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# Green bonds – building optionality for issuers into programme documentation

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Since their introduction in 2007, green bonds issuances have exponentially increased in volume and have become a necessary product for bond issuers to offer their investor base. In view of this, bond issuers are increasingly building optionality into existing MTN and GMTN Programme documentation to enable them to issue green bonds and meet investor demands.

## Market Guidelines, Rules and Regulations

### Green characteristics

There is no market standard definition of a "green bond" however, there are a few internationally accepted sets of criteria that set out key characteristics of what makes a bond "green" as opposed to a conventional bond. Chief among them are the Green Bond Principles ("GBP"). The GBP were developed by the International Capital Markets Association ("ICMA") in 2014, as updated in June 2017, in order to strengthen the integrity of the green bond market, which focuses on financing environmentally friendly and low carbon assets. The GBP are voluntary market guidelines that set out transparency, reporting and disclosure recommendations. The GBP: (i) provide issuers with guidance on the key components involved in launching a green bond; (ii) aid investors by ensuring availability of information necessary to evaluate the environmental impact of their green bond investments; and (iii) assist dealers/managers by standardising disclosure to facilitate transaction comparisons. Disclosure of "green" Use of Proceeds is the cornerstone of a green bond however the GBP do not have prescriptive formula for it. The "Use of Proceeds" section of a typical green bond prospectus[1] is flexible enough to describe the project the issuer desires to use the proceeds for while enabling investors to assess whether the level of "green use" is compatible with their investment needs.

### Benefits of going green

Whether an issuer opts to use the GBP as the basis of the green bond issuances or builds a more bespoke framework, their first foray into the green bond market is likely to be off their existing MTN programme, in particular in case of frequent issuers.

There are a number of advantages to building green bond capability into an MTN or GMTN Programme. From the issuer's perspective, a green bond results in the diversification of its investor pool (e.g., greater numbers of asset managers and insurance or pension funds, regional shift of investor groups), and contributes to "green" investor relations and corporate social responsibility initiatives. From a dealer/manager's perspective, green bonds can be marketed as premium products to their clients as many investors are increasingly required to invest in social and sustainable products in order to meet their social and sustainability guidelines

1 Prospectus is used as a general term to represent offering memorandum and other debt securities offering documentation and the terms can be used interchangeably in this regard.

or criteria in their investment strategies. Hence, green bonds are considered as an asset class of its own. For investors, it provides much needed supply to the market.

## "Green" Terms in Programme Documentation

As a practical matter an issuer will designate a "green" Use of Proceeds in the EMTN or GMTN base prospectus or other disclosure documentation and then provide summarised information about: (i) the "green" (eligible) projects it expects to finance, (ii) any reporting obligations it may have and (iii) the provision of second party opinions (if any). These rather simple amendments and others outlined below are the key changes that can be made to existing EMTN and GMTN Programme documentation in order to build in optionality for issuers to issue green bonds.

### Key "green" terms

The GBP provide recommendations on process and disclosure that issuers, investors, underwriters, placement agents, rating agencies and other market participants may use to understand the characteristics of a particular green bond. The key sections in an EMTN and GMTN base prospectus or similar disclosure document are:

- the "Use of Proceeds" section;
- the applicable "Final Terms" or "Pricing Supplement"; and
- the "Risk Factors" section.

When updating an existing MTN or GMTN base prospectus, the following few changes could enable issuers to raise funds for new and existing projects with environmental benefits through green bonds. Alternatively, issuers could include some of these in a supplemental or drawdown Prospectus to issue green bonds without completing a programme update:

- **Use of Proceeds** is universally included in green bond documentation and remains the single most consistent identifier for a green bond. An issuer wishing to issue green bonds using its existing EMTN or GMTN programme documentation could include wording similar to the following in the "Use of Proceeds" section of its EMTN or GMTN base prospectus:
  - *The net proceeds from each issue of Notes will be used by the issuer for general corporate purposes, unless otherwise specified in the applicable Final Terms or, in the case of Exempt Notes, the applicable Pricing Supplement.*
  - *In particular, if so specified in the applicable Final Terms or, in the case of Exempt Notes, the applicable Pricing Supplement, the Issuer will apply the net proceeds from an offer of Notes specifically for projects and activities that promote climate-friendly and other environmental or sustainable purposes ("Green Projects")*[2]*.*
- **"Green" Risk Factors** are often included in an EMTN or GMTN base prospectus in order to describe the specific "green" risks which come along with an investment in green bonds. Such risks need to be set out on base prospectus level and cannot be added in the relevant Final Terms. If risk factors are not included in a current EMTN or GMTN base prospectus they can be introduced by way of supplement to the relevant base prospectus. Once the Prospectus Regulation[3] becomes directly applicable (i.e. post 21 July 2019), risk factors will be categorised according to type of risk and listed in order of materiality. In addition, the assessment of the risk materialising (low, medium or high) may be disclosed but unlikely that issuers choose to do so due to an increase of liability. An issuer would therefore have to consider the specific risks related to issuing a green bond in comparison to more general risks about its business and the environment in which it operates and categorise them accordingly.

[2] This is a generic example only, specific terms may vary.

[3] Regulation (EU) 2017/1129.

**Final Terms or Pricing Supplement**: issuers can include the following in "Part B" of their Final Terms or Pricing Supplements to facilitate green bond issues:

| Reasons for the offer | |
|---|---|
| **Reasons for the offer:** | [●] / [Not Applicable]<br><br>(See "Use of Proceeds" wording in the Prospectus – if reasons for the offer are different from general corporate purposes, include those reasons here, including if the Issuer intends to apply the net proceeds for Green Projects.) |

This allows the Issuer to outline details of the specific eligible project or structure that the proceeds of the green bond issuance will be used for in the applicable Final Terms or Pricing Supplement. Although many stock exchanges accept such amendments to the form of Final Terms and/or Pricing Supplement, some may not. In these cases, we would work together with the listing venue team to find alternative solutions that work for that particular exchange and still allow issuer to incorporate relevant Use of Proceeds disclosure in the offering document.

- **Other potential amendments**: issuers can include further features in the EMTN or GMTN base prospectus such as including details of the process for project evaluation and selection, management of proceeds and reporting in relation to the proceeds of any green bond issuances and appropriate disclaimers. These are not mandatory but may help raise interest from certain "dark green" investors.

## Key "green" terms – Contractual Documents

### Undertaking or representation on Use of Proceeds

"Green" provisions are not typically included in contractual documents, although the inclusion of an undertaking regarding Use of Proceeds in the Dealer and/or Subscription Agreement is sometimes requested by underwriters.

However, we do see a representation on the use of proceeds in the context of sanction representations, e.g. "The Issuer will only use the proceeds of the issue of the Notes, or lend, contribute or otherwise make available such proceeds to any person or entity for the purposes as disclosed in the Prospectus."

Issuers should ensure that such an undertaking or representation does not create an obligation of liability for ongoing monitoring or enforcement.

### "Green" undertakings

Issuers are reluctant to include "green" undertakings as a breach may trigger an event of default under bond documentation, which could result in cross-defaults of other agreements. However, in green project bonds and "green" structured finance there has been a willingness to include such undertakings. There does not currently appear to be much demand from investors to move toward an undertaking–style approach but this may change in a changing market environment.

### Prospectus liability

In many jurisdictions, prospectus liability (either criminal or civil) may be imposed if there is a material inaccuracy in, or omission of information from, the prospectus or other offering document, which causes investors to suffer loss as a result. If the issuer discloses in the "Use of Proceeds" section, for example, that it would use the proceeds of the issuance for certain eligible projects, and did not, in some jurisdictions prospectus liability may arise if the result of such incorrect or incomplete disclosure is a loss. The same may apply if the disclosure in the prospectus or offering document sets out a mechanism to credit the proceeds of the green bond into a specific sub-account or otherwise track them by a formal internal process.

## Green bond listing venues

There are a growing number of dedicated green bond markets and indices that exist to promote "green" finance, such as the green bond segment of the London Stock Exchange, the Frankfurt Stock Exchange, the Luxembourg Green Exchange, the Shanghai Stock Exchange Social Responsibility Index and the FTSE4GOOD Index Series. Green bonds must comply with the listing rules of the dedicated green bond segment of the relevant Stock Exchange on which they are listed. These rules or criteria apply in addition to conventional regulatory listing requirements or rules for bonds and include, inter alia, disclosure on the Use of Proceeds, external review and ex-post reporting. There are a number of green bond exchanges that have similar listing requirements for green bonds.

## Market Precedents

### Example "green" Programmes

We have advised several issuers on updating their Programme documentation in order to allow them to issue green bonds. Here is a sample of different approaches that issuers can take. However, there are many options available to make MTN programmes green bond ready.

**Investment Grade Financial Institutions**: Svenksa Handelsbanken AB (publ) completed their Programme update in June 2017. Although the bank amended its 'Use of Proceeds' wording and Final Terms/Pricing Supplement in its updated Prospectus, it opted to omit a green bonds risk factor, preferring instead to issue a Supplementary Prospectus for any future green bond issuance.

Crédit Agricole Corporate & Investment Bank ("CACIB") issued Premium Green PLC Series 2017-2 Balance Sheet Notes due 2029 pursuant to the PREMIUM Multi Issuer Asset Backed Medium Term Note Programme. The transaction was a landmark US$3 billion synthetic securitisation of project finance, asset finance and infrastructure loans, a first-of-its-kind "Green Capital Note" that blends best practice from capital management and the objectives of socially responsible investing.

Landesbank Baden-Württemberg (LBBW) completed their Programme update in April 2017. The bank amended its 'Use of Proceeds' wording on base prospectus level in order to set out relevant Use of Proceeds wording in the relevant Final Terms for the first senior unsecured green bond issue by LBBW in December 2017.

**Corporates**: a number of corporates have updated their Programme documentation to include optionality to issue green bonds. Stora Enso, a leading provider of renewable solutions in packaging, biomaterials, wood and paper included a market setting "green" risk factor in their Programme.

SNCF Réseau, the French railway infrastructure manager issued a debut green bond of €900 million 1.00%. Notes due 2032 with a follow up issue in March 2017 of €1bn 1.875%. Notes due 2034, both were admitted to trading on the regulated market of Euronext Paris. SNCF Réseau is the first railway infrastructure manager in the world and the first European transportation entity to issue a green bond. The proceeds of these issues will be allocated in priority to maintenance and upgrades of the railway network and to development of new projects and the strengthening of the strategy of SNCF Réseau dedicated to biodiversity and protection of natural resources.

Unibail-Rodamco: we represented Bank of America Merrill Lynch International and Crédit Agricole CIB as Global Coordinators on the issue of €750 million 2.5% Notes due 2024 under the €11 billion Guaranteed Euro Medium Term Note Programme. This transaction represents the first green bond issuance for a real estate business in the European market.

**Sovereigns**: we represented the Ministry of Finance of the Republic of Poland on the offering of a five year €750 million denominated green bond with a maturity of 2021 under its EMTN Programme. Republic of Poland green bond was the first sovereign green bond.

## Our Sustainable Finance Practice

Our sustainable finance knowledge and experience covers a range of industries, issuers, dealers/managers and financial intermediaries, investors, structures and financial service providers. White & Case is also a contributing Observer Member of the ICMA Green Bond Principles Working Group, a select member of the Green Finance Initiative Partnership lead by HM Treasury, the Department of Energy and Climate Change and the City of London and an Advisor to the Bank of England as chair of the G20 Green Finance Study Group, the ICMA green bonds underwriter legal risk mitigation working group, the chair of UK Green Finance Initiative (UK GFI) Green Islamic Finance Working Group and CBI Partners and members of the Climate Bonds Initiative Legal Roundtable.

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