3(a)(2) offering).

It is important to note that issuers very rarely register for the first time with the SEC in order to register debt securities. Typically, issuers registering debt securities are already reporting companies under the Exchange Act, with listed equity securities. However, this is not the case for:

- Foreign issuers registering the offer of Yankee bonds.
- Issuers relying on the section 3(a)(2) exemption.
- Certain high yield issuers that are voluntary filers under the Exchange Act.

Registered offerings

The methods of registration include:

- Registration on Form S-1. An issuer that does not currently file, or has only recently begun filing, Exchange Act reports must use Form S-1 (Form F-1 for foreign private issuers (FPIs)) to register issuances of its debt securities. The contents of the prospectus are essentially the same as for a registration statement on Form S-1 for an offering of equity securities, plus a description of the terms of the debt securities, the indenture and the trustee.
- Shelf registration. An issuer may be eligible to use Form S-3 (or Form F-3 for an FPI) if it:
 - has filed periodic reports under the Exchange Act for at least 12 months;
 - has at least a 75 million USD worldwide common equity float held by non-affiliates; and
 - has been timely in its periodic filings.

Form S-3 is a short-form registration statement. A specific offering of a class or series of debt securities is made by means of a prospectus supplement to the basic prospectus. The prospectus supplement includes specific information about the terms of the offering and the debt securities. Issuers often also use term sheets filed with the SEC as free writing prospectuses (FWPs) to describe the terms of the offered securities.

- Shelf registration for well-known seasoned issuers (WKSIs). Issuers eligible to use Form S-3 and that meet various requirements (*see below*) are WKSIs and can use Form S-3ASR (or Form F-3ASR for an FPI). An issuer is a WKSI if, within 60 days of the issuer's eligibility determination date, it either:
 - has a worldwide market value of its outstanding equity held by non-affiliates of at least 700 million USD ; or
 - has issued in the last three years at least 1 billion USD of non-convertible securities (other than common equity securities) in primary offerings for cash registered under the Securities Act.

A shelf registration statement filed on Form S-3ASR is effective automatically and an issuer can offer securities immediately.

An issuer is also eligible to use Form S-3 (or Form F-3 for an FPI) to register non-convertible investment grade securities if it has a public float of at least USD75 million or if it satisfies any one of the following four criteria:

- The issuer has issued (as of a date within 60 days prior to the filing of the registration statement) at least 1 billion USD in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act, over the prior three years.
- The issuer has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least 750 million USD of non-convertible securities, other than common equity, issued in primary offerings for cash registered under the Securities Act.
- The issuer is a wholly-owned subsidiary of a WKSI as defined in Rule 405 under the Securities Act.

- The issuer is a majority-owned operating partnership of a real estate investment trust (REIT) that qualifies as a WKSI.

Unregistered offerings

Debt securities can also be issued in reliance on an exemption from registration as follows:

- Section 4(a)(2) offerings. The issuer can issue the securities directly to investors in a private placement under section 4(a)(2). Section 4(a)(2) provides a registration exemption for "transactions by an issuer not involving any public offering". While neither the Securities Act nor the SEC has defined the term "public offering", case law and SEC guidance have outlined a number of key factors that are relevant to a finding that a particular transaction is not a public offering for the purposes of section 4(a)(2). In *SEC v Ralston Purina* (346 U.S. 119 (1953)), the Supreme Court focused on whether the particular class of persons affected, needed the protection of the Securities Act and stated that "an offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering'". Hence, if offerees were sophisticated investors who have knowledge and experience in business and financial matters to make an informed investment decision with respect to the securities, then that would be a key factor in finding that such transaction was not a public offering under section 4(a)(2). Aside from the characteristics of investors, other key factors to such a determination would include the limited number of offerees or investors involved in the transaction, the absence of general solicitation or advertising, and the investor's investment intent to buy securities for its own account, and not for resale or distribution. Most institutional debt private placements are made in reliance on section 4(a)(2). Securities sold under section 4(a)(2) are restricted securities that cannot be resold freely !
- Regulation D offerings. Regulation D provides three safe harbors with respect to non-public offerings (*Rules 504, 506(b) and 506(c), Regulation D*). Rule 504 allows an issuer to offer and sell up to 5 million USD of securities in any 12-month period. The most popular safe harbor, Rule 506(b) of Regulation D, permits the sale of securities to an unlimited number of accredited investors and up to 35 non-accredited investors provided that there is no general solicitation or advertising to sell the securities. Rule 506(c) of Regulation D, however, permits the use of general solicitation or advertising to sell the securities provided that offers and sales are made solely to accredited investors, and the issuer takes reasonable steps to verify that the purchasers are accredited investors. Rule 506 of Regulation D also contains disqualification provisions prohibiting the use of the exemption under any of these three safe harbors, by certain bad actors and felons, and these disqualification events apply to the issuer, persons related to the issuer and anyone who will be paid (directly or indirectly) remuneration in connection with the offering (placement agents and others).
- Rule 144A offerings. Unlike section 4(a)(2) and Regulation D offerings which are private placement exemptions available to the issuer, Rule 144A and Regulation S offerings are resale safe harbors that are available to persons other than the issuer, such as broker-dealers or initial purchasers. Hence, the issuer can sell securities in a private placement under section 4(a)(2) with an intermediary, for subsequent resale under Rule 144A (Rule 144A offering). In a Rule 144A offering, securities can be offered and sold without registration to QIBs.

Securities sold under Rule 144A are restricted securities that cannot be resold freely. Resales are limited to other QIBs and trades are generally made in the over-the-counter (OTC) market. Rule 144A also requires that the securities being offered are not of the same class as, or convertible into, securities listed on a national securities exchange.

General solicitation and general advertising, and other forms of publicity in the United States, are now permitted under Rule 144A so long as the securities being offered are sold only to a QIB or to a purchaser that the seller and any person acting on the seller's behalf reasonably believes to be a QIB.

- Regulation S offerings. Offerings to US investors under section 4(a)(2) or Rule 144A are often part of larger global offerings that include sales outside the United States made in reliance on Regulation S. Regulation S is a safe harbor for offers and sales in offshore transactions with no "directed selling efforts" in the US. General solicitation and general advertising in connection with a section 4(a)(2) or Rule 144A offering also will not be viewed as "directed selling efforts" in connection with a concurrent Regulation S offering.
- Section 3(a)(2) offerings. A US bank issuer can issue securities exempt from registration under section 3(a)(2). A foreign bank also can use the section 3(a)(2) exemption if the foreign bank has a US branch or agency (typically located in New York) that issues the securities directly or guarantees the securities issued by the foreign parent. Securities sold in section 3(a)(2) offerings are typically sold to institutional "accredited investors" and in high minimum denominations (typically 250,000.00 USD or higher). Registration with the OCC may be required unless an exemption from registration applies, which may include meeting the requirements of Rule 144A, Regulation S or Regulation D.
- Exchange offers. Issuers using Rule 144A may undertake, at the time of issuance, to register the securities with the SEC after the offering is completed, so that the securities become freely tradable. Registration is often accomplished by an exchange offer (called an A/B or Exxon Capital exchange), in which the securities sold under Rule 144A are exchanged for securities with the same terms but registered on Form S-4 (or F-4 in the case of an FPI). FPIs in particular may prefer Rule 144A offerings without a subsequent exchange offer (Rule 144A for life). If an A/B or Exxon Capital exchange is not used, an issuer may instead register the securities for resale by the security holders on Form S-3 (or F-3 in the case of an FPI) if the issuer satisfies the requirements for use of Form S-3 (or F-3 in the case of an FPI).

9.2.2.5. Restricted securities and Rule 144

Debt securities that are issued in offerings exempt from registration are restricted securities, which means that they can only be sold or transferred under an exemption from registration. However, under Rule 144 of the Securities Act, restricted securities may be freely sold or transferred if the debt security holder has satisfied the applicable holding period under Rule 144:

- Six months if the holder is not an affiliate of the issuer and the issuer is a reporting company under the Exchange Act.

- One year if the holder is not an affiliate of the issuer but the issuer is not a reporting company under the Exchange Act.
- One year if the holder is an affiliate of the issuer (regardless of whether the issuer is a reporting company under the Exchange Act).

A selling debt security holder also may "tack" or include as part of his or her own holding period, the holding period of a prior holder unless the securities were purchased from an affiliate, in which case the holding period would start over.

In addition, restricted securities can be sold or transferred under the section 4(a)(1½) exemption and the exemption provided under section 4(a)(7) of the Securities Act. Section 4(a)(1½), although not specifically provided for in the Securities Act, has been recognized by the SEC and provides a hybrid exemption from registration for the private resale of restricted or control securities. Section 4(a)(7) became effective immediately after the Fixing America's Surface Transportation Act (FAST Act) was signed into law on 4 December 2015. Section 4(a)(7) provides a resale exemption for certain transactions involving unregistered resales and resembles the section 4(a)(1½) exemption for private resales of restricted securities, although it is more limited in scope.

5. Are trust structures used for issues of debt securities in the United States ? If not, what are the main ways of structuring issues of debt securities in the debt capital markets/exchanges ?

In the United States, larger, well-seasoned investment grade or high-grade issuers generally offer straight senior or subordinated debt in registered public offerings. These securities can be fixed or floating rate obligations. In recent years, fixed-to-floating and auto-callable type structures have been popular. These issuers may also offer senior debt obligations with interest and/or principal payments that are based on the performance of a reference asset. These are generally referred to as structured Notes. The reference asset may be an index (like the S&P 500), an equity security or basket of equity securities or a commodity or basket of commodities. Most of these are issued in registered public offerings. Companies whose debt is not investment-grade-rated may offer senior or subordinated debt in private (*section 4(a)(2), Regulation D, Rule 144A or section 3(a)(2)*) offerings or registered public offerings. Usually, the debt securities will include some covenants. Most convertible Notes are offered in Rule 144A offerings. High yield debt typically is offered in private placements or Rule 144A offerings, and the debt securities will contain numerous covenants. Historically, financial institutions and some utilities have offered hybrid securities using a trust structure, including trust preferred securities, REIT preferred securities or certain structured mandatory convertibles. Given regulatory changes, trust preferred securities are no longer permitted for banks. In addition, issuances using a trust structure can only be made under an exemption from registration under the Investment Company Act. Finally, issuers may establish debt repackaging programs using a trust vehicle, where the trust vehicle will hold corporate bonds of multiple issuers or will hold bonds and swaps. However, this has become less common as a result of risk retention requirements and the possible applicability of the Volcker Rule. The Volcker Rule, which was promulgated under the Dodd-Frank Act, applies to certain banking entities regardless of size and prohibits or limits proprietary trading and sponsoring or holding an ownership interest in a hedge fund or a private equity fund.

9.2.2.6. Main debt capital markets/exchanges

6. What are the main debt securities markets/exchanges in the United States (including any exchange-regulated market or multi-lateral trading facility (MTF)) ?

Issuers typically offer investment grade debt securities in registered public offerings. FPIs can also market debt securities in registered offerings (Yankee bonds) or Rule 144A offerings. Offerings of high yield debt securities are typically conducted as private placements or Rule 144A offerings (see *Question 4 above*). Bank issuers, including foreign banks with US branches or agencies, may also issue debt securities exempt from registration under section 3(a)(2) of the Securities Act (see *Question 4 above*). Investment grade securities are usually not listed on an exchange. As at 31 December 2019, 8,443 debt securities (which include "exchange traded Notes") were listed on the NYSE, NYSE Arca, NYSE American and Nasdaq (*source: Bloomberg*).

As at 31 December 2019, 8,354 debt securities (which include "exchange traded Notes") were listed on the NYSE, six debt securities were listed on the NYSE Arca, 45 debt securities were listed on the NYSE American and 38 debt securities were listed on Nasdaq (*source: Bloomberg*). With respect to new issuances (which include "exchange traded Notes"), for the 12 months ended 31 December 2019, 791 new debt issuances were listed on the NYSE, 7 new debt issuances were listed on the NYSE American, and 14 new debt issuances were listed on Nasdaq. No new issuances were listed on the NYSE Arca (*Source: Bloomberg*).

9.2.2.7. Regulatory bodies

7. What legislation applies to the debt securities markets/exchanges in the United States ? Who are the main regulators of the debt capital markets ?

The main securities regulator in the United States is the SEC. The SEC's three-fold mission is to protect investors, maintain fair and efficient markets, and promote capital formation. The SEC is an independent US government agency that:

- Requires public companies to disclose financial and other information to the public.
- Oversees securities exchanges, securities brokers and dealers, investment advisers, and mutual funds.
- Has civil enforcement authority for violation of the securities laws.

The Financial Industry Regulatory Authority (FINRA) is the largest non-governmental regulator of securities firms in the United States and is dedicated to investor protection and market integrity through effective and efficient regulation, particularly of the offering process.

9.2.2.8. Legislative framework

The SEC has rulemaking and enforcement authority, and administers the federal securities laws, including the primary statutes regulating public offerings:

- Securities Act.
- Exchange Act.
- Investment Company Act.

In addition, the following laws also affect the capital markets:

- Trust Indenture Act (*see Question 10 hereafter*).
- Sarbanes-Oxley Act, parts of which are incorporated into the Exchange Act.
- Dodd-Frank Act (*see Question 5 above*).
- Jumpstart Our Business Startups Act (JOBS Act), signed into law on 5 April 2012 (*see Questions 8, 10 and 16 hereafter*).

9.2.2.9. Listing debt securities

8. What are the main listing requirements for bonds and Notes issued under programs?

Main requirements

US securities offerings, including offerings of debt securities, must be registered under the Securities Act, unless a valid exemption from registration is available (*see Question 4 above*). Registered offerings of debt securities may not involve listing on an exchange, although the issuer may be required for at least some time to file periodic reports with the SEC. Investment grade debt securities typically are not listed.

To trade on a US exchange, a security must be both:

- Registered pursuant to, or exempt from registration under, the Securities Act.
- Accepted for listing on an exchange.

The NYSE has separate listing standards for listed companies and their affiliates and for non-listed or affiliated companies. Companies must meet specified financial criteria. In addition, an issuer cannot list debt securities with a total market value of less than 5 million USD.

Trading record and accounts

For non-listed and affiliated companies, the debt securities must either:

- Have at least an S&P Corporation "B" rating (or equivalent rating by another nationally recognised securities rating organisation (NRSRO)).
- Be guaranteed by a listed company.

If not rated, a company's:

- Senior issue is rated investment grade.
- *A pari passu* or junior issue of the company is given an S&P Corporation "B" rating (or equivalent).

Minimum denomination

There are limited minimum denomination requirements depending on the nature of the debt instrument. Certain structured debt instruments that are registered and listed can be required to have denominations of 10,- USD. A customary denomination is 1.000,- USD and the offering may require a minimum purchase. Private offerings typically have both higher minimum denominations (for example, 250.000,- USD) and minimum purchase requirements (for example 1 million USD).

Procedure for a foreign company

The procedures for SEC registration and listing on an exchange are substantially the same for FPIs and US issuers, although the specific disclosure and corporate governance requirements differ and an FPI may be able to file its registration statement with the SEC initially on a confidential basis, either:

- As an emerging growth company (EGC) under the JOBS Act.
- Under the rules for FPIs.

An FPI bases its decision whether to list debt securities on a number of factors, including:

- A comparison of the pricing levels in its home jurisdiction to the typical pricing levels in the US markets.
- Investor demand.

9. Are there different/additional listing requirements for other types of securities ?

Listing requirements differ slightly for convertible debt securities (that is, debt securities convertible into equity securities). For example, convertible debt securities may be listed on the NYSE only if both:

- The underlying equity securities are subject to real-time last sale reporting in the United States.
- The convertible debt issue has an aggregate market value or principal amount of no less than 10 million USD.

Convertible debt securities may be listed on the Nasdaq Capital Market if:

- The convertible debt issue has an aggregate principal amount of at least 10 million USD.
- The current last sale information is available in the United States with respect to the underlying equity securities.

- There are at least three registered and active market makers for the convertible debt securities.
- One of the following applies:
 - the issuer of the convertible debt securities has an equity security that is listed on Nasdaq, the NYSE American or the NYSE;
 - an issuer whose equity securities are listed on Nasdaq, the NYSE American or the NYSE, directly or indirectly owns a majority interest in, or is under common control with, the issuer of the convertible debt securities, or has guaranteed the convertible debt securities;
 - an NRSRO has assigned a current rating to the convertible debt securities that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO;
 - where no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned an investment grade rating to an immediately senior issue, or a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.
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9.2.2.10. Continuing obligations : debt securities

10. What are the main areas of continuing obligations applicable to companies with listed debt securities and the legislation that applies ?

Continuing obligations vary depending on whether the issuer has:

- Securities registered under the Exchange Act.
- Listed its debt securities on the NYSE or Nasdaq.
- Offered debt securities under section 4(a)(2), Regulation D, Rule 144A or section 3(a)(2) and is not otherwise an SEC reporting company.

Debt securities registered under the Exchange Act

The key areas of continuing obligations are substantially similar to those for companies with equity securities registered under the Exchange Act.

The key areas of continuing obligations for public companies are:

- Periodic reporting.
- Compliance with the Sarbanes-Oxley Act and the Dodd-Frank Act (although not all the provisions will be applicable for an issuer that has only issued debt securities in a registered public offering).
- Share ownership and transaction reporting by the company's officers, directors and 10% shareholders (not applicable to FPIs).

- Beneficial ownership reporting for acquirers of 5% or more of the company's equity securities (also applicable to FPIs).
- Continued qualitative and quantitative listing requirements of the relevant exchange, including relating to corporate governance (FPIs may rely on certain home country corporate governance practices).
- Disclosure and timing requirements related to shareholder meetings (not applicable to FPIs).
- Rules relating to the conduct of tender offers and other securities-related transactions.

Periodic reporting

A US company must file with the SEC:

- An annual report on Form 10-K after the end of each fiscal year, with audited annual financial statements.
- Quarterly reports on Form 10-Q after the end of its first three fiscal quarters, with reviewed interim financial statements.
- Current reports on Form 8-K when certain specified events occur.
- A proxy statement for any shareholders' meeting, including the annual meeting.

The reporting requirements are less onerous for an FPI. They must:

- File an annual report on Form 20-F within four months of each fiscal year-end. The annual report on Form 20-F must also contain a summary of differences between US and home jurisdiction's corporate governance requirements. However, an FPI is Not required to file quarterly reports on Form 10-Q or current reports on Form 8-K.
- Include on Form 6-K any material information that it either:
 - makes public under its home jurisdiction's laws or stock exchange requirements; or
 - is required to distribute to its shareholders, such as bi-annual or quarterly reports.

The Sarbanes-Oxley Act and related regulations impose numerous additional requirements on listed issuers, including:

- Certification of SEC periodic filings.
- Submission of reports on internal controls over financial reporting.
- Independence of the issuer's audit committee.

Each annual and, in the case of a US issuer, quarterly report filed with the SEC must be accompanied by certifications signed by the company's principal executive and financial officers and cover, among other things:

- Completeness and accuracy of the disclosure.
- Fairness of the presentation of the issuer's financial condition and results of operations in its financial statements.

- Effectiveness of the issuer's disclosure controls and procedures, and internal control over financial reporting.

In addition, each annual report must include a management report and auditor's report on the company's internal control over financial reporting. Newly public companies are Not required to file either report until their second annual report after their initial public offering (IPO). Smaller public companies and EGCs, whether domestic or foreign, are Not required to provide the auditor's report. The JOBS Act also provides relief from certain ongoing disclosure obligations for EGCs.

After it has filed its first annual report with the SEC, the debt issuer can cease to file periodic reports under the Exchange Act if it meets applicable de-registration requirements.

NYSE requirements

An issuer that has listed its debt securities on the NYSE must also have registered those securities under the Exchange Act. Issuers that have only debt securities listed on the NYSE are Not subject to most of the NYSE's corporate governance standards (other than audit committee requirements and certifications to the NYSE).

The NYSE's quantitative continued listing requirements allow the exchange to de-list or suspend the trading of bonds if any of the following apply:

- The total market value or principal amount of publicly held bonds falls below USD1 million.
- The issuer is No longer able to meet its obligations on the listed debt securities.

Debt securities are Not eligible for procedures that would allow the issuer time to conform to the exchange's continued listing requirements. In addition, in a number of circumstances (such as failure to comply with continued listing requirements), the NYSE can take discretionary enforcement action, including suspending trading and de-listing proceedings against a listed company.

Rule 144A ongoing information requirements

An issuer that is Not a reporting company nor exempt from reporting under Exchange Act Rule 12g3-2(b) (which permits an FPI to terminate registration if its US average daily trading volume (ADTV) falls below a certain level or it has fewer than 300 US shareholders) must provide reasonably current information to security holders and prospective investors under Rule 144A, including:

- A brief description of its business, products and offered services.
- Its most recent balance sheet.
- Profit and loss, and retained earnings statements.
- Financial statements for that portion of the two preceding fiscal years during which the issuer has been in operation.

To facilitate the delivery of this information, indentures may contain covenants that require an issuer to become a voluntary filer or to prepare reports for bondholders as if it were subject to the Exchange Act.

Debt security holders' rights are contained in the operative debt documents, primarily the indenture.

Suspension of registration

All companies registered with the SEC, whether US or foreign, can suspend their obligation to file SEC reports and other public company obligations if either:

- There are fewer than 300 record holders of the common equity or 1,200 record holders in the case of banks, bank holding companies (BHCs) and savings and loan holding companies (SLHCs).
- The common equity is held by less than 500 non-accredited record holders or 2,000 record holders, and the company's total assets have been No more than USD10 million at the end of each of its last three fiscal years.

However, if the company ever exceeds these levels, the obligations are reinstated.

Termination of registration

An FPI can terminate (rather than merely suspend) its listing and de-register under Exchange Act Rule 12g3-2(b) (because, for example, the US market for its shares is thinner than anticipated, or declines over time, such that the additional compliance expenses associated with US registration are Not justified), if either:

- The US ADTV of the securities has been No greater than 5 % of the worldwide ADTV for a recent 12-month period.
- The securities are held by fewer than 300 persons worldwide or fewer than 300 persons resident in the United States and certain other conditions are met.

Voluntary filers

In some markets, particularly the high yield market, issuers that would otherwise be able to de-register under the Exchange Act are required by debt covenants to continue to make periodic filings as if they were still subject to the Exchange Act (although they may provide more limited information). These issuers are referred to as "voluntary filers".

Indenture qualification

Debt securities that are SEC-registered must be issued under an indenture qualified under the Trust Indenture Act. However, debt securities issued in unregistered offerings (*section 4(a)(2), Regulation D, Rule 144A and section 3(a)(2)*) do Not have to be issued under an indenture qualified under the Trust Indenture Act.

Qualification includes appointing and registering the indenture trustee with the SEC. A qualified indenture contains mandatory provisions that apply automatically, including provisions related to the duties of the trustee. The registration statement, which will describe key provision of the

indenture, must also include a Form T-1 prepared by the trustee, which sets forth information enabling the SEC to determine whether the trustee is eligible to act under the standards of the Trust Indenture Act. If the terms of the debt securities are Not known at the time of the filing of the registration statement, the indenture that is filed pre-effectively may contain a generic, Non-specific description of the debt securities, with details provided in a subsequent supplemental indenture at the time a series is offered. In the case of a shelf registration statement on Form S-3 (or Form F-3 for an FPI), section 305(b)(2) of the Trust Indenture Act permits the trustee to be designated on a delayed basis if the identity of the trustee is Not known when the issuer files the registration statement.

11. Do the continuing obligations apply to foreign companies with listed debt securities?

Domestic and foreign issuers have the same obligations. The key issue is whether the issuer is subject to reporting under the Exchange Act.

12. What are the penalties for breaching the continuing obligations?

If the debt securities are registered under the Exchange Act and trade on an exchange, failure to file required Exchange Act reports can result in the SEC bringing an enforcement action against the issuer seeking injunctive relief. In addition, any officer of the company who knowingly makes a false certification in connection with an Exchange Act report can potentially be subject to both:

- Monetary fines and criminal sanctions for violating section 13(a) or 15(d) of the Exchange Act.
- SEC and private actions for violating section 10(b) of the Exchange Act and Rule 10b-5 under the Exchange Act.

Failure to comply with an exchange's continued listing requirements can result in a suspension of trading or de-listing.

9.2.2.11. Advisers and documents : debt securities issue

13. Outline the role of advisers used and main documents produced when issuing and listing debt securities.

Underwriters

The lead underwriters:

- Offer financial advice to the issuer, including valuation advice.
- Manage the marketing of the securities to prospective investors.

A broader syndicate of underwriters usually assists with marketing and distribution. Underwriters

typically provide aftermarket support by repurchasing the debt securities in the secondary market to stabilise the price after the offering. Underwriters also seek to maintain a long-term relationship with the issuer so as to continue to underwrite future offerings.

Lawyers

The issuer's lawyers draft the registration statement and manage the legal aspects of the offering. The underwriters' lawyers participate in drafting the registration statement and lead the due diligence process. As part of the due diligence process, lawyers for the underwriters and the issuer usually prepare letters stating that, based on specific inquiries (and subject to exclusions for financial and other information provided by experts), they are unaware of anything that may indicate that the prospectus contains any material misstatement or omission. For companies in highly regulated industries or with non-US operations, the issuer and underwriters may retain lawyers that specialize in these matters.

The issuer's lawyers also will review the issuer's SEC filings on an ongoing basis. The lawyers will then be prepared when a subsequent offering is proposed.

Lawyers for the trustee (equivalent to a fiscal/paying agent) are also involved. The trustee's counsel negotiates provisions of the indenture relating to the trustee and represents the trustee's interests. The main documents are also substantially the same with the addition of an indenture or other instrument for the debt securities being offered.

Independent registered public accounting firm

The registration statement includes annual financial statements, which must be audited by an independent public accounting firm registered with the Public Company Accounting Oversight Board (PCAOB). The public accounting firm:

- Must consent to the use of its audit opinion in the registration statement.
- Reviews any unaudited interim financial statements included in the registration statement.
- Reviews the financial information in the registration statement as part of the due diligence process.
- Issues a "comfort" letter at the pricing of the offering and a "bring-down comfort" letter at the closing of the offering, each addressed to the underwriters and the issuer's board of directors, relating to:
 - financial statements; and
 - other financial information included in the registration statement.

The public accounting firm will continue to audit and review the issuer's financial statements included in the issuer's SEC reports and will have the same responsibilities for any financial statements filed in or incorporated by reference in registration statements for subsequent offerings.

Others

An issuer may also retain outside investor-relations firms and other professionals. For subsequent offerings, these advisers are already in place.

Documentation for unregistered offerings (section 4(a)(2), Regulation D, Rule 144A and section 3(a)(2))

As a general matter, the documentation for unregistered offerings is very similar to the documentation for registered offerings because although no registration statement is involved, issuers and underwriters will still be subject to sections 12 and 15 of the Securities Act and section 10(b) and Rule 10b-5 of the Exchange Act. However, the documentation for unregistered offerings (*section 4(a)(2), Regulation D, Rule 144A and section 3(a)(2)*) differs slightly from registered offerings in a few respects. First, rather than using a registration statement containing a prospectus, a private placement memorandum, offering circular or offering memorandum is used, which contains the same information as a registration statement, including a description of the issuer's business and financial statements, and typically incorporates by reference the issuer's Exchange Act reports or reports filed by the issuer under its home-country laws (if the issuer is not a reporting company under the Exchange Act). Second, the investment banks underwriting unregistered offerings sign a purchase agreement with the issuer, rather than an underwriting agreement. Third, issuers and underwriters often also use term sheets to describe the terms of the offered securities, but these term sheets are not filed with the SEC as FWP's.

9.2.2.12. Debt prospectus / main offering document

14. When is a prospectus (or other main offering document) required? What are the main publication/delivery requirements ?

Public securities offerings are accomplished using a registration statement, which is filed with, and declared effective by, the SEC. A registration statement contains two parts:

- A prospectus, which is the main marketing and disclosure document.
- Other information filed with the SEC but not distributed to investors, including exhibits to the registration statement.

In an SEC-registered public offering, the issuer must deliver (or, under certain circumstances, make available electronically) a written prospectus meeting the requirements of the Securities Act and related prospectus delivery obligations.

15. Are there any exemptions from the requirements for publication/delivery of a prospectus (or other main offering document) ?

Section 4(a)(2), Regulation D, Rule 144A and section 3(a)(2) offerings (*see Question 4 above*) do not

require a statutory prospectus as such offerings are exempt from the registration requirements under section 5 of the Securities Act. However, because section 4(a)(2), Regulation D, Rule 144A and section 3(a)(2) offerings are still subject to sections 12 and 15 of the Securities Act and section 10(b) and Rule 10b-5 of the Exchange Act, such offerings are usually made using a private placement memorandum, offering memorandum or offering circular that closely tracks a statutory prospectus in form and content.

Certain classes of debt securities are excluded from registration under the Securities Act. These include short-term Notes (with maturities of 270 days or less), such as commercial paper (which is exempt from registration under section 3(a)(3) of the Securities Act).

16. What are the main content/disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

Content/disclosure requirements

The prospectus (or private placement memorandum, offering circular or offering memorandum in the case of an unregistered offering) is the primary disclosure document for a debt offering. The contents of a prospectus depend on the applicable SEC registration statement form. The disclosure must include all material information (that is, matters that a reasonable investor would likely deem important in determining whether to purchase the security). The contents of an offering circular or offering memorandum (in the case of an unregistered offering) will be very similar to the prospectus for a registered offering.

Once the issuer has been a public company for at least 12 months and has filed its periodic reports on a timely basis, it may be eligible to use Form S-3 (or Form F-3 for an FPI) to make subsequent public offerings. Form S-3 is a short-form registration statement that allows the issuer to refer in the prospectus to information from its SEC reports filed under the Exchange Act that would otherwise be required to be stated in full.

A typical prospectus (or private placement memorandum, offering circular or offering memorandum in the case of an unregistered offering) contains the following sections:

- Summary of the prospectus (or private placement memorandum, offering circular or offering memorandum in the case of an unregistered offering), including business and financial information and key offering terms.
- Risk factors.
- Use of proceeds.
- Issuer capitalisation (not required but sometimes provided).
- Selected financial data.
- Management's discussion and analysis of financial condition and results of operations.
- Material aspects of the issuer's business.

- Management, providing a five-year employment history of directors and executive officers (not required for EGCs), and including disclosure about board committees, corporate governance guidelines and codes of ethics.
- Compensation discussion and analysis and executive compensation (EGCs and FPIs may provide more limited information).
- Related party transactions.
- Description of the debt securities.
- Information regarding the trustee/fiscal agent.
- Tax issues.
- Underwriting.
- Legal matters.
- Identification of the independent public accounting firm and any other experts that may be required to give an opinion on the prospectus.
- Financial statements, typically three years of audited financial statements and unaudited financial statements for any required interim periods. Under the JOBS Act, an EGC may include in a registration statement only two years of audited financial statements and the unaudited financial statements for the related interim periods. In addition, an issuer that is filing a registration statement or submitting a registration statement for confidential review may omit financial information for historical periods that otherwise would be required at the time of filing or submission, provided that the omitted financial information will not be required to be included in the Form S-1 or F-1 at the time of the consummation of the offering, and that prior to distribution of a preliminary prospectus to investors, the registration statement includes all required financial statements. If an FPI prepares its financial statements according to the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), it need not reconcile its financial information to US Generally Accepted Accounting Principles (US GAAP).

An FPI must include certain additional information in the prospectus (or private placement memorandum, offering circular or offering memorandum in the case of an unregistered offering); for example, information on the enforcement of judgments against the issuer, and on any exchange controls and taxation of shareholders in the issuer's home jurisdiction.

The registration statement also contains additional information and required exhibits, including organizational documents, material contracts and consents of experts. The issuer can request confidential treatment of sensitive information. The offering circular or offering memorandum for an unregistered offering does not include such additional information or exhibits.

For a subsequent offering using a short-form registration statement, the issuer can include the information set out above, or incorporate such information by reference to its SEC reports.

Disclosure of issuer credit ratings

Issuer credit ratings cannot be disclosed in registration statements and prospectuses for registered offerings, unless the consent of the applicable credit rating agency is obtained. However, "issuer disclosure-related ratings information" is allowed to be included in a registration statement without the consent of a credit rating agency. "Issuer disclosure-related ratings information" is defined as ratings information that relates only to:

- Changes to a credit rating.
- The liquidity of the registrant.
- The cost of funds for the registrant.
- The terms of agreements that refer to credit ratings.

This would include, for example, risk factor disclosure about the consequences of failure to maintain a rating. For asset-backed issuers that must disclose ratings information under Regulation AB, the SEC has stated that it will not recommend enforcement action so long as the disclosure meets the requirements under Regulation AB.

The consent of a credit rating agency is not required for inclusion of ratings information in FWP's (compliant with Rule 433 under the Securities Act) and term sheets or press releases (compliant with Rule 134 under the Securities Act).

For unregistered offerings (*section 4(a)(2), Regulation D, Rule 144A and section 3(a)(2)*), issuer credit ratings may be disclosed in private placement memoranda, offering circulars or offering memoranda, as well as term sheets.

17. Who is responsible for the prospectus (or other main offering document) and/or who is liable for its contents?

Preparation

The issuer and its lawyers prepare the prospectus (or private placement memorandum, offering circular or offering memorandum in the case of an unregistered offering) working with the underwriters and their lawyers, and the auditors. The underwriters and their lawyers conduct due diligence on the issuer and verify the information in the prospectus (or private placement memorandum, offering circular or offering memorandum in the case of an unregistered offering). The diligence process includes:

- A review of organizational and corporate documents, shareholder lists, material contracts, litigation, intellectual property and other legal and business matters material to the issuer.
- Detailed discussions with management about the contents of the prospectus, business plan and road show presentation.
- Interviews with the issuer's auditors, main customers, suppliers and distributors.

The SEC comments on the prospectus as part of the registration process (unless the registration statement is for a WKSJ). The comments are intended to clarify issuer disclosure as well as verify compliance with SEC requirements. The SEC does not independently verify any information contained in the registration statement.

For a subsequent offering, most of the disclosure is taken from the issuer's ongoing SEC filings (or home country filings if the issuer is an FPI), so the prospectus (or private placement memorandum, offering circular or offering memorandum in the case of an unregistered offering) drafting process is typically shorter. With respect to registered offerings, in most cases, the SEC does not comment on the prospectus for a subsequent offering, although it may have commented on the issuer's ongoing public filings.

Liability

Registered offerings. In the case of registered offerings, the issuer is strictly liable for the content of the prospectus. The issuer's directors and officers, and underwriters and accountants have potential defenses to liability (*see below*). Liability arises primarily under sections 11, 12 and 15 of the Securities Act, and section 10(b) and Rule 10b-5 of the Exchange Act, as follows:

- Section 11 liability. If the registration statement contains an untrue statement of a material fact, or omits to state a material fact required to be stated in it (or that is necessary to make the statements not misleading), any buyer of a security under a registration statement can sue the issuer and the following persons:
 - anyone who signed the registration statement (a registration statement is signed by the issuer's chief executive, principal financial and accounting officers, and at least a majority of the issuer's directors);
 - any director (or person who consented to be named as a director) at the time the registration statement was filed;
 - every accountant, engineer, appraiser or other expert who consented to be named as having prepared or certified the accuracy of any part of the registration statement, or any report or valuation used in the registration statement (but liability is limited to that information);
 - every underwriter.
- Section 12 liability. A buyer of a security can sue any person who both:
 - offered or sold the security to that buyer in violation of section 5 of the Securities Act;
 - offered or sold the security to that buyer by means of a prospectus or oral communication that included an untrue statement of a material fact (or omitted to state a material fact necessary to make a statement, in light of the circumstances under which it was made, not misleading).
- Section 15 liability. Every person who controls (through share ownership, agreement or otherwise) any other person that is liable under sections 11 or 12 of the Securities Act is jointly and severally liable with the other person, unless the controlling person had no knowledge of, or reasonable grounds to believe in, the existence of the facts that resulted in the alleged liability.
- Section 10(b) and Rule 10b-5 liability. It is unlawful for any person to do any of the following in connection with the purchase or sale of any security:

- employ any fraudulent scheme;
- make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- engage in fraud or deceit.

Note that the US states also have similar laws governing liability that may also apply to registered offerings.

To succeed in a claim under Rule 10b-5 under the Securities Act, the claimant must show that the person selling the security intended to deceive or had a reckless disregard of the truth. This "scienter" requirement does not apply under sections 11 and 12 of the Securities Act. In addition, the US Supreme Court has limited the territorial application of Rule 10b-5 under the Securities Act by holding that section 10(b) of the Exchange Act covers only:

- Transactions in securities listed on domestic exchanges.
- Domestic transactions in other securities.

This test is often referred to as the "transactional test". As a result, it was thought that "foreign-cubed" cases (foreign issuers, foreign claimants and foreign transactions) could no longer be brought in US courts. In addition, one US federal appeals court held that to be liable for domestic transactions in other securities, a claimant must allege facts suggesting that irrevocable liability was incurred or title was transferred within the United States.

However, there have been cases exploring the limitations of the transactional test and whether section 929P(b) of the Dodd-Frank Act supersedes it. Section 929P(b) of the Dodd-Frank Act directly addresses the issue of transnational securities fraud brought by the SEC or the US Department of Justice by amending section 22 of the Securities Act and section 27 of the Exchange Act, and providing that US courts have jurisdiction over an action or proceeding brought or instituted by the SEC or the US Department of Justice alleging a violation of section 17 of the Securities Act or section 27 of the Exchange Act involving either:

- Conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors.
- Conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

This test is often referred to as the "conduct and effects test". In March 2017, a US district court held that section 929P(b) of the Dodd-Frank Act supersedes the transactional test, in a case involving a web traffic exchange that had 90% of its customers purchasing products over the internet while located outside the United States. The US district court found that the legal context in which section 929P(b) was drafted, the legislative history and the express purpose of section 929P(b) all point to a congressional intent that section 10(b) of the Exchange Act and section 17(a) of the Securities Act should be applied to extraterritorial transactions to the extent that the conduct and effects test can be satisfied. It remains to be seen, however, whether other US district courts will continue to follow the transactional test in light of this recent decision.

Unregistered offerings. In the case of unregistered offerings (*section 4(a)(2), Regulation D, Rule 144A and section 3(a)(2)*), where there is no registration statement and section 5 statutory prospectus, liability under section 11 of the Securities Act is not applicable. However, liability for issuers and underwriters may still arise under sections 12 and 15 of the Securities Act, and section 10(b) and Rule 10b-5 of the Exchange Act, as follows:

- Section 12 liability. A buyer of a security can sue any person who:
 - offered or sold the security to that buyer without establishing a valid exemption from registration (that is, failure to meet the requirements under section 4(a)(2), Rule 144A or section 3(a)(2));
 - offered or sold the security to that buyer by means of an offering circular or offering memorandum or oral communication that included an untrue statement of a material fact (or omitted to state a material fact necessary to make a statement, in light of the circumstances under which it was made, not misleading).
 - Section 15 liability. This is the same as in the case of registered offerings
 - Section 10(b) and Rule 10b-5 liability. This is the same as in the case of registered offerings
- Note that US states also have similar laws governing liability that may also apply to unregistered offerings.

Defences. A person other than the issuer (such as an underwriter) against whom a claim is made may have defences, including a due diligence defence.

9.2.2.13. Timetable : debt securities issue

18. What is a typical timetable for issuing and listing debt securities?

A US debt offering can take from between a few days to a few months to complete, depending on the structure of the offering, whether the issuer is already public, and the underwriters' ability to conduct due diligence and obtain a comfort letter. In addition, unregistered offerings typically are conducted on a more accelerated time frame, since a registration statement does not need to be filed with the SEC and SEC review of non-automatic shelf registration statements could be lengthy.

9.2.2.14. Taxes : debt securities issue

19. What are the main tax issues when issuing and listing debt securities?

Payment of interest

US federal withholding tax does not generally apply to a payment of interest (or original issue

discount) to a non-US holder of a US issuer's debt security, if all of the following requirements are satisfied:

- The debt security is in "registered" form for US tax purposes (generally, the right to principal of, and interest on, the debt security can only be transferred through a book entry system meeting certain requirements).
- The payment is not effectively connected with the non-US holders' conduct of a US trade or business (or, if certain income tax treaties apply, the payment is not attributable to a US permanent establishment (PE) maintained by the non-US holder).
- The non-US holder does not actually or constructively own 10% or more of the total combined voting power of all classes of the debt issuer's stock entitled to vote.
- The non-US holder is not a controlled foreign corporation that is related directly or constructively to the debt issuer through stock ownership.
- The non-US holder is not a bank that acquired the debt securities in consideration for an extension of credit made under a loan agreement entered into in the ordinary course of its trade or business.
- The non-US holder provides the withholding agent with a statement to the effect that the holder is not a US person.

If a non-US holder cannot satisfy the requirements described above, payments of interest are generally subject to a 30% US federal withholding tax, unless the non-US holder provides an Internal Revenue Service (IRS) Form W-8BEN, W-8BEN-E or W-8IMY claiming an exemption from or reduction in withholding under the benefits of an applicable income tax treaty, or an IRS Form W-8ECI claiming that the interest is effectively connected with the non-US holder's trade or business in the United States.

If a non-US holder of a debt security is engaged in the conduct of a trade or business within the United States and if interest (including any original issue discount) on the debt security, or gain realized on the sale, exchange, or other disposition of the debt security, is effectively connected with the conduct of such trade or business (and, if certain tax treaties apply, is attributable to a PE maintained by the non-US holder in the United States), the non-US holder, although exempt from US federal withholding tax (provided that the certification requirements discussed above are satisfied), generally will be subject to US federal income tax on such interest (including any original issue discount) or gain on a net income basis in the same manner as if it were a US holder. In addition, if such non-US holder is a foreign corporation, it may also be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable US income tax treaty) of a portion of its earnings and profits for the taxable year that are effectively connected with its conduct of a trade or business in the United States, subject to certain adjustments.

A debt security is generally treated as issued with original issue discount if its stated redemption price at maturity exceeds its issue price by more than a *de minimis* amount (for example, if the debt security is issued at a discount). Special tax considerations must be taken into account in the case of a re-opening of debt securities issued with original issue discount.

Dispositions

A non-US holder is not generally subject to US federal income tax or withholding tax on gain realized on the sale or exchange of debt securities, if both:

- The gain is not effectively connected with a US trade or business of the non-US holder (or, if certain income tax treaties apply, the gain is not attributable to a US PE maintained by the non-US holder).
- The non-US holder is a non-resident foreign person that is not present in the United States for 183 or more days in the taxable year of the sale or disposition, and certain other conditions are met.

A gain that is effectively connected with a US trade or business of the non-US holder (or, if certain income tax treaties apply, attributable to a US PE maintained by the non-US holder) is generally subject to US federal income tax on a net income basis, as described above.

Other tax issues

The Foreign Account Tax Compliance Act (FATCA) imposes a 30% US withholding tax on interest payments (including original issue discount) to foreign financial institutions and certain other non-financial foreign entities. Withholding under FATCA will generally not apply if such payments are made to a foreign financial institution that agrees to identify accounts held by US persons (and it complies with additional reporting and withholding requirements) and foreign entities with substantial US owners or to a non-financial foreign entity that either certifies it does not have any substantial US owners, or furnishes identifying information regarding each substantial US owner.

The US Treasury has entered into several intergovernmental agreements with governments of various countries that may allow a foreign financial institution to satisfy its reporting requirements.

9.2.2.15. Clearing and settlement of debt securities

20. How are debt securities cleared and settled and what currency are debt securities typically issued in? Are there special considerations for holding, clearing and settling debt securities issued in foreign currencies?

Clearing and settlement

Debt securities issued in the United States are, more frequently than not, denominated in US dollars. However, debt securities can be denominated in any currency. For any debt security that is denominated in a foreign currency (currency other than US dollars), special care should be taken to discuss payment and settlement issues with the trustee or fiscal and paying agent and with the Depository Trust Company (DTC). DTC will not handle payments to security holders in any currency other than US dollars. However, the trustee/fiscal agent and DTC can make arrangements for payments in foreign currency to be made through Euroclear Bank S.A./N.V., as operator of the Euroclear System, or Clearstream Banking, *société anonyme*. Debt securities also are identified by

individual CUSIP (Committee on Uniform Securities Identification Procedures) numbers provided by the CUSIP Bureau in order to facilitate the clearing and settlement process, and CUSIP numbers are typically obtained by the trustee/fiscal agent. In addition, debt securities issued in a section 4(a)(2) offering are not DTC-eligible.

Trade reporting secondary market transactions

OTC secondary market transactions in eligible fixed income securities must be reported to FINRA through FINRA's Trade Reporting and Compliance Engine (TRACE). TRACE disseminates real-time price information for the OTC bond market, thus providing transparency to the corporate and agency bond markets. Reporting is required for registered securities (except for securities issued under a non-shelf registration statement), and if the securities are unregistered and the trade does not qualify as a "distribution" under Regulation M (that is, no special selling efforts, small transaction size, handful of purchasers), then the trade generally must be reported. The reporting requirements for various types of transaction participants are as follows:

- In transactions between two market makers, only the member on the sell side must report.
- In transactions between a market maker and a non-market maker, only the market maker must report.
- In transactions between two non-market makers, only the member on the sell side must report.
- In transactions between a member and a customer, the member must report.
- In transactions between two members, the "executing party" must report.

In addition, FINRA requires the public dissemination through TRACE of information regarding Rule 144A offerings of corporate bonds. The information consists of investment/non-investment grade status and real time market data.

Stabilisation

The rules governing stabilization, contained in Regulation M under the Exchange Act (Regulation M), are complex. It is generally unlawful for any person to stabilize, effect any syndicate covering transaction, or impose a penalty bid in connection with the offering of a security, unless certain conditions are met. Stabilizing activities are permitted only to prevent or slow a decline in the market price of the security. The key conditions for stabilization relate to:

- Notice.
- Pricing parameters.
- Timing.
- Priority for independent bids.

However, transactions in Rule 144A securities and investment grade non-convertible and asset-backed securities are exempt from Regulation M.

9.2.2.16. Reform

21. Are there any proposals for reform of debt capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

The SEC's publicly released Spring 2020 agenda provides some insight on what to expect from the SEC for the remainder of 2020 and beyond. The agenda provides a list of rule-making proposals that SEC Chair Jay Clayton anticipates to complete in the short-term (possibly by October 2020) and beyond. Some of the key reform proposals most relevant to the US debt capital markets and market participants in general, that have made it to the SEC's short-term list or those that are in the final rule stage for 2020, are:

- **Harmonization of Exempt Offerings.** In June 2019, the SEC issued a concept release soliciting comment on ways to simplify, harmonize and improve the exempt offering framework to promote capital formation and expand investment opportunities while maintaining appropriate investor protections. Following the concept release, in March 2020, the SEC proposed a number of amendments, including to Regulation D, Rule 144A and Regulation S, and the rules relating to the integration of offerings.
- **Modernization and Simplification of Disclosures Regarding MD&A, Selected Financial Data and Supplementary Financial Information.** In January 2020, the SEC proposed amendments intended to modernize, simplify and enhance the financial disclosure requirements for the MD&A section in filings by reducing duplicative disclosure and focusing on material information to improve these disclosures for investors and simplify compliance efforts for registrants.

In addition, the SEC adopted the following sets of amendments in 2020 that are particularly relevant to registered debt offerings and financial disclosures:

- **Financial Disclosure Requirements in Registered Debt Offerings involving Guaranteed or Collateralized Securities.** In March 2020, the SEC adopted amendments to the financial disclosure requirements in Rules 3-10 and 3-16 of Regulation S-X, applicable to registered debt offerings involving guaranteed or collateralized securities. The amendments are intended to improve the quality of disclosure to investors and encourage issuers to conduct debt offerings with these credit enhancements, on a registered, rather than an unregistered, basis. The amendments become effective on 4 January 2021 but early compliance is permitted.
- **Financial Disclosures about Acquired and Disposed Businesses.** In May 2020, the SEC adopted revisions to financial statement disclosures with respect to business acquisitions and dispositions required by Regulation S-X, in particular, Rule 3-05 (financial statements of businesses acquired or to be acquired), Rule 3-14 (special instructions for real estate operations to be acquired), Article 11 on pro forma financial information and other related rules and forms. The amendments become effective on 1 January 2021 but early compliance in full is permitted.

- Modernization and Simplification of Disclosures of Regulation S-K Items on Business, Legal Proceedings and Risk Factor Disclosures. In August 2020, the SEC adopted amendments to modernize the description of business, legal proceedings and risk factor disclosures that companies are required to make pursuant to Regulation S-X. The amendments aim to improve the readability of disclosures while discouraging repetition and disclosure of immaterial information and simplifying compliance for reporting companies. The amendments include more principles-based disclosures for the "Business" section of SEC offering and periodic filings, simplifying the disclosures required with respect to legal proceedings, and streamlining risk factor disclosures.
- Amending the "Accredited Investor" and "Qualified Institutional Buyer" definitions. In August 2020, the SEC adopted amendments to the definition of "accredited investor," with the effect of broadening the scope of individuals and entities that would qualify as accredited investors. The SEC also amended the definition of "qualified institutional buyer" in Rule 144A to avoid inconsistencies and to include the kinds of entities that qualify for accredited investor status when these entities meet the USD100 million in securities owned and invested threshold in Rule 144A.

9.2.3. Regulation D

9.2.3.1. Key Takeaways

- Regulation D lets companies doing specific types of private placements raise capital without needing to register the securities with the SEC.
- SEC Reg D should not be confused with Federal Reserve Board Regulation D, which limits withdrawals from savings accounts.
- The company or entrepreneur must file a Form D disclosure document with the SEC after the first securities are sold.
- Those selling securities under Regulation D must still comply with all applicable laws.

9.2.3.2. What is SEC Regulation D (Reg D) ?

Regulation D (Reg D) is a Securities and Exchange Commission (SEC) regulation governing private placement exemptions. It should not be confused with Federal Reserve Board Regulation D, which limits withdrawals from savings accounts. Reg D offerings are advantageous to private companies or entrepreneurs that meet the requirements because funding can be obtained faster and at a lower cost than with a public offering. It is usually used by smaller companies. The regulation allows capital to be raised through the sale of equity or debt securities without the need to register those securities with the SEC. However, many other state and federal regulatory requirements still apply.

9.2.3.2. Understanding SEC Reg D

Raising capital through a Reg D investment involves meeting significantly less onerous requirements than a public offering. That allows companies to save time and sell securities that they might not otherwise be able to issue in some cases.

While Regulation D makes raising funds easier, buyers of these securities still enjoy the same legal protections as other investors.

It is not necessary to keep Regulation D transactions a secret, even though they are private offerings. There are directives within the regulation that, depending on which rules are applied, may allow offerings to be openly solicited to prospective investors in a company's network.

9.2.3.3. Requirements of SEC Reg D

Even if the Reg D transaction involves just one or two investors, the company or entrepreneur must still provide the proper framework and disclosure documentation. A document known as Form D must be filed electronically with the SEC after the first securities are sold. Form D, however, contains far less information than the exhaustive documentation required for a public offering. The form requires the names and addresses of the company's executives and directors. It also requires some essential details regarding the offering.

The issuer of a security offered under Reg D must also provide written disclosures of any prior "bad actor" events, such as criminal convictions, within a reasonable time frame before the sale. Without this requirement, the company might be free to claim it was unaware of the checkered past of its employees. In that case, it would be less accountable for any further "bad acts" they might commit in association with the Reg D offering.

According to rules published in the Federal Register, transactions that fall under Reg D are not exempt from antifraud, civil liability, or other provisions of federal securities laws. Reg D also does not eliminate the need for compliance with applicable state laws relating to the offer and sale of securities. State regulations, where Reg D has been adopted, may include disclosure of any notices of sale to be filed. They may require the names of individuals who receive compensation in connection with the sale of securities.

9.2.3.4. Limitations of SEC Reg D

The benefits of Reg D are only available to the issuer of the securities, not to affiliates of the issuer or to any other individual who might later resell them. What is more, the regulatory exemptions offered under Reg D only apply to the transactions, not to the securities themselves.

9.2.4. Rule 144A

Next is an in-depth discussion on Rule 144A.

9.2.4.1. Key Takeaways

- Rule 144A modifies SEC restrictions so privately placed securities can be traded among qualified institutional buyers with much shorter holding periods and no SEC registration in place.
- The idea is that sophisticated institutional investors don't need the same levels of information and protection that individuals require.
- Critics have noted a lack of transparency and unclear definitions of what constitutes a qualified institutional buyer.
- Concerns endure that Rule 144A may give unscrupulous overseas companies undue access to the U.S. market without SEC scrutiny.
- Additional concern is that private offerings may severely reduce the number of public offerings.

Rule 144A modifies the Securities and Exchange Commission (SEC) restrictions on trades of privately placed securities so that these investments can be traded among qualified institutional buyers, and with shorter holding periods—six months or a year, rather than the customary two-year period. While the Rule, introduced in 2012, has substantially increased the liquidity of the affected securities, it has also drawn concern that it may reduce the range of securities on offer to the general public.

9.2.4.2. The Impetus for Rule 144A

Before a security can be offered to the general public, the Securities Act of 1933 stipulates that the issuer must register it with the SEC and provide extensive documentation through a filing with the agency.

Rule 144A, however, was drawn up in recognition that more sophisticated institutional investors may not require the same levels of information and protection as do individuals when they buy securities. The Rule provides a mechanism for the sale of privately placed securities that do not have—and are not required to have—an SEC registration in place, creating a more efficient market for the sale of those securities.

9.2.4.3. Rule 144A Holding Requirements

In addition to not requiring that securities receive SEC registration, Rule 144A relaxed the regulations over how long a security must be held before it can be traded. Rather than the customary two-year holding period, a minimum of a six-month period applies to a reporting company, and a minimum one-year period applies to issuers not required to meet reporting requirements. These periods begin on the day the securities in question were bought and considered paid in full.

9.2.4.4. Public Information Requirement

A minimum level of public-accessible information is required of the selling party.

For reporting companies, this issue is addressed as long as they are in compliance with their regular reporting minimums.

For non-reporting companies (also called non-issuers), basic information regarding the company, such as company name and the nature of its business, must be publicly available.

9.2.4.5. Trading Volume Formula

For affiliates, there is a limit on the number of transactions, referred to as the volume, that cannot be exceeded. This must amount to no more than 1% of the outstanding shares in a class over three months or the average weekly reported volume during the four-week period preceding the notice of sale on Form 144.

9.2.4.6. Brokerage Transactions

The sale must also be handled by the brokerage in a manner deemed routine for affiliate sales. This requires no more than a normal commission be issued, and neither the broker nor the seller can be involved in the solicitation of the sale of those securities.

9.2.4.7. Notice Filings

To meet filing requirements, any affiliate sale of over 5,000 shares or over \$50,000 during the course of a three-month span must be reported to the SEC on Form 144. Affiliate sales under both of these levels are not required to be filed with the SEC.

9.2.4.8. Concern over Rule 144A and Responses

As the Rule succeeded, as intended, in increasing non-SEC trading activity, concern rose at the number of trades that were all but invisible to individual investors, and even murky to some institutional ones, as well. In response, the Financial Industry Regulatory Authority (FINRA) in 2014 began to report Rule 144A trades in the corporate debt market. "We're excited to increase transparency in this opaque market. The information will help professional investors and contribute to more efficient pricing of these securities, as well as inform valuation for mark-to-market purposes," said Steven Joachim, FINRA executive vice president, Transparency Services.

Also, in 2017 the SEC itself responded to questions about the definition of "qualified institutional buyers" allowed to participate in Rule 144A trades, and how they calculate the requirement that they own and invest on a discretionary basis at least \$100m in securities of unaffiliated issuers.

Still, some concerns endure about the effects of Rule 144A, including how it may allow unscrupulous overseas companies to fly under the regulatory radar when offering investments in the U.S. As Dan Caplinger put it in *Motley Fool*, "many [Rule 144A] transactions involve securities of foreign companies that don't want to subject themselves to SEC scrutiny, and that exposes U.S. institutions to the potential for fraudulent representations from those foreign issuers".

9.2.5. Regulation S

Regulation S, which was adopted by the Securities and Exchange Commission (the "SEC") in 1990, provides that offers and sales of securities that occur outside of the United States are exempt from the registration requirements of Section 5 of the Securities Act of 1933 (the "Securities Act").

Regulation S is generally intended to facilitate two capital-raising scenarios:

- i. a U.S. company that issues securities only to foreigners; and
- ii. a U.S. investor who enters a foreign market to buy foreign securities. In essence, Regulation S permits these types of transactions, among others, to occur without SEC registration.

To issuers and other distributors of securities, raising capital without registration means obtaining funding more quickly, more discreetly and less expensively than would be the case if registration were required. Any mechanism that permits such capital raising, however, is capable of being abused, and Regulation S is no exception. Abuse of Regulation S means that securities are being offered or sold without adequate disclosure to the public, the precise result that Section 5 is

designed to prevent. In 1998, the SEC identified several regulatory abuses, and amended Regulation S in an attempt to strike a better balance between providing access to international markets and guarding against unwarranted evasion of Section 5 registration requirements.

9.2.5.1. Background

Section 5 Registration.

Section 5 of the Securities Act requires that all securities offered or sold by means of interstate commerce be registered unless an exemption is available. The purpose behind Section 5 is to ensure adequate disclosure before a security is offered to the public so that the public may make informed investment decisions. For purposes of Section 5, “interstate commerce” includes, among other things, “trade or commerce in securities or any transportation or communication relating thereto...between a foreign country and any State.” Many commentators have remarked that Section 5 could be read to apply to securities offerings occurring outside of the United States, thereby deterring transnational transactions due to the threat of a U.S. registration requirement for such transactions.

Release 4708.

At the recommendation of a Presidential Task Force charged with increasing the foreign market for U.S. securities, the SEC adopted Securities Act Release 4708 (“Release 4708”), which limited the scope of the application of Section 5 registration requirements. In Release 4708, the SEC stated that it would not take enforcement action with respect to a failure to register when securities were distributed, even though the means of interstate commerce were used, if the distributions were effected in a manner that would result in the securities coming to rest abroad. The SEC reasoned that the purpose of Section 5 of the Securities Act was to protect American investors by preventing offerings of securities without adequate disclosure about such securities. The SEC determined that an offering outside of the United States was properly exempt from registration provided that such unregistered securities would not be distributed or redistributed within the United States or to U.S. nationals without an exemption. Release 4708 did not provide detailed guidance as to what types of offerings were within the purview of Release 4708. As a result, numerous no-action letters were requested to supplement the principles set forth in Release 4708.

Adoption of Regulation S.

In response to increasingly global financial markets, the SEC adopted Regulations S to clarify and codify its view on the territorial reach of Section 5 of the Securities Act as well as to provide specific

guidelines to make compliance more certain.

Regulation S exempts offshore offerings from Section 5 registration requirements provided that certain specific conditions are met. Besides the level of detail, another significant difference between Regulation S and Release 4708 is the approach. Release 4708 was intended to protect American investors. Regulation S is intended to protect “U.S. capital markets and those who invest in U.S. capital markets, whether U.S. or foreign nationals.” Unlike Release 4708, Regulation S addresses the offshore offerings of the securities of foreign issuers, and under what circumstances such securities would be exempt from Section 5. This clarification may seem superfluous, but has been important in terms of quelling political sensitivities and international comity concerns.

A few years after the adoption of Regulation S, the SEC identified several regulatory abuses, primarily involving equity securities of domestic issuers. In 1998, the SEC amended Regulation S to curb some of these abuses. (Securities Act Release n° 33-7505 (“Release 7505”)).

9.2.5.2. Operation of Regulation S

Regulation S consists of five rules:

- a General Statement (Rule 901);
- Definitions (Rule 902);
- an Issuer Safe Harbor (Rule 903);
- a Resale Safe Harbor (Rule 904);
- and Resale Limitations (Rule 905).

The General Statement broadly restates the SEC’s territorial approach to Section 5. The Issuer and Resale Safe Harbors provide specific guidelines for transactions. If these guidelines are complied with, such transactions will be deemed to have occurred “outside of the United States” within the meaning of the General Statement. Rule 905 clarifies the consequences of a resale of an equity security of a domestic issuer acquired through a Rule 901, Rule 903 or Rule 904 transaction, linking the “restricted period” of a Rule 144 security with the “distribution compliance period” of a Regulation S security.

General Statement.

The General Statement provides that “[f]or purposes of Section 5 of the [Securities] Act, the terms “offer,” “offer to sell,” “sell,” “sale,” and “offer to buy” shall be deemed not to include offers and sales that occur outside the United States.” Transactions that comply with the conditions of either Rule

903 or 904 will be deemed to be outside of the United States within the meaning of the General Statement, and therefore exempt from the registration requirements.

Safe Harbors.

Rules 903 and 904 permit the issuance and resale of unregistered securities under specified conditions.

Two general conditions must be met to qualify under both the Issuer Safe Harbor and the Resale Safe Harbor:

- i. the offer or sale must be made in an “offshore transaction”; and
- ii. no “directed selling efforts” may be made in the United States.

An “offshore transaction” takes place when the offer is not made to a person in the United States and either the buyer is outside of the United States (or the offeror reasonably believes that the buyer is outside of the United States) or the transaction is executed on an established foreign securities exchange.

“Directed selling efforts” means any activities that condition the U.S. market for such securities (*e.g.*, a roadshow in the U.S., placing an advertisement in a U.S. newspaper, etc.).

In addition to the general conditions, Regulation S also imposes additional conditions depending on the nature of the issuer and the type of security being offered. These additional conditions and restrictions function as safeguards against the flowback of unregistered securities into the United States. The Issuer Safe Harbor (that is, the conditions that, if met, will ensure compliance with Regulation S) is divided into three categories. Category #1 has the least conditions and restrictions, as the likelihood of flowback for these offerings is minimal. By contrast, Category #3 has the most conditions and restrictions, as the likelihood that these securities will flow back to the United States is high. Similarly, in the Resale Safe Harbor, different safeguards are imposed depending on the type of person offering or selling the security.

One additional requirement for Categories #2 and #3 of the Issuer Safe Harbor is that “offering restrictions” be implemented. “Offering restrictions” means:

- (A) that each distributor agrees in writing (i) that all offers or sales prior to the end of a “distribution compliance period” will be made in accordance with Rule 903 or Rule 904 and (ii) if an equity security of a domestic issuer is involved, not to engage in any hedging transaction prior to the end of the applicable “distribution compliance period” and

(B) that all offering materials used in connection with offers or sales prior to the end of the applicable “distribution compliance period” shall include a statement that the securities are not registered (and, if equity securities of a domestic corporation are involved, must also state that hedging transactions involving these securities cannot take place except in compliance with the Securities Act).

9.3. Intérêts

Une opération de titrisation d'un emprunt obligataire sécurisée de 100 millions USD à un taux d'intérêt zéro (0 %) offrirait les conditions les plus favorables au Gouvernement de la République Démocratique du Congo, par rapport aux taux d'intérêt en vigueur sur le marché pour d'autres pays africains émissions obligataires (non-garanti) à la date du 15 février 2021. Un an de plus, à la date de 02 mars 2022 les taux ont déjà connu une évolution largement défavorable.

Ci-après quelques taux d'intérêt pour un certain nombre de pays africains⁷⁶³ qui sont déjà actifs sur les marchés financiers internationaux avec une comparaison entre le 15 février 2021 et le 02 mars 2022 :

- Botswana
- Kenya
- Maurice
- Maroc
- Namibie
- Nigéria
- Afrique du Sud
- Ouganda

Le taux d'intérêts dépend des taux généraux sur le marché ainsi que du rating du pays⁷⁶⁴. Malheureusement, le rating accordé à la RDC n'est pas favorable (mais quand même en train d'améliorer).





Agency	Rating	Outlook	Date
S&P	B-	stable	Jan 28 2022
Moody's	Caa1	positive	Oct 18 2021
S&P	CCC+	positive	Jul 30 2021
S&P	CCC+	stable	Jul 31 2020
S&P	CCC+	positive	Aug 02 2019
Moody's	Caa1	stable	Jun 18 2019
Moody's	B3	negative	Dec 08 2017
S&P	CCC+	stable	Aug 04 2017
S&P	B-	negative	Feb 05 2016
S&P	B-	stable	Dec 13 2013
Moody's	B3	stable	Sep 06 2013

⁷⁶³ Voir <https://www.investing.com/rates-bonds/african-government-bonds>

⁷⁶⁴ Voir <https://tradingeconomics.com/congo/rating>









9.3.1. Botswana

Botswana »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Botswana 6M	1.145	1.240	1.240	1.149	0.000	0.00%	03:26:45 
 Botswana 3Y	3.867	3.930	3.950	3.930	0.000	0.00%	03:26:45 
 Botswana 5Y	5.165	5.200	5.200	5.200	+0.000	+0.00%	02:01:05 
 Botswana 7Y	3.534	3.600	3.600	3.600	0.00	0.00%	14/05 
 Botswana 13Y	4.971	5.010	4.971	4.971	0.00	0.00%	14/05 

15 février 2021

































Botswana »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Botswana 6M	1.510	1.550	1.551	1.551	-0.040	-2.55%	02:09:29 
 Botswana 3Y	4.704	4.750	4.750	4.000	-0.046	-0.97%	02:09:18 
 Botswana 5Y	5.832	5.850	5.850	5.850	-0.018	-0.31%	02:09:02 
 Botswana 20Y	8.576	8.500	8.500	8.500	+0.076	+0.89%	02:09:12 

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9.3.2. Kenya

Kenya »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕	
 Kenya Overnight	3.551	4.076	4.076	3.551	0.000	0.00%	00:41:47	
 Kenya 3M	6.905	6.905	6.905	6.905	+0.000	+0.00%	12/02	
 Kenya 6M	7.644	7.644	7.644	7.644	+0.000	+0.00%	12/02	
 Kenya 1Y	8.824	8.824	8.824	8.824	+0.000	+0.00%	12/02	
 Kenya 2Y	9.429	9.300	9.300	9.122	+0.129	+1.39%	04:40:42	
 Kenya 3Y	9.489	9.350	9.500	9.350	+0.139	+1.49%	04:31:14	
 Kenya 4Y	10.112	10.450	10.500	10.028	-0.338	-3.23%	04:31:02	
 Kenya 5Y	10.919	10.700	10.700	10.458	+0.218	+2.04%	04:31:27	
 Kenya 6Y	11.179	10.950	11.197	10.950	+0.229	+2.09%	04:31:16	
 Kenya 7Y	12.078	11.800	11.800	11.645	+0.278	+2.36%	04:32:06	
 Kenya 8Y	12.294	12.000	12.089	12.000	+0.294	+2.45%	04:40:33	
 Kenya 9Y	12.402	12.100	12.162	12.089	+0.302	+2.50%	04:34:10	
 Kenya 10Y	12.507	12.200	12.400	12.200	+0.307	+2.52%	04:30:42	
 Kenya 15Y	13.093	12.750	12.920	12.750	+0.343	+2.69%	04:40:26	
 Kenya 20Y	13.522	13.150	13.230	13.150	+0.372	+2.83%	04:31:23	
 Kenya 25Y	13.681	13.300	13.867	13.300	+0.381	+2.86%	04:31:19	

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Kenya »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Kenya Overnight	5.806	5.806	5.806	5.806	+0.00	+0.00%	28/02 
 Kenya 3M	7.254	7.254	7.254	7.254	+0.00	+0.00%	25/02 
 Kenya 6M	8.062	8.062	8.062	8.062	0.00	0.00%	25/02 
 Kenya 1Y	9.764	9.764	9.764	9.764	+0.00	+0.00%	25/02 
 Kenya 2Y	10.075	9.907	9.907	9.907	+0.168	+1.70%	02:09:02 
 Kenya 3Y	10.776	10.586	10.586	10.586	+0.190	+1.80%	02:09:17 
 Kenya 4Y	11.338	11.094	11.094	11.094	+0.245	+2.20%	02:09:02 
 Kenya 5Y	12.031	11.754	11.754	11.754	+0.277	+2.36%	02:09:18 
 Kenya 6Y	12.521	12.214	12.214	12.214	+0.307	+2.51%	02:09:03 
 Kenya 7Y	12.710	12.396	12.396	12.396	+0.314	+2.54%	02:09:04 
 Kenya 8Y	13.030	12.690	12.690	12.690	+0.340	+2.68%	02:09:16 
 Kenya 9Y	13.115	12.769	12.769	12.769	+0.346	+2.71%	02:09:02 
 Kenya 10Y	13.133	12.785	12.785	12.785	+0.348	+2.72%	02:09:03 
 Kenya 15Y	13.646	13.300	13.264	13.264	+0.346	+2.60%	02:09:12 
 Kenya 20Y	14.280	13.750	13.859	13.859	+0.530	+3.86%	02:09:02 
 Kenya 25Y	14.434	13.990	14.002	14.002	+0.444	+3.18%	02:09:28 

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9.3.3. Maurice

Mauritius »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Mauritius 2M	0.132	0.200	0.132	0.132	-0.069	-34.25%	00:25:10 
 Mauritius 4M	0.229	0.300	0.229	0.229	-0.071	-23.83%	00:25:08 
 Mauritius 6M	0.226	0.300	0.226	0.226	-0.074	-24.67%	04:28:12 
 Mauritius 8M	0.236	0.310	0.236	0.236	-0.074	-24.03%	04:19:33 
 Mauritius 1Y	0.326	0.400	0.326	0.326	-0.074	-18.50%	04:22:25 
 Mauritius 2Y	0.548	0.669	0.548	0.548	-0.121	-18.16%	02:01:15 
 Mauritius 3Y	0.772	0.896	0.772	0.772	-0.124	-13.84%	02:01:25 
 Mauritius 4Y	1.012	1.132	1.012	1.012	-0.120	-10.64%	02:01:24 
 Mauritius 5Y	1.111	1.234	1.111	1.111	-0.123	-9.97%	02:01:25 
 Mauritius 10Y	2.018	2.133	2.018	2.018	-0.116	-5.41%	02:01:22 
 Mauritius 15Y	2.547	2.656	2.547	2.547	-0.110	-4.12%	02:01:19 
 Mauritius 20Y	2.803	2.908	2.803	2.803	-0.105	-3.63%	02:01:24 

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Mauritius »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Mauritius 2M 	0.578	0.600	0.578	0.480	+0.000	+0.00%	10/11 
 Mauritius 4M	0.679	0.700	0.728	0.632	0.000	0.00%	10/11 
 Mauritius 6M	0.828	0.850	0.828	0.777	+0.000	+0.00%	10/11 
 Mauritius 8M	0.877	0.900	0.877	0.827	+0.000	+0.00%	10/11 
 Mauritius 1Y	0.975	1.000	0.975	0.925	+0.000	+0.00%	10/11 
 Mauritius 2Y	0.866	0.974	0.866	0.866	0.000	0.00%	10/11 
 Mauritius 3Y	1.201	1.380	1.201	1.201	0.000	0.00%	10/11 
 Mauritius 4Y	2.237	2.371	2.237	2.237	0.000	0.00%	10/11 
 Mauritius 5Y	2.455	2.551	2.455	2.455	0.000	0.00%	10/11 
 Mauritius 10Y	3.973	4.060	3.973	3.973	0.000	0.00%	10/11 
 Mauritius 15Y	4.434	4.510	4.434	4.434	0.000	0.00%	10/11 
 Mauritius 20Y	4.848	4.940	4.848	4.848	0.000	0.00%	10/11 

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9.3.4. Maroc

Morocco »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Morocco 3M	1.414	1.464	1.414	1.414	-0.050	-3.42%	02:01:05 
 Morocco 6M	1.420	1.470	1.420	1.420	-0.050	-3.40%	02:01:22 
 Morocco 2Y	1.564	1.614	1.564	1.564	-0.050	-3.10%	02:01:06 
 Morocco 5Y	1.807	1.857	1.807	1.807	-0.050	-2.69%	02:01:05 
 Morocco 10Y	2.205	2.255	2.205	2.205	-0.050	-2.22%	02:01:05 
 Morocco 15Y	2.588	2.628	2.588	2.588	-0.040	-1.52%	02:01:10 

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Morocco »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Morocco 3M	1.491	1.560	1.560	1.560	-0.069	-4.39%	02:09:14 
 Morocco 6M	1.488	1.561	1.561	1.561	-0.073	-4.71%	02:09:20 
 Morocco 2Y	1.700	1.800	1.801	1.801	-0.100	-5.53%	02:09:12 
 Morocco 5Y	2.001	2.101	2.101	2.101	-0.100	-4.76%	02:09:03 
 Morocco 10Y	2.266	2.366	2.366	2.366	-0.100	-4.23%	02:09:19 
 Morocco 15Y	2.573	2.673	2.673	2.673	-0.100	-3.74%	02:09:01 

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9.3.5. Namibie

Namibia »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Namibia 3M	4.022	4.010	4.010	4.004	+0.000	+0.00%	02:01:14 
 Namibia 6M	4.282	4.281	4.281	4.280	+0.000	+0.00%	02:01:15 
 Namibia 9M	4.371	4.385	4.385	4.385	-0.014	-0.32%	02:01:14 
 Namibia 1Y	4.369	4.408	4.409	4.408	0.000	0.00%	02:01:13 
 Namibia 3Y	4.686	4.721	4.703	4.703	-0.035	-0.74%	02:01:06 
 Namibia 7Y	7.665	7.504	7.579	7.579	+0.161	+2.15%	02:01:01 
 Namibia 10Y	8.656	8.460	8.530	8.530	+0.196	+2.32%	02:01:08 
 Namibia 15Y	11.923	11.640	11.650	11.575	+0.000	+0.00%	12/02 
 Namibia 20Y	12.468	12.030	12.142	12.142	+0.438	+3.64%	02:01:05 

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Namibia »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 Namibia 3M	4.661	4.652	4.622	4.622	+0.009	+0.19%	02:09:13 
 Namibia 6M	4.530	4.525	4.492	4.492	+0.005	+0.11%	02:09:12 
 Namibia 9M	5.329	5.307	5.292	5.292	+0.021	+0.41%	02:09:09 
 Namibia 1Y	5.750	5.750	5.733	5.733	0.000	+0.01%	02:09:17 
 Namibia 3Y	7.473	7.404	7.417	7.417	+0.069	+0.93%	02:09:00 
 Namibia 7Y	5.872	5.872	5.872	5.872	0.000	0.00%	02:10:28 
 Namibia 10Y	12.319	11.938	12.036	12.036	+0.380	+3.19%	02:09:02 
 Namibia 15Y	8.224	8.224	8.224	8.224	0.000	0.00%	02:10:28 
 Namibia 20Y	13.507	13.120	13.156	13.156	+0.387	+2.95%	02:09:02 

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9.3.6. Nigéria

Nigeria »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
■ ■ Nigeria 3M	0.558	0.558	0.558	0.558	+0.000	+0.00%	12/02 ↻
■ ■ Nigeria 6M	1.977	1.977	1.977	1.977	+0.00	+0.00%	11/02 ↻
■ ■ Nigeria 1Y	2.027	2.027	2.027	2.027	+0.00	+0.00%	12/02 ↻
■ ■ Nigeria 2Y	2.065	2.065	2.065	2.065	+0.000	+0.00%	12/02 ↻
■ ■ Nigeria 4Y	7.770	7.770	7.770	7.770	+0.000	+0.00%	12/02 ↻
■ ■ Nigeria 7Y	9.893	9.893	9.893	9.893	0.000	0.00%	12/02 ↻
■ ■ Nigeria 10Y	10.427	10.427	10.427	10.427	0.000	0.00%	12/02 ↻
■ ■ Nigeria 20Y	10.007	10.007	10.007	10.007	0.000	0.00%	12/02 ↻

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Nigeria »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
■ ■ Nigeria 3M	2.802	2.802	2.802	2.802	0.000	0.00%	31/08 ↻
■ ■ Nigeria 6M	4.381	4.381	4.381	4.381	0.000	0.00%	25/08 ↻
■ ■ Nigeria 1Y	3.919	3.919	3.919	3.919	-0.001	0.00%	28/02 ↻
■ ■ Nigeria 2Y	6.517	6.517	6.517	6.517	-0.027	0.00%	28/02 ↻
■ ■ Nigeria 4Y	8.296	8.895	8.296	8.296	-0.599	-6.73%	01/03 ↻
■ ■ Nigeria 7Y	10.450	10.451	10.450	10.450	-0.001	-0.01%	01/03 ↻
■ ■ Nigeria 10Y	12.252	12.252	12.252	12.252	+0.001	+0.00%	01/03 ↻
■ ■ Nigeria 20Y	12.174	12.174	12.174	12.174	0.000	0.00%	01/03 ↻

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9.3.7. Afrique du Sud

South Africa »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 South Africa 3M	4.090	3.750	5.200	4.090	+0.340	+9.07%	03:06:12 
 South Africa 2Y	4.705	4.680	4.715	4.650	+0.025	+0.53%	04:27:48 
 South Africa 5Y	6.745	6.705	6.770	6.675	+0.040	+0.60%	04:27:44 
 South Africa 10Y	8.520	8.510	8.545	8.480	+0.010	+0.12%	04:42:32 
 Souht Africa 12Y	9.355	9.355	9.410	9.325	0.000	0.00%	04:42:32 
 South Africa 20Y	10.505	10.520	10.550	10.470	-0.015	-0.14%	04:27:45 
 South Africa 25Y	10.590	10.600	10.625	10.550	-0.010	-0.09%	04:27:46 
 South Africa 30Y	10.495	10.505	10.535	10.475	-0.010	-0.10%	04:27:46 

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South Africa »

Name ↕	Last	Prev.	High	Low	Chg. ↕	Chg. % ↕	Time ↕
 South Africa 3M	4.950	5.000	5.000	4.950	-0.050	-1.00%	02:11:17 
 South Africa 2Y	5.370	5.385	5.395	5.320	-0.015	-0.28%	02:25:14 
 South Africa 5Y	7.985	7.960	7.990	7.945	+0.025	+0.31%	02:25:14 
 South Africa 10Y	9.555	9.505	9.555	9.490	+0.050	+0.53%	02:25:15 
 Souht Africa 12Y	9.965	9.920	9.975	9.905	+0.045	+0.45%	02:25:15 
 South Africa 20Y	10.690	10.635	10.705	10.630	+0.055	+0.52%	02:25:15 
 South Africa 25Y	10.765	10.710	10.780	10.705	+0.055	+0.51%	02:25:14 
 South Africa 30Y	10.685	10.635	10.705	10.630	+0.050	+0.47%	02:25:14 

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