

New Global Note Structure

for international bearer debt securities
issued through the ICSDs

Frequently asked questions (FAQ)

version 8

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International
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Services Association



euroclear

clearstream | DEUTSCHE BÖRSE
GROUP

Changes to the previous version

This table highlights the changes to version 7 of the FAQ, which was published on 16 October 2006

| Version | Questions | Changes |
|-----------------------------|------------------|--|
| Version 5 • 7 July 2006 | 1.3 | Revision showing date as of which NGN form will be mandatory |
| Version 5 • 7 July 2006 | 2.1 | Revision showing date as of which NGN form will be mandatory |
| Version 6 • 30 August 2006 | 5.9 | Answer updated |
| Version 7 • 16 October 2006 | 3.2 | Answer updated |
| Version 8 • January 2007 | 3.3 | Answer updated |
| Version 8 • January 2007 | 3.5 | New question |

1. Generic background

1.1 Why has a new structure been introduced for global form bearer debt securities held with Euroclear Bank and Clearstream Banking (the 'ICSDs')?

Following a recommendation by the Eurosystem concerning the custody structure of international debt securities, the ICSDs worked with market participants to create a new structure (the New Global Note or NGN), for the issuance, processing and safekeeping of international global form bearer debt securities. The ICSDs serve as the place of primary deposit for securities issued in NGN form (i.e., for securities bearing an ISIN code with the prefix 'XS').

The NGN structure was launched on 30 June 2006 and will become mandatory for newly issued international bearer debt securities to be recognised as eligible collateral for Eurosystem monetary policy and intraday credit operations as of 1 January 2007.

1.2 What are the fundamental differences between a Classical Global Note (CGN) and an NGN?

The CGN structure is a deposit structure where the securities are represented by a bearer or registered form Global Note that is deposited with a Common Depository on behalf of the two ICSDs. The Common Depository provides safekeeping and asset servicing for such securities.

The characteristics of the NGN structure are the same as the CGN structure, except that:

- the NGN only applies to debt securities in bearer form;
- the ICSDs' records, rather than physical annotations on the global note itself, are used to determine the outstanding amount of the issue;
- the NGN is safekept by a Common Safekeeper (CSK) and serviced by a Common Service Provider (CSP); and
- NGNs that are transmitted electronically to the CSK must be effectuated by the CSK pursuant to an authorisation from the issuer (see question 5.3).

The NGN structure only applies to securities issued through the ICSDs (i.e. for which the ICSDs are the place of primary deposit), not to securities issued through CSDs.

1.3 When will the new structure be put in place?

The new structure has been available since 30 June 2006. As from that date, issuers have been able to issue new international bearer debt securities in NGN form and deposit NGNs with a CSK.

The Eurosystem has provided a positive assessment of the NGN structure and confirmed its mandatory use for global bearer debt issued through the ICSDs as of 1 January 2007 (see also questions 1.1 and 2.1).

1.4 Does the CGN structure continue to exist in parallel with the NGN structure?

Yes. Since the launch of the new structure, the CGN structure and the NGN structure co-exist. Issuers can choose between the two structures.

1.5 Who supports the implementation of the NGN structure?

The NGN structure was put in place as a result of a market initiative undertaken by leading entities in the international debt securities market, as organised into:

- a Working Group, which supervised the effective implementation of the project and oversaw project deliverables. The Working Group was made up of the ICSDs, ICMA and leading agent banks; and
- a Market Advisory Group, which provided strategic guidance to the Working Group on market feedback and communication of the proposed changes to the market, and ensures high-level monitoring of the project. The Market Advisory group was made up of issuers, lead managers, the ICSDs, ICMA and leading agent banks; representatives from the European Investment Bank, the European Central Bank (ECB) and the Belgian and Luxembourg national central banks attended as observers.

2. Eurosystem collateral eligibility

2.1 What impacts does the NGN structure have on the eligibility of securities as collateral for Eurosystem credit and monetary operations?

As of 1 January 2007, all newly issued global bearer form securities with the ICSDs as place of primary deposit will have to be issued in NGN form and deposited with an ICSD CSK (see question 2.2) in order to be eligible as collateral for Eurosystem operations.

All securities issued in CGN form with the ICSDs as place of primary deposit prior to 1 January 2007 will continue to be eligible as collateral for Eurosystem operations after 31 December 2006 (grandfathering), provided they meet the collateral eligibility criteria (see question 2.2). Such securities will continue to be held and serviced by the Common Depositary.

Bearer form securities issued in CGN form with the ICSDs as place of primary deposit after 31 December 2006 will no longer be eligible, except for fungible securities issued under the same ISIN code as securities issued before 31 December 2006 (see question 5.9).

All actual determinations of eligibility are, and will continue to be, made by the Eurosystem and its members. The above information is based on our currently available information and remains subject to change.

2.2 Have the Eurosystem collateral eligibility criteria changed with the new structure?

The current Eurosystem collateral eligibility criteria are, and will continue to be, maintained by the Eurosystem. These criteria can be consulted on the ECB website (collateral eligibility section) at www.ecb.int/paym/coll/assets/html/index.en.html

In addition, global bearer form securities with the ICSDs as place of primary deposit issued after 31 December 2006 will have to comply with two additional criteria. Such international bearer debt securities must be:

- issued in NGN form; and
- deposited with a CSK that is one of the two ICSDs.

Securities in NGN form can be deposited with a commercial bank CSK or an ICSD CSK, but only NGNs that are deposited with the latter will be eligible as collateral for Eurosystem operations. See question 5.1 for more information on CSKs

2.3 What about the eligibility of securities in registered global note form or in definitive bearer (physical) form?

The Eurosystem will maintain the eligibility of CGN securities in registered form as well as for securities issued in definitive bearer form held with the ICSDs.

2.4 Where can I find information on Eurosystem eligible securities and collateral eligibility criteria ?

The list of Eurosystem-eligible securities, as well as collateral eligibility criteria are available on the ECB website at <http://www.ecb.int/paym/coll/assets/html/index.en.html>

3. Impact on issuers

3.1 Who can decide whether to issue in NGN or CGN form?

The issuer (or its agent) has the freedom to choose the form of the international bearer debt securities (i.e. either NGN or CGN).

3.2 What instruments can be issued in NGN form?

Issuers can choose the NGN structure for international bearer debt securities to be deposited with the ICSDs. The NGN form can be used for short-, medium- and long-term debt securities.

The NGN structure cannot be used for registered securities, as the NGN uses the records of the ICSDs as the official records of the issue outstanding amount.

3.3 Should STEP-labelled securities be issued in NGN form?

The ECB indicated in a press release (dated 15 September 2006) that the STEP market will be accepted as a non-regulated market for collateral purposes in Eurosystem credit operations, as soon as the STEP statistics on yields are published on the ECB's website.

In order to be eligible as Eurosystem collateral, STEP-labelled securities will have to comply with the ECB's collateral eligibility criteria (see question 2.1 and 2.2). In particular, such securities primarily deposited with Euroclear Bank and Clearstream must be:

- issued in NGN form; and
- deposited with a CSK that is one of the two ICSDs.

The issuance and deposit process for STEP-labelled securities in NGN form is similar to the process used for non-syndicated MTN in NGN form as referred in the *New Issues Procedures for international bearer debt securities issued in NGN form through the ICSDs* document available on the ICSDs, ICMA and ICMSA websites. Please see question 3.5 for the creation of ISIN codes via EPIM.

Please refer to question 4.7 for further details on the mandatory language to include in the legal documentation. For STEP-labelled issues, the language as suggested in the NGN legal pack can be incorporated where appropriate.

3.4 Will NGNs be denominated only in euro?

Securities issued in NGN form can be denominated in any currency. However, as the primary objective of the NGN structure is to maintain the eligibility of securities as collateral for Eurosystem operations, the ICSDs expect that the majority of securities issued in NGN form will, in the beginning, be denominated in euro.

3.5 Can I use EPIM to allocate an ISIN code in NGN form?

Programme foresees issuance in NGN form only

Dealers and Issuing and Paying Agents (IPA) should continue to use the European Pre-Issuance Messaging system (EPIM) for all drawdowns, provided:

- the programme documentation is updated to specify that all international securities issued through the ICSDs under the programme will be issued in NGN form,
- the programme documentation indicates that euro-denominated securities are to be held in a manner that would allow Eurosystem eligibility; and
- for such securities, an ICSD CSK election form is completed at the programme level.

Programme foresees issuance in NGN and CGN form (mixed programme)

Dealers and/or IPAs:

- should request the allocation of ISIN codes for CGN securities via EPIM; and
- must request the allocation of all ISIN codes for NGN securities issued under the programme via telephone and specify whether the security is to be held in a manner that would allow Eurosystem eligibility.

The IPA must in addition ensure a written confirmation is sent to the ICSDs with the specific terms of the security after the ISIN allocation before or at the latest on issue date.

It is expected that in the course of 2007, the EPIM system will be upgraded to support automated ISIN allocation and dissemination for both forms of securities (CGN and NGN) under a single programme.

3.6 Does the new structure involve any additional costs for the issuer community?

Implementation of the NGN structure does not change any of the current market fundamentals. Additional costs to the issuer community are expected to be limited to those costs related to the adaptation of some of the issuance documentation.

4. Legal questions

4.1 What new requirements are placed on the issuer and its agents under the new structure?

The issuer is required to use a new model form of global note (NGN).
At issuance the issuer should:

- include appropriate wording to reflect the NGN structure in new issue documentation, as well as other documentation (e.g. agency agreements); and
- if applicable, authorise the CSK to effectuate the NGN (see question 5.3 for a description of effectuation); and
- sign an Issuer-ICSDs Agreement (in the form set forth in the NGN Legal Pack) requesting that a security be made eligible for settlement. In addition, this agreement sets out the obligations of the parties in relation to the maintenance of the issue outstanding amount by the ICSDs.
This agreement must be provided once for each issuer for each programme allowing issuance of securities in NGN form, and separately for each stand-alone issue represented by an NGN.

The legal documentation requirements are outlined in the NGN Legal Pack. Issuers should check with their legal advisers as to whether other documents (e.g. base prospectus) might need to be amended.

4.2 Was a legal analysis on the validity and enforceability of the NGN performed?

Yes. The Working Group conducted an extensive feasibility study on the NGN structure. The ICSDs do not anticipate that there would be difficulties with this form from a legal standpoint in any major jurisdiction.

In addition, the ICSDs will ask the first issuer of NGN securities in each applicable jurisdiction to submit a copy of the usual validity and enforceability opinion prepared by their counsel prior to the acceptance of their security with the ICSDs. There are no special requirements for these opinions and the ICSDs are not required to be addressees of such opinions.

An exhaustive list of jurisdictions for which such opinions have been received is available on the website of each ICSD.

4.3 Is there any new or additional risk for issuers in the NGN structure, more particularly in relation to payments made to the ICSDs for the benefit of investors, that is not in existence in the classic global note (CGN) structure?

No. Under the terms of the NGN, payments made by the issuer in respect of amounts due under the notes will discharge the issuer's obligations in respect thereof. Upon payment, the issuer will procure that the payment be recorded in the records of the ICSDs, but the terms of the NGN state that any failure to make such entries shall not affect the discharge of the issuer of its payment obligation.

4.4 Will the NGN be considered to be a bearer form security for US tax purposes?

Each issuer should check with its own US tax counsel with respect to US tax issues. However, the NGN form has been reviewed by certain US tax counsel and they do not expect that the US tax analysis for the NGN would differ from the analysis applied to CGN form.

4.5 Are NGNs exchangeable into definitive bearer certificates?

Yes. Like the CGN certificate, securities in NGN form may be exchangeable into definitive bearer certificates as set forth in their terms upon the occurrence of a relevant exchange event, which typically includes events of default or unavailability of the ICSDs but could also include an exchange at the request of a holder.

4.6 Why do the Final Terms refer to the intention for the security to be held in a manner which would allow Eurosystem eligibility?

Under the Eurosystem requirements, securities in NGN form must be physically safekept by one of the ICSDs. It is therefore important that the issue documentation specifies whether Eurosystem eligibility is intended for the security in order for the ICSDs to determine whether the NGN certificate must be deposited with one of them or can be deposited with a commercial bank acting as CSK (typically the same bank acting as CSP) (for more information see question 5.7).

If the intention is not indicated, the NGN will be deposited with a commercial bank CSK. As a result, the security will not be recognised as Eurosystem eligible collateral even if it meets other Eurosystem eligibility criteria.

4.7 Are issuers required to use the specific forms for their NGN (and other documents) as set forth in the Legal Pack?

No. The forms of document in the Legal Pack (refer to websites as per question 8.1) are based on Allen & Overy LLP forms for issues governed by English law. They are included for illustrative purposes only with a view to identifying the changes likely to be necessary. It is recognised that the forms used by other firms may be significantly different. Accordingly, each issuer and its counsel will need to review its own forms to determine whether and to what extent changes are necessary to allow for the use of NGNs in stand-alone or programme transactions.

However, in order for securities to be recognised as issued in the NGN form by the ICSDs, the global note must include a statement indicating that the nominal amount of the global note shall be the aggregate amount from time to time entered in the records of both the ICSDs. If the NGN is to be effectuated by an ICSD as CSK, it also must include language indicating that the global note shall not become valid or enforceable for any purpose unless and until it has been effectuated by the entity appointed as common safekeeper by the ICSDs.

In addition, the forms of effectuation authorisation and Issuer-ICSDs Agreement included in the Legal Pack should not be altered or modified except where such forms provide for modification by issuers.

4.8 Can an issuer that wishes to issue only NGN securities update its programme documentation to only provide for this option?

Yes, although the issuer should carefully consider whether it is likely to want to issue securities at any point in the future for which the NGN structure would not be appropriate (for example, in registered form or cleared through a clearing system other than one of the ICSDs).

5. Impacts on issuance, safekeeping and asset servicing of securities

5.1 Who will service the NGN?

NGNs are serviced by the following two new types of agents appointed jointly by the ICSDs:

- a CSP, which is in charge of providing asset services to the ICSDs; and
- a CSK, which is in charge of safekeeping the NGN throughout its life.

The list of agents is available from each ICSD.

5.2 What is the impact of the new structure on the issuance process?

The issuance and distribution process for securities in NGN form is similar to the issuance and distribution process for CGNs. However, the deposit of a new security in NGN form requires two additional actions before the securities can be credited to the ICSDs' records and distributed to investors:

- NGN deposit and effectuation: the issuer or its agent must deposit the NGN certificate with the CSK, which confirms receipt and effectuation (if applicable - see question 5.3 on effectuation). For securities expected to meet Eurosystem eligibility criteria, the CSK must be one of the ICSDs; and
- issue outstanding amount (IOA) mark-up: the issuer agent must confirm the initial amount to be credited on the ICSDs' books to the ICSDs (via the CSP). In addition, the new structure supports electronic transmission of the NGNs to the CSK via secured communication means prior to distribution of the new issue.

When electronic transmission is used, the issuer or its agent must provide the CSK with an effectuation authorisation (see question 5.3).

5.3 What is the effectuation of the NGN?

Effectuation is the final act of physically signing the NGN to make it a valid security. The effectuation process applies to securities sent electronically to the CSK by the lead manager, the issuer, or its agent or legal counsel. In such cases, the issuer uses an effectuation authorisation to authorise the CSK to sign the NGN in order to make it a valid security.

5.4 Can a NGN governed by German law be validly issued when effectuated?

Yes, according to our legal advisers NGNs will be validly issued when effectuated and held by the ICSDs provided that at some stage during their issuance process they bear an original signature of the issuer. Issuers should seek separate advice from their legal advisers to confirm this position.

5.5 What safeguards have been established to ensure that the issue outstanding amount (IOA) as recorded in the books of the ICSDs is a true and accurate reflection of issuer indebtedness?

The IOA portion held by each ICSD is reconciled regularly (daily for securities for which the IOA has been modified and monthly for all securities).

This reconciliation takes place between each ICSD and the issuer or its agent (via the CSP). Specific obligations regarding the maintenance of the IOA are included in the Issuer-ICSDs Agreement.

In addition, the ICSDs have agreed to a contractual commitment in the Issuer-ICSDs Agreement to update their records to reflect the discharge of the issuer's obligations with respect to the securities in NGN form upon the receipt of a redemption payment and an instruction to mark-down (i.e. decrease) the issue outstanding amount.

5.6 How has the role of the Common Depositary changed?

The Common Depositary continues to perform the same functions as in the past for securities in CGN form. Safekeeping for securities in NGN form is performed by a CSK, and asset servicing is provided by a CSP (see question 5.1).

5.7 How is the determination made as to which party will act as the CSK for any particular issue?

The CSK is appointed by the ICSDs. In accordance with the ICSDs' mandate allocation guidelines, the CSK is:

- Clearstream Banking Luxembourg or Euroclear Bank for securities that issuers wish to make potentially eligible as collateral for Eurosystem monetary policy or intra-day credit operations; or
- one of the CSK banks in the ICSDs' network of agents for all other securities issued in NGN form, following the allocation guidelines applied for the CSP mandate (see below).

5.8 How is the determination made as to which party will act as the CSP for any particular issue?

The CSP is appointed by the ICSDs in accordance with their current mandate allocation guidelines. The CSP is the entity acting as (in order of priority):

- issuing and paying agent, principal paying agent or fiscal agent;
- conversion agent, exchange agent; or
- any other issuer agent function.

If none of the above criteria are met, the CSP is selected:

- based on the preference of the issuing and paying agent or lead manager; or
- at the discretion of the ICSDs, if no preference is expressed.

5.9 What is the impact on new tranches of securities?

The introduction of the NGN structure does not impact the current fungibility principles for new securities: new tranches of securities may bear the same ISIN code as the original securities, provided they are fungible with the original securities and issued in the same legal form (CGN or NGN). If a new tranche is represented by a temporary certificate and ISIN (e.g. for compliance with TEFRA rules), then it may have a legal form different from the original securities until fungibility.

6. Standard Market Protocol

6.1 What is the Standard Market Protocol (SMP)?

This document, to be published by the ICMSA and the ICMA, will provide guidance on best market practice for issuers, their agents and all market professionals involved in the servicing of international debt securities issued in CGN and NGN form.

7. Impacts on ICSD customers

7.1 Are the services provided by the ICSDs to their customers holding securities in NGN form under the new structure any different compared to what happens under the CGN structure?

Except for a few minor changes, the services provided by the ICSDs to customers holding securities in NGN form will be unchanged under the NGN structure as compared with today.

7.2 Will ICSD customers be required to make any changes to their systems to accommodate the new structure?

It is not expected that ICSD customers will need to make any changes to their systems to accommodate the new structure.

7.3 Will the new structure involve any additional costs for ICSD customers?

It is not anticipated that the new structure will involve any additional costs for ICSD customers.

8. Additional information

8.1 Where can I find additional information on the NGN structure?

Documents, e.g. the NGN General Information Brochure and the NGN Legal Pack (including NGN templates), as well as additional information on the NGN structure, can be found on:

- the Euroclear website www.euroclear.com
- the Clearstream website www.clearstream.com
- the ICMA website www.icma-group.org
- the ICMSA website www.capmktstserv.com

If you require additional information, please contact the ICSDs at the following numbers:

- Euroclear Bank + 32 2 224 4527
- Clearstream Banking + 352 243 32119

or send an e-mail to one of the following addresses:

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