

FREQUENTLY ASKED QUESTIONS ABOUT MEDIUM-TERM NOTE PROGRAMS

Understanding Medium-Term Note Programs

What are “medium-term note programs”?

Medium-term note (“MTN”) programs enable companies to offer debt securities on a regular and/or continuous basis.

Traditionally, the securities issued under these programs have filled the financing gap between short-term commercial paper, which has a maturity of nine months or less, and long-term debt, which has maturities of 30 years or more. As compared to other forms of debt securities, MTNs tend to have their own type of settlement procedures and marketing methods, which are similar in some respects to those of commercial paper.

Although medium-term notes typically have maturities of between two to five years, they are not required to have medium terms. In fact, it is common for companies to issue both short-term and long-term securities under an MTN program.

Why would a company have a medium-term note program?

Like a shelf registration statement, an MTN program enables a company to sell a wide range of debt securities without having to complete the SEC’s registration or review process for each issuance. *See “How are MTN programs registered?”* In addition, an

MTN program uses a master set of disclosure documents, agreements with selling agents or dealers, and issuing and paying agency agreements to help minimize the new documentation that is needed for each offering.

Who develops MTN programs?

Historically, many MTN programs were developed by the commercial paper departments of investment banks. Securities from these programs were offered and sold on a principal or agency basis from a broker-dealer’s trading desk. The programs often were administered by a bank’s specialty group rather than through the typical relationship bankers.

What types of issuers establish MTN programs?

MTN programs typically are used by large companies that have an ongoing need for capital and that are eligible to file shelf registration statements for delayed and continuous offerings. Most large financial institutions, and many “industrial companies,” have an MTN program. A number of government-sponsored entities, such as Fannie Mae and Freddie Mac, also have MTN programs.

Are the debt securities in an MTN program ever guaranteed by an entity other than the issuer?

Yes. Particularly among financial institution issuers, it is common for an operating subsidiary (such as a bank

subsidiary of a bank holding company) to have a higher credit rating on its indebtedness than the parent corporation (such as a bank holding company). Accordingly, many MTN programs are structured so that:

- the operating subsidiary is the actual issuer of the securities, and the parent holding company is the guarantor; or
- the parent holding company is the issuer of the securities, and one or more operating subsidiaries are guarantors.

Some MTN programs use a special purpose financing subsidiary as the issuer or the guarantor. See “*When must subsidiary guarantors be named in a shelf registration statement?*” in our “Frequently Asked Questions About Shelf Offerings.”

What types of offerings are completed using MTN programs?

In light of the convenience offered by shelf registration and MTN programs, issuers use MTN programs:

- to effect small and medium-sized offerings of debt securities to investors that seek specific terms (known as “reverse inquiry” trades) (see “*What are ‘reverse inquiry’ transactions, and how do they impact the MTN market?*”);
- to effect large syndicated offerings of debt securities that might, in the absence of an MTN program, be offered through a shelf takedown;
- to offer structured notes, such as equity-linked, currency-linked, and commodity-linked securities; and

- to operate a “retail note program,” in which an issuer offers debt securities with small minimum denominations to “retail” investors.

What types of securities normally are sold through medium-term note programs?

Historically, the most common type of security issued under an MTN program is a fixed-rate, non-redeemable senior debt security. However, MTN programs typically include other types of debt securities, including floating rate, zero coupon, non-U.S. denominated, amortizing, multi-currency, subordinated, or indexed securities. Common reference rates for floating rate securities issued under MTN programs include LIBOR, EURIBOR, the prime rate, the Treasury rate, the federal funds rate and the CMS rate. Most MTN programs are rated “investment-grade” by one or more nationally recognized rating agencies.

Who sets the terms of medium-term notes?

Similar to the commercial paper market, the traditional market for MTNs is investor-driven. Dealers continuously offer MTNs within a specific maturity range, and an investor can negotiate to have the dealer meet its particular investment needs at a specific maturity level. See “*What types of offerings are completed using MTN programs?*”

Investors in MTN securities make their investment decisions based upon credit ratings, an evaluation of the issuer and its business, the maturity of the notes, and the yield on the notes.

MTN buyers include the institutional buyers of underwritten corporate debt securities. In the case of structured products and retail notes sold from an MTN program, individual investors also may be purchasers.

Are medium-term notes sold on a firm commitment basis or a best efforts basis?

It varies. The dealer's traditional obligation is to sell the MTN securities on a "best efforts" basis. However, on occasion, competitive pressures result in a dealer purchasing MTN securities as principal. In addition, large syndicated MTN offerings often are effected on a firm commitment basis. In both cases, the MTN dealer is usually regarded as an "underwriter" for Section 11 purposes.

How are MTNs "posted" and sold?

Through its selling agents, an issuer of MTNs "posts" offering rates over a range of possible maturities: for example, nine months to one year, one year to 18 months, 18 months to two years, and annually thereafter. An issuer may post rates as a yield spread over Treasury securities having the same maturity. The selling agents provide this rate information to their investor clients and to regional dealers.

Issuers are likely to lower their posted rates once they raise the desired amount of funds at a given maturity. In addition, issuers will change their offered rates as market conditions and prevailing interest rates change. Issuers may effectively withdraw from the market by suspending sales or, alternatively, by posting narrow offering spreads over the comparable Treasury yields at all of the posted maturity ranges.

When an investor expresses interest in an MTN offering, the selling agent contacts the issuer to obtain a confirmation of the terms of the transaction. Within a range, the investor may have the option of selecting the actual maturity of the notes, subject to final agreement by the issuer.

What are "reverse inquiry" transactions, and how do they impact the MTN market?

Investors often play an active role in the MTN market through the "reverse inquiry" process. An investor may seek an investment in a specified principal amount, with a specified credit rating, and a specified maturity. If a security with the desired terms is not available in the corporate bond market, the investor may be able to obtain it in the MTN market through reverse inquiry. In this case, the investor will communicate the terms of the investment it is seeking to an issuer of MTNs through the issuer's selling agent. If the issuer finds the terms of the reverse inquiry acceptable, it may agree to the transaction even if it was not posting rates at the desired maturity.

Reverse inquiry transactions play an important role in both "plain vanilla" debt issued in MTN programs and more exotic structured securities.

What is a "retail MTN" program?

Historically, some issuers would not issue MTNs except in fairly significant principal amounts, as bookkeeping and administrative costs can become disproportionately burdensome with smaller offerings. However, book-entry clearing through The Depository Trust Company (the "DTC") and advances in computer bookkeeping decreased the cost of issuing debt securities in small denominations. As a result, a variety of issuers have registered MTN programs with minimum denominations of \$1,000, or even less. Although most MTNs are still sold to institutional investors, reducing the minimum denominations has enabled issuers to reach smaller investors.

A "retail MTN program" is specifically designed to offer debt securities to the retail market, while

maintaining administrative costs to issuers at acceptable levels. In order to achieve those objectives, the process of issuing retail MTNs may differ slightly from the process of selling MTNs to institutions.

In one type of retail MTN program, an issuer will post rates weekly with retail and/or regional brokers. During the week that these rates are posted, the brokerage firms market the securities to retail investors, who place orders in the applicable minimum denominations. At the end of the week, the retail and regional brokerage firms will contact the corporate issuer and indicate the aggregate amount of orders for notes at each maturity, and the corporation will issue one series of notes at each maturity. For example, several hundred retail investors could place orders for MTNs with maturities of two and five years, but the administrative costs for the corporate issuer would reflect only two issuances from the shelf registration.

Significant U.S. arrangers for retail MTNs include Incapital (and its InterNotes program) and Merrill Lynch.

The Working Group in an MTN Program

What is the role of the arranger of an MTN program?

The arranger of an MTN program serves a variety of roles, including:

- serving as principal selling agent for the MTN securities;
- advising the issuer as to potential financing opportunities in the MTN market;
- communicating to the issuer any offers from potential investors to buy MTNs;

- advising the issuer as to the form and content of the offering documents, including the types of securities to be included;
- helping the issuer draft the offering documents and related program agreements;
- negotiating the terms of the agreements on its own behalf and on behalf of the other selling agents;
- coordinating settlement of the MTN securities with the issuer, the trustee and the paying agent; and
- making a market in the issued and outstanding securities issued under the program.

What is the role of the other selling agents in an MTN program?

The MTN program may have selling agents other than the arranger who offer the issuer's securities. Having multiple selling agents encourages competition among the selling agents to market the issuer's securities, and may lower the issuer's financing costs for securities issued under the program. In addition, having more selling agents quote prices for the MTN securities may lead to more "reverse inquiry" transactions. See "What are 'reverse inquiry' transactions, and how do they impact the MTN market?"

How are additional dealers added to an MTN program?

From time to time, additional selling agents may be added to an existing program. Most program agreements of the type discussed below include as an exhibit a form of "accession letter" for this purpose. The accession letter is a short form of agreement between the issuer and the new selling agent that makes the new

selling agent a party to the existing program agreement. In some cases, this document may be negotiated to reflect any concerns or needs of the issuer or new selling group member.

How do the selling agents conduct due diligence with respect to an MTN program?

Whether the selling agents are acting on a “best efforts” or “firm commitment basis” in connection with a takedown, they are subject to liability as “underwriters” under Section 11 of the Securities Act of 1933 (the “Securities Act”). See “*Are medium-term notes sold on a firm commitment basis or a best efforts basis?*” However, because takedowns from a program may be frequent, and often occur on short notice, the selling agents are not likely to be able to initiate and complete a full due diligence process at the time of each offering. Accordingly, it is fairly common for the selling agents on an active MTN program to conduct “ongoing due diligence” with respect to the issuer, so that their investigation is complete and up-to-date at the time of each takedown.

With respect to so-called “legal due diligence,” the issuer under an MTN program will often designate a law firm, known as “designated underwriters’ counsel,” to conduct ongoing legal due diligence, and to share its material findings with the relevant selling agents on a particular takedown. See “*Are underwriters expected to perform the same standard of due diligence for a shelf offering?*” in our “Frequently Asked Questions About Shelf Offerings.”

What is the role of regional dealers in the MTN market?

At one time, the major New York-based investment banks distributed nearly all MTN securities to investors. As the market matured, regional dealers began to play a

larger role in selling MTNs. Regional dealers receive information about MTN issuers’ offering rates from MTN selling agents. In turn, the regional dealers communicate this information to their investor clients.

When an investor buys an MTN through a regional dealer, the dealer typically receives a selling concession from the MTN selling agent. These placements through regional dealers improve efficiency in the market by broadening the potential investor base for MTNs.

What is the role of the trustee or paying agent in an MTN program?

The trustee or paying agent in an MTN program serves a variety of roles, including:

- processing payments of interest, principal and other amounts on the securities from the issuer to the investors;
- communicating notices from the issuer to the investors;
- coordinating settlement of the MTN securities with the issuer and the selling agent;
- assigning security identification codes to the MTN securities (in the case of U.S. programs, the trustee typically obtains a block of CUSIP numbers for the relevant issuer’s program and assigns them on an issue-by-issue basis);
- processing certain tax forms that may be required under the program; and
- in the case of a trustee of a series of U.S.-registered notes, acting as representative of the investors in the event of any claim for payment if a default occurs.

**Registration of Medium-Term Note Programs /
Offering Documents**

How are MTN programs registered?

MTN programs typically are registered on a shelf registration statement under Rule 415.

Issuers that are eligible to use Form S-3 or Form F-3 on a “primary” basis may file a shelf registration statement under Rule 415(a)(1)(x), permitting continuous or delayed offerings. MTN issuers not eligible to use Form S-3 or Form F-3 are limited to continuous offerings under Rule 415(a)(ix), may not wait to commence offers once the registration statement has been declared effective, and must offer the securities on a continuous basis. Accordingly, MTN programs generally are limited to larger public companies, with at least a \$75 million in public equity float. See “*What is ‘primarily eligible’?*” in our “*Frequently Asked Questions About Shelf Offerings.*”

Companies can register MTN programs on Form S-1 or Form F-1. However, this is rarely done due to the potential need to update the MTN registration statement to reflect developments in the issuer’s business and finances. See “*What are the benefits of shelf registration statements?*” in our “*Frequently Asked Questions About Shelf Offerings.*”

Are MTN programs always registered with the SEC?

No. Some MTNs are offered through bank note programs exempt from registration under Section 3(a)(2) of the Securities Act, or in Rule 144A programs in which the securities are offered exclusively to qualified institutional buyers. In the past, some issuers operated programs that were conducted as private placements in continuous Section 4(a)(2)

programs. In addition, issuers may establish Regulation S programs in which the securities are offered outside the United States, such as in the case of European Medium-Term Note Programs (“EMTNs”), Global Medium-Term Note Programs (“GMTNs”) or Australian Medium-Term Note Programs (“AMTNs”). Two or more of these types of programs may be combined, such as an EMTN program that also provides for the issuance of securities to qualified institutional buyers in the United States under Rule 144A.

Non-U.S. issuers that wish to access the debt markets in the United States without registering under the Securities Act often establish a Rule 144A program and/or a Section 3(a)(2) program (if they are banks) and the securities are guaranteed by a U.S. branch or agency, or the securities are issued by the U.S. branch or agency (see “*Frequently Asked Questions About Section 3(a)(2) Bank Note Programs.*”).

Typically, the offering circular and settlement process for non-registered MTN programs are somewhat similar to registered MTNs. The primary difference is the nature of the offerees.

What offering documents are used in an MTN program?

The issuer’s registration statement for an MTN program typically consists of:

- a “universal” shelf registration statement for debt and other securities; or
- a shelf registration statement providing only for debt securities; or
- a prospectus pertaining to the MTN program itself.

In the first two cases, after its registration statement becomes effective (or upon filing, in the case of a well-

known seasoned issuer, or “WKSI,” filing an automatically-effective shelf registration statement), the issuer will prepare and file an “MTN prospectus supplement” under Rule 424(b) that describes the securities to be issued under the MTN program and provides the names of the selling agents. See *“What is a ‘prospectus supplement?’”* in our “Frequently Asked Questions About Shelf Offerings.” Traditionally, the prospectus supplement sets forth the aggregate U.S. dollar amount of the securities that may be offered under the program. Many WKSI no longer provide that amount, because a WKSI shelf-registration statement is not required to specify the aggregate amount of securities that will be issued. See *“What are the benefits of qualifying as a well-known seasoned issuer?”* in our “Frequently Asked Questions About Shelf Offerings.”

The terms of a takedown from an MTN program are set forth in a “pricing supplement” that is filed with the SEC under Rule 424(b). The pricing supplement may be very short, especially in the case of “plain vanilla” securities. Alternatively, it may be very long, in the case of complex structured securities offered from an MTN program. See *“What is disclosed in a ‘pricing supplement’ for a MTN offering?”*

Since the SEC adopted Rule 159 in December 2005, many issuers have attempted to describe as many of the potential terms of the securities as possible in the base prospectus or the MTN prospectus supplement rather than in the pricing supplement. This disclosure strategy enables issuers to limit the information that needs to be provided to an investor at the time of pricing or in the pricing supplement. Such issuers are attempting to reduce the likelihood that an investor can claim that the information it received prior to its agreement to

purchase the securities was inadequate without the information in the pricing supplement.

Under SEC Rule 424(c), the base prospectus and the MTN prospectus supplement need not be re-filed with the SEC via EDGAR at the time of a pricing with the applicable pricing supplement if those two documents have not changed since their previous filing. However, some issuers choose to re-file those documents together with the pricing supplement in order to provide investors more convenient access to all of the relevant disclosure.

What other offering documents may be used in an MTN offering?

In addition to the base prospectus, MTN prospectus supplement, and pricing supplement, an issuer and the selling agent may use several other disclosure documents in the offering process:

- ***Preliminary and Final Term Sheets:*** Subject to the filing requirements of Rule 433 and other SEC rules relating to “free writing prospectuses,” an issuer or a selling agent may use preliminary and final term sheets to negotiate the terms of an offering with potential investors, to broadly market an offering, or to set forth the agreed-upon final terms of an offering. As per the discussion of Rule 159 above, providing a final term sheet at the time of pricing also may help bolster the position that the investor received all of the relevant required information at the time it entered into its agreement to purchase the securities. See *“What offering documents are used in an MTN program?”*

- Free Writing Prospectuses: Issuers and selling agents may use brochures, pamphlets, websites and other types of documents to market potential offerings from an MTN program.
- Product Supplements: Issuers of structured products from MTN programs often use a “product supplement” to describe the detailed terms, risk factors and tax consequences of a particular type of product to potential investors.
- Underlying Supplements: Some issuers of structured products from MTN programs use an “underlying supplement” to describe one or more equity or commodity indices that will be linked to the relevant security.
- Press Releases: Particularly in the case of a large syndicated offering, the issuer may issue a press release after pricing to describe the transaction. For a registered offering, the content of such a press release is limited by Rule 134.

How do the offering documents differ for a non-registered MTN program offered in the United States?

Because Rule 144A and Section 3(a)(2) programs are not subject to the SEC’s registration requirements, these programs do not involve the filing of a registration statement. Instead, the principal document used to describe the securities and the issuer is an “offering memorandum,” which may be called an “offering circular.” In addition to a detailed “description of the securities” section, an offering memorandum will either include a description of the issuer’s business and financial statements, or incorporate them by reference

from the issuer’s publicly-available documents in the United States or its home jurisdiction.

In addition, the issuer and the selling agents for these offerings may use a variety of term sheets to offer these securities, which are not subject to the filing requirements of Rule 433.

What additional exhibits are required in the registration statement for an MTN program?

If not otherwise filed with the registration statement, the issuer under an MTN program must also file:

- the distribution agreement with the selling agents;
- the indenture (or indentures) with the indenture trustee;
- an Exhibit 5.1 opinion as to the legality of the notes to be issued under the program;
- in the case of complex securities, an Exhibit 8.1 opinion as to the disclosure of the U.S. federal income taxes; and
- the form of the note or certificate representing the medium-term notes.

Issuers often file these documents as to the program as a whole at the time the MTN prospectus supplement is filed. However, depending upon the circumstances and the terms of the relevant offering, these documents may be filed at the time of a specific take-down. See “Is a legality opinion required to be pre-effectively filed for a shelf registration statement relating to a delayed offering?” in our “Frequently Asked Questions About Shelf Offerings.”

Establishing a Medium-Term Note Program

What documents are used to establish an MTN program?

In addition to the disclosure documents (see “Registration of Medium-Term Note Programs / Offering Documents”), the following documents are typically used to establish an MTN program:

- one or more indentures with the indenture trustee (in the case of an SEC-registered program), or paying agency agreements with the paying agent (in the case of an unregistered program);
- a distribution agreement (or “program agreement”) between the issuer and the selling agents or dealers; and
- an “administrative procedures memorandum,” which describes the exchange of information, settlement procedures, and responsibility for preparing documents among the issuer, the selling agents, the trustee or paying agent, and the applicable clearing system in order to offer, issue and close each series of securities under the MTN program.

Additional agreements for an MTN program may include:

- Calculation Agency Agreement: Under this agreement, the calculation agent, which often is the trustee or the paying agent but may also be an affiliate of the issuer, agrees to calculate the rate of interest due on floating rate notes. This type of agreement also may be used in connection with structured notes to calculate the returns payable on the note. In the case of

structured notes, a broker-dealer (usually, the arranger or one of its affiliates) is more likely to serve as calculation agent.

- Currency Exchange Rate Agency Agreement: Under this agreement, an exchange rate agent (again, often the trustee or the paying agent) converts the payments made by the issuer on foreign currency-denominated MTN notes into U.S. dollars for the benefit of U.S. investors.

In addition, at the time an MTN program is established, the issuer generally is required to furnish a variety of documents to the selling agents, as would be the case in a typical underwritten offering:

- officer certificates as to the accuracy of the disclosure documents;
- legal opinions as to the authorization of the program, the absence of misstatements in the offering documents, and similar matters; and
- a comfort letter from the issuer’s independent auditors.

Depending upon the arrangements between the issuer and the selling agents, some or all of these documents will be required to be delivered to the selling agents on a periodic basis as part of the selling agents’ ongoing due diligence process. See “*How do the selling agents conduct due diligence with respect to an MTN program?*” Some or all of these documents also may be required in connection with certain takedowns, such as large syndicated offerings.

What types of provisions are in the distribution agreement for an MTN program?

A distribution agreement (which also may be called a “program agreement” or a “sales agency agreement”) is

similar to an underwriting agreement in many ways, but is designed to provide for multiple offerings during the life of the program. Typical contents include:

- representations and warranties of the issuer as to the accuracy of the offering documents, the authorization of the program, and other matters;
- the steps to be followed if the MTN prospectus supplement is amended or the size of the program is increased;
- the steps to be followed, and the approvals required, if any free writing prospectuses are to be used;
- requirements as to the conditions precedent, documents, and deliverables for establishing the program and/or conducting takedowns;
- requirements as to any subsequent deliverables from the issuer to the selling agents, such as periodic comfort opinions, legal opinions and officer certificates;
- provisions allocating program expenses among the issuer and the selling agents;
- indemnification of the selling agents for liabilities under the securities laws;
- provisions relating to the determination of the selling agents' compensation, or a schedule of commissions; and
- provisions for adding additional selling agents, whether for the duration of the program or for a specific offering.

The representations and warranties under the distribution agreement typically are deemed to be made

both at the time of the signing of the agreement, at the time of each takedown and at each time that the issuer's registration statement containing the prospectus used for the MTN program, or the offering circular for an unregistered MTN program, is supplemented or amended (generally, by means of the incorporation by reference of a Securities Exchange Act of 1934 report such as a Form 10-K or 10-Q).

What kind of bond indenture is used for an MTN program?

In the case of a registered program, the indenture or indentures for an MTN program must be qualified under the Trust Indenture Act of 1939. The indenture may or may not be designed for specific use with an MTN program. The indenture is usually open-ended, and does not limit the amount of debt securities that can be issued. See "When should an indenture be qualified under the Trust Indenture Act in connection with a delayed offering of debt securities?" in our "Frequently Asked Questions About Shelf Offerings."

The indenture may have restrictive covenants, affirmative covenants and events of default. These provisions will vary depending upon the nature of the issuer.

What forms of notes are used for an offering under an MTN program?

The notes issued under an MTN program typically are in global form, with a single master certificate representing each series. In U.S. programs, an investor's interest in the global note is held through a direct or indirect participant in the DTC system.

In a typical U.S. offering of debt securities that does not involve an MTN program, the form of note used to represent the securities is customized specifically for

that offering. However, in the case of an MTN offering, it may be an unnecessary cost to create a customized form of note for each offering. Accordingly, an MTN program often will involve one or more forms of notes that consist of two key parts:

- detailed provisions that could apply to many different types of notes (fixed and floating; the calculation of different types of base rates); and
- a short leading page or cover page for the note that indicates (through “check boxes” and blank lines) which of those detailed terms are applicable to the specific issuance.

Although notes of this kind may be rather lengthy, this formulation enables the issuer and/or the trustee to create the forms of notes for actual takedowns more efficiently. Of course, in the case of more complex securities, such as structured notes, more customized forms of global notes often must be created.

Some MTN issuers use a “master note” for their MTN programs. When this format is used, a single global security will represent all of the notes issued from the program. That global security will incorporate by reference the relevant terms described in the pricing supplement and prospectus. At the time of each issuance, each pricing supplement may be attached to the master note, or listed in an exhibit to the note. This format may help to reduce the amount of documentation needed for each offering.

Are MTN programs rated by rating agencies?

The issuer’s credit rating plays an important part of an investor’s decision to purchase MTNs. Accordingly, an issuer of MTNs usually will have either credit ratings for its indebtedness generally, or credit ratings that are specific to the MTN program. Most MTN programs

carry an investment grade rating. The issuer will deliver copies of the applicable ratings letters to the arranger, and generally is required to inform the selling agents of any changes in its ratings. An investment grade rating for an MTN program will also help facilitate an exemption from a FINRA filing if an agent on the program is an affiliate of the issuer. See “*Are any filings with FINRA required under the Corporate Financing Rule?*” in “*Frequently Asked Questions About Section 3(a)(2) Bank Note Programs.*”

Effecting an MTN Offering

How complicated is a takedown from a MTN program?

A takedown from an MTN program can be very simple. Each takedown only requires a few matters to be addressed, including:

- agreeing upon the terms of the takedown (frequently done orally, with written confirmation);
- in certain cases, such as a large syndicated takedown from an MTN program, delivering an updated comfort letter, legal opinions and one or more officers’ certificate to the selling agents;
- delivering the base prospectus, MTN prospectus supplement and pricing supplement to investors (which may occur via “access equals delivery” under SEC Rule 172);
- completing a note, either in global or certificated form, which is done by the trustee or issuing and paying agent upon the issuer’s

instructions (see “What forms of notes are used for an offering under an MTN program?”); and

- filing a pricing supplement under Rule 424 with the SEC.

What is disclosed in a “pricing supplement” for a MTN offering?

For a simple debt security, very little information is required in the pricing supplement. The pricing supplement will include the final terms of the offering, such as the:

- title of the securities;
- issue date;
- maturity date;
- interest rate;
- redemption dates, if any;
- underwriter or selling agent;
- selling agents’ compensation for the offering; and
- the legal opinion language discussed on the following page.

How do MTN securities settle and clear?

MTN offerings settle and clear in the United States through the issuance of securities in global form. Beneficial interests in these global notes are held by direct and indirect participants of the DTC. When an MTN is issued under the book-entry system, an agent bank for the issuer uses a computer link with the DTC to enter the descriptive information and settlement details of the offering. The selling agent receives a copy of the computer record from the DTC, and the investor

receives a trade confirmation from the selling agent and periodic ownership statements.

Secondary market trades also are recorded with computer entries. Under the book-entry system, an issuer of MTNs, through the trustee or paying agent, makes a single wire transfer to the DTC that covers all interest payments on each interest payment date, and only one transfer of funds on the maturity date to the DTC.

This system differs from a “paper certificate” system, in which the issuer must make separate payments to each securityholder. In addition to reducing the cost of securities issuances, the book-entry system reduces the likelihood of delayed delivery because of logistical problems, and reduces the chances of failed trades arising from paperwork errors.

How do issuers satisfy their obligations to file legal opinions for an MTN offering?

In 2011, the SEC issued its Staff Bulletin No. 19, which reminded issuers of their obligations to file an “Exhibit 5.1” legal opinion for each offering of securities. For debt offerings, this opinion typically provides that the notes are “binding obligations of the registrant.” In many shelf registrations, this opinion is filed by (a) filing an unqualified opinion as to all debt offerings as an exhibit to the shelf registration statement or (b) filing a Form 8-K (or Form 6-K) prior to the settlement of the offering which includes the unqualified opinion as an exhibit.

For an MTN program, filing an unqualified opinion at the commencement of the program is often not necessarily feasible—the terms of many or most offerings will not be known at that time. On the other hand, filing an unqualified opinion in connection with

each offering under the program can be a cumbersome process, and doing so can fill the issuer's set of EDGAR filings with many documents that are not likely to be useful for most investors.

Accordingly, in Staff Bulletin No. 19, the SEC recognized the approach of a "forward looking opinion." In this mechanism, an issuer will file with the shelf registration statement a form of legal opinion, together with consent from counsel to the filing of that opinion and the naming of counsel in the relevant pricing supplements. That form of opinion will include the relevant opinion qualifications, and the legal opinion language that will be included in the final pricing supplement. The final pricing supplement for the offering will then include the relevant opinion language, after counsel has reviewed the relevant transaction documents. The combination of the forward-looking opinion and the final pricing supplement's opinion language is deemed to satisfy the SEC's requirement for an unqualified opinion.

Staff Bulletin No. 19 also includes guidance with respect to required "Exhibit 8.1" tax opinions in connection with shelf offerings and MTN programs.

Source: Staff Bulletin No. 19 may be found on the SEC's website at:

<http://www.sec.gov/interps/legal/cfs19.htm>.

Review of MTN Programs by FINRA

Are the arrangements with the selling agents in an MTN program subject to review by FINRA?

It depends. Many MTN programs involve investment grade debt securities issued from shelf-registration statements by issuers with a public equity float of more

than \$300 million. These programs are not subject to review by the Financial Industry Regulatory Authority, or FINRA. See *"When is a shelf offering exempt from FINRA filing under the Corporate Financing Rule?"* in our *"Frequently Asked Questions About Shelf Offerings."*

However, in the case of an MTN program operated by a financial institution, in which one or more of its broker-dealer affiliates serves as a selling agent, the underwriting arrangements must be reviewed by FINRA under FINRA's "conflict of interest" rules. Since many of these issuers are well-known seasoned issuers, FINRA often will issue a "no objections" letter with respect to the underwriting arrangements with minimal or no review. In 2009, FINRA created an additional exemption from filing in these situations, where "prominent disclosure" is made in the applicable offering documents as to the nature of the conflict of interest and the securities to be issued are either investment grade rated or form part of the same series of notes of the issuer and have equal rights and obligations as the issuer's investment grade rated securities.

By Lloyd S. Harmetz, Partner,
Ze'ev D. Eiger, Partner, and
Bradley Berman, Of Counsel,
Morrison & Foerster LLP

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