

Model Global Commercial Paper Dealer Agreement Guidance Notes

The Bond Market Association (the “Association”) is publishing its Model Global Commercial Paper Dealer Agreement (the “Agreement”). The Agreement is designed for use by issuers and dealers in documenting commercial paper programs where issuance of commercial paper may take place in both the United States and the European markets. These programs are referred to in these Guidance Notes as “global commercial paper programs.” The Agreement is intended to cover global commercial paper programs that are exempt from registration under the U.S. Securities Act of 1933, as amended (the “Act”), pursuant to the exemptions contained in Sections 3(a)(3) and 4(2) of the Act for U.S. commercial paper and Regulation S for Euro commercial paper.

The Agreement is based on two existing models. The first is the Model Commercial Paper Dealer Agreement of the Association, which has been widely used in the U.S. market for a number of years to document commercial paper programs in which issuance takes place only in the U.S. market. The second is a form of commercial paper dealer agreement developed by the Euro-Commercial Paper Association (now the Euro-Commercial Paper Committee of the International Primary Markets Association), which has commonly been the basis for documenting commercial paper programs in which issuance takes place in the European market. The Euro-Commercial Paper Committee comprises a group of international securities firms that are active in the international money markets. Most of the firms that are members of this Committee are also members of The Bond Market Association. Allen & Overy advised the Association in the preparation of this form; Clifford Chance also provided valuable comments and suggestions during the course of the Agreement’s development.

The Agreement is being published with the intent to provide consistency in the documenting of global commercial paper programs and to streamline the documentation process by reducing and focusing the negotiation of terms. As with other Association model agreements, use of this Agreement is not intended to be mandatory. Even the firms that participated in its preparation may vary its terms from transaction to transaction. The Association anticipates that the Agreement is sufficiently balanced and comprehensive to garner widespread acceptance of most of its provisions, thereby limiting negotiation in any particular case to a relatively small number of provisions.

To assist users of the Agreement, the Association has prepared these Guidance Notes, which explain certain sections of the Agreement. These Notes are aimed principally at issuers and their counsel, who may be unfamiliar with the Agreement and the reasons behind certain of its provisions. However, these Notes should not be relied upon by any party to determine, without appropriate legal or other relevant professional advice, whether any provision of the Agreement, or the Agreement as a whole, is suitable to that party’s particular circumstances and needs.

Capitalized terms not otherwise defined have the meanings given to them in the Agreement.

The Association represents securities firms and banks that underwrite, trade and sell debt securities, both domestically and internationally.

General Observations

Consistent with the approach that is generally taken in the European market, the Agreement provides for a particular dealer to act in an administrative capacity as the Arranger under the Agreement. In addition, the Agreement is formatted for execution by multiple ECP Dealers and USCP Dealers, thereby covering all Dealers involved in a commercial paper program for an Issuer with the same terms and conditions. The Agreement also contains mechanisms for adding additional dealers without re-execution of the entire Agreement.

The Agreement may be complemented by other arrangements providing for credit support by a third party of the Issuer's obligations under the Agreement. For example, dealers may require the delivery of a guarantee by the parent company of the Issuer.

Optional Provisions

Currency of the ECP Notes: The Agreement contains options regarding the currency in which the ECP Notes are to be denominated, in clause 1.5 and elsewhere.

Clause 1.1

The language in the first paragraph that "the Issuer may issue and sell Notes to or through the Dealer(s)" is intended to convey that both agency and principal arrangements for the sale of commercial paper through the Dealers are covered by the Agreement.

Clause 1.2.2

This provision contemplates that compensation to Dealers is to be deducted from the proceeds of issuance. Compensation arrangements are conventionally agreed between the Issuer and Dealers pursuant to arrangements separate from the Agreement.

Clause 2.1.7

Alternative language relating to financial statements of the Issuer ("present fairly"/"give a true and fair view of") is provided, depending on whether the Issuer is a U.S. or English corporation, respectively.

Clause 2.1.12

Issuers are advised to discuss with U.S. counsel the applicability of the exemptions under either Section 3(a)(3) or 4(2) of the Securities Act, the specific requirements to ensure the

continuing availability of either exemption, and the appropriate internal procedures and controls in connection with such exemption.

Clauses 2.1.13, 2.1.14, 2.1.15, 2.1.16, 2.1.17 and 2.1.18

Issuers are advised to discuss with U.S. counsel the applicability of the Investment Company Act of 1940, Regulations S and D under the Securities Act, integration rules under the Securities Act, the impact on the Section 3(a)(3) exemption of listing on a national securities exchange or quoting on an automated inter-dealer quotation system in the United States, and Regulation T of the Board of Governors of the Federal Reserve System. The same guidance applies to undertakings in analogous provisions in clause 3.

Clause 3.1

This provision requires the Issuer to notify the Dealers when an event occurs that would render any of the representations and warranties in Clause 2.1 untrue or incorrect. If a Dealer is holding Notes in inventory, the Issuer would be required either to confirm that the representation and warranty in clause 2.1.6 is true and accurate or to amend the Information Memorandum so that such representation and warranty is true and accurate. If the Issuer does not so confirm or amend, the Dealer would be unable to resell the Notes held in inventory because the representation and warranty in clause 2.1.6 would not be true and accurate [on a Trade Date]. Positioning of Notes in inventory by a Dealer enhances the Notes' liquidity, thereby creating an important benefit for the Issuer.

Clause 3.3

The indemnification provision in the Agreement is inserted as one possible suggestion, based on current practice in the European and U.S. markets. Indemnification provisions and practices may vary, and the parties to any transaction may alter the suggested form or use a different form.

Clause 3.16

Issuers are advised to discuss with U.K. counsel the applicability to them of Section 19 of the U.K. Financial Services and Markets Act 2000.

Clause 8.1

This provision concerning governing law for the Agreement sets forth an option to select either New York law or English law. The choice of the governing law for the Agreement is a business decision based on a variety of factors. The basis for such decision might include the location of the Issuer, the Dealers and the investor base for the Notes, the Issuer's level of familiarity and previous experience with New York law or English law, and prior course of dealings between the Issuer and the Dealers. New York law would, in any case, govern the USCP Notes.

Section 9.1, definition of "Disclosure Documents"

The term “Disclosure Documents” has been defined broadly to include a large amount of Issuer-related information. Investors in commercial paper are presumed to be basing investment decisions on the Issuer’s publicly available information, including reports and other documents filed under the Exchange Act. The references to forms filed with the SEC should be tailored based on whether the Issuer is a U.S. company or a non-U.S. company.

Schedule 2

A statement of selling restrictions has conventionally been a part of commercial paper dealer agreements in the London market. This schedule sets forth restrictions applying to the manner in which commercial paper is sold in various major jurisdictions in order to comply with certain laws and regulations in those jurisdictions relating to the offer and sale of securities.