

GUIDANCE NOTE ON DENOMINATIONS OF €50,000 AND INTEGRAL MULTIPLES OF €1,000

The ICMA is publishing this guidance note summarising the key issues which arise in the context of issuance of bearer debt securities with a denomination being €50,000 and an integral multiple of another lesser amount, usually €1,000 (“50k+1k denominations”).

The EU Prospectus and Transparency Directives provide for a less onerous disclosure regime for issuers of securities with a denomination per unit of at least €50,000 (or its equivalent in another currency). To take advantage of this regime, while minimising the impact of large denominations on liquidity, some market participants have been issuing notes in denominations of €50,000 but providing in the terms and conditions that, whilst the notes were in global form and held in the ICSDs, they were permitted to trade in minimum amounts of €50,000 plus multiples of a lesser amount, usually €1,000 (“tradeable amounts”) thereafter. This had the result that the ICSDs would permit the notes to be transferred in amounts of, e.g., €51,000, €52,000, €53,000, etc. (but never in amounts lower than €50,000) depending on the preferences of the parties. If definitive notes were required to be printed, they would be printed in denominations of €50,000 only.

Paying agents and the ICSDs expressed concerns about this arrangement, in particular with respect to misuse of terminology and consequent lack of clarity. Therefore, it will now be possible to achieve the same flexibility in trading amounts only by using 50k+1k denominations. The key difference is that with 50k+1k denominations, the range of situations where definitive notes may be printed is limited and, in the theoretical case that such a situation occurs, definitive notes would be printed in denominations of €51,000, €52,000, €53,000, etc., up to €99,000.

The concept of 50k+1k denominations gives rise to a number of questions which need to be carefully considered if they are to operate in a manner which meets the expectations not only of investors but also of paying agents, the ICSDs and the relevant exchanges.

A working group of members of the ICMA Legal & Documentation Committee and City of London capital markets law firms has extensively discussed practical issues associated with 50k+1k denominations and their impact on issue documentation. The discussions were closely co-ordinated with the International Capital Market Services Association (the ICMSA), the trade association representing paying agents and ICSDs.

In November 2006, the ICMSA published a paper entitled “*Guide to the Treatment of Denominations and Related Exchange Conditions*” (the “ICMSA Paper”). The ICMSA Paper summarises the requirements relating to denominations and exchange of the notes from global to definitive form which the ICMSA expect an issuer to comply with if the issue is to be admitted into the ICSDs. The purpose of this note is to provide background to the ICMSA Paper and summarise the conclusions of the discussions on 50k+1k denominations.

This guidance note applies only to bearer notes (where security printing considerations are relevant), not to registered notes (the terms and conditions of which often allow for multiple denominations) or other wholly dematerialised notes.

The suggestions made in this guidance note are based on the assumption that the notes are deposited with the ICSDs and not other clearing systems which may have other requirements concerning denominations or tradeable amounts. This guidance note also assumes that any local legislation in a jurisdiction relevant to the notes does not prevent the issuer from issuing 50k+1k denominations. Issuers should seek local legal advice in particular where the law of incorporation of the issuer or the governing law of the notes is not English law. At the time of this guidance note, 50k+1k denominations are not acceptable or may be problematic (at least in some scenarios) under the laws of Germany, France, Spain, Italy and Luxembourg. In addition, where the notes are intended to be traded on a stock exchange or other similar market, the issuer should make sure that the trading system of such a market is able to accommodate the 50k+1k denominations.

Using 50k+1k denominations

When using the 50k+1k denomination, the issuer must (a) meet the requirements of the ICMSA for its acceptability and (b) properly document it.

Satisfaction of the ICMSA requirements

There have been concerns about the operation of 50k+1k denominations in practice, in particular about the consequences where a global note may be exchanged for definitive notes. That is because the printing and delivery of definitive notes in denominations corresponding to the actual various holdings of the noteholders, i.e., €51,000, €52,000, €53,000 up to (and including) €99,000 would be logistically difficult for the issuer, investors, paying agents and the ICSDs. Issuers should also consider the potential costs involved in the printing and delivery of definitive notes in such a manner.

Consequently, the ICMSA has stated in the ICMSA Paper that 50k+1k denominations will only be acceptable where the events triggering delivery of definitive notes are, in practice, unlikely to occur. According to the ICMSA Paper, if the terms of a global note provide the issuer or a noteholder with an unrestricted option to exchange for definitive notes at any time, the ICSDs will not accept those securities if they provide for 50k+1k denominations. The ICSDs will, however, accept securities which provide for 50k+1k denominations if the terms of the global note provide for exchange into definitive notes **only** in the case of (i) a closure of one or both ICSDs, (ii) issuer default, and (iii) adverse tax consequences to the issuer as a result of the notes being in global form¹ (this is a broad characterisation of the relevant events and it is not intended to prescribe specific language which is expected to differ on a case-by-case basis). While events sub (i) and (iii) are unlikely to occur, events sub (ii) may occur but are unlikely to actually lead to the delivery of definitive notes. If (theoretically) one of such events was to occur and definitive notes were to be delivered, they would be printed in denominations from €50,000 to €99,000 (assuming the integral multiple is €1,000).

¹ Since the quoted Eurobond exemption has been extended to include registered notes, this exchange option is no longer an absolute requirement. It may still, however, be a term in existing programmes.

Documenting 50k+1k denominations

The ICMSA Paper illustrates, with specific examples, how use of incorrect terminology in the offering documentation may be misleading. The language mentioned in the ICMSA Paper and other language inconsistent with language suggested below should be avoided. The offering documentation should refer only to “denomination” and avoid the use of other terms, such as tradeable or minimum tradeable amounts. In particular, the ICMSA Paper seeks to end the practice of documenting issues with a “denomination” of €50,000 and “tradeable amount” of €1,000.

The following is an example of the language to be included in the terms and conditions of a stand-alone issue of debt securities which correctly specifies the 50k+1k denominations:

The Bonds are in bearer form and in the denominations of €50,000 and integral multiples of [€1,000] in excess thereof, up to and including [€99,000]. No definitive Bonds will be issued with a denomination above [€99,000].

The following is an example of the language to be included in the terms and conditions of an issue of debt securities under a programme (in the Final Terms) which correctly specifies the 50k+1k denominations:²

PART A – CONTRACTUAL TERMS

Specified Denominations: €50,000 and integral multiples of [€1,000] in excess thereof up to and including [€99,000]. No notes in definitive form will be issued with a denomination above [€99,000].

The following is an example (referred to in the ICMSA Paper) of the language to be included in the prospectus of debt securities (for example in the section describing the notes while in global form) which correctly reflects the operation of the 50k+1k denominations while the securities are in global form and held with the ICSDs:

“So long as the Notes are represented by a temporary Global Note or permanent Global Note and the relevant clearing system(s) so permit, the Notes will be tradeable only in the minimum authorised denomination of €50,000 and higher integral multiples of [€1,000], notwithstanding that no definitive notes will be issued with a denomination above [€99,000].”

The examples above assume that the terms and conditions of the issue (programme) comply with the ICMSA requirements. Care should be taken when this wording, as well as other instances of suggested wording contained in this note, are used in practice. In all cases, the entire documentation should be carefully reviewed to ensure that it complies with the ICMSA requirements as a whole and that the various references to denominations are consistent with each other and with the rest of the documentation.

² This language will be included in the 2007 revised version of the pro forma IPMA final terms for medium term note programmes.

Consequences of 50k+1k denominations

Stub amounts

With 50k+1k denominations, the ICSDs are unable to prevent a noteholder from creating a balance of less than the 50k+1k denomination in its account with the ICSDs. For example, if a noteholder sells €50,000 out of a holding of €97,000, the trade will be settled by the ICSDs, but the accountholder will have a remaining balance of €47,000 in its account – a stub amount. As long as the issue is held in the ICSDs, the noteholder will be unable to transfer this amount.

A stub amount holder should not be disenfranchised. As long as the issue is held in the ICSDs, the stub amount holder should have the same rights as a noteholder holding a 50k+1k denomination, other than the right to transfer the stub amount and the right to receive definitive notes, as described above.

The documentation should reflect this fact. In particular, the various rights of a noteholder should not be related to holding of a note but to a nominal amount of a note, e.g., €1 or €1,000.

Issuers may wish to consider whether a risk factor should be included in the prospectus in respect of the fact that as long as the issue of debt securities is held in the ICSDs, a stub amount holder is unable to transfer the stub amount. The following is an example of the language for such a risk factor:

In relation to any issue of Notes which have a denomination consisting of the minimum Specified Denomination plus a higher integral multiple of another smaller amount, it is possible that the Notes may be traded in amounts in excess of €50,000 (or its equivalent) that are not integral multiples of €50,000 (or its equivalent). In such a case a Noteholder who, as a result of trading such amounts, holds a principal amount of less than the minimum Specified Denomination may not receive a definitive Note in respect of such holding (should definitive Notes be printed) and would need to purchase a principal amount of Notes such that its holding amounts to a Specified Denomination.

US issuers

Broadly speaking, where the issuer or the guarantor is a US entity, a noteholder's right to request exchange for definitive notes may be required for TEFRA purposes. In such a case, the 50k+1k denominations may not be used as such a right would conflict with the ICMSA requirements. When considering alternative solutions, issuers affected by TEFRA should seek advice from US counsel.

Illustration

By way of an illustration, **Annex 1** sets out, in relation to an MTN programme, the ICMSA requirements for 50k+1k denominations.

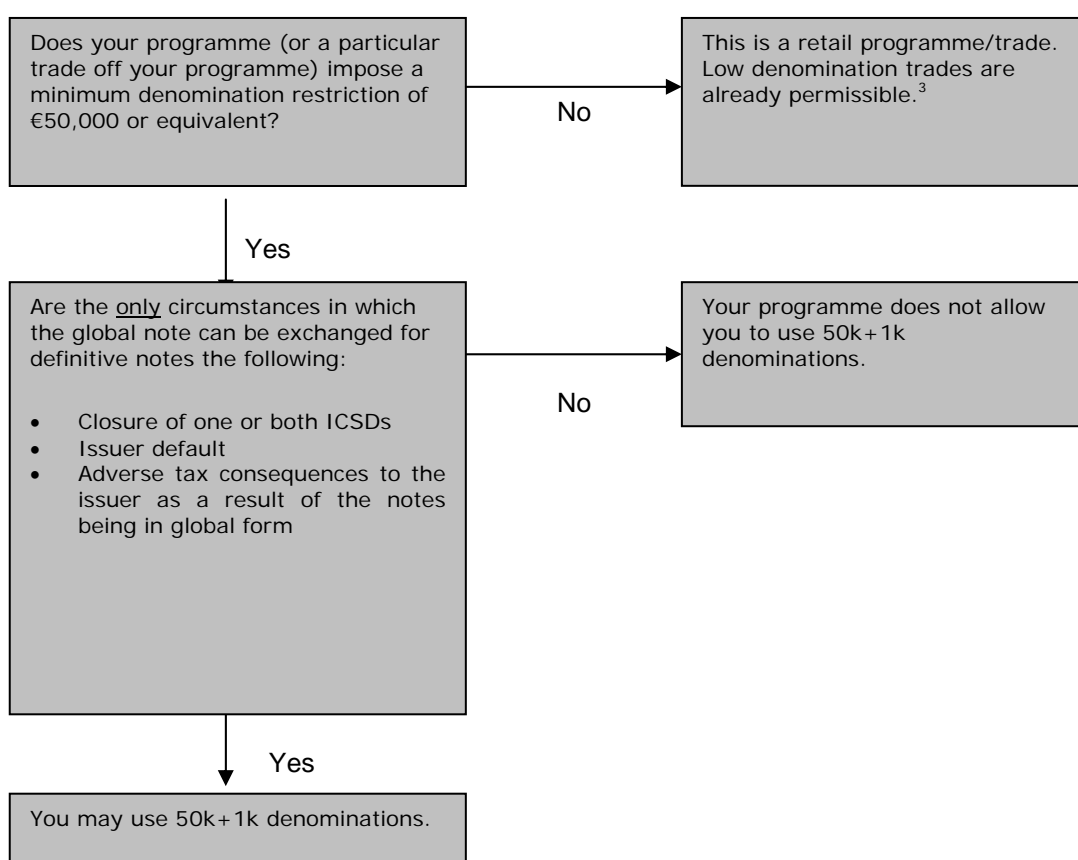
Application of the ICMSA requirements and grandfathering

The details on timing of the application of the ICMSA requirements, grandfathering of existing issues, fungible issues and programme updates are contained in a separate joint statement of both associations, published together with the ICMSA Paper and this note.

Annex 1

Use of 50k+1k denominations in relation to an MTN programme

This illustration sets out, in relation to an MTN programme, the ICMSA requirements for 50k+1k denominations. The decision-making tree in the illustration could in any particular case be affected by the principles of grandfathering and treatment of fungible issues, which should be considered separately.



³ If it is anticipated that an issuer may wish to issue 50k+1k denomination notes off its retail programme, then such an issuer would be advised to include the wording set out in "*Documenting 50k+1k denominations*", and to include the appropriate statement in the "Summary of Notes while in Global Form" and an appropriate risk factor in the programme prospectus. The analysis set out in the table above should also be followed.