

## **Investment Grade Note Offerings – An Overview for Issuers**

Offerings of investment grade debt can be an attractive financing tool for issuers that are rated in the four highest credit rating categories. Investment grade debt generally has no financial covenants and extremely limited operating covenants. Interest rates vary with US Treasury Note benchmarks and typically are set upon pricing the offering by adding a premium, or spread, to the Treasury note with the nearest comparable maturity date.

### *What is investment grade debt and who invests in it?*

Investment grade debt is a term used to describe debt securities that are rated BBB- or higher by Standard & Poor's or Baa3 or higher by Moody's. They are considered to be less risky for investors than debt issued by lower-rated companies (debt securities issued by lower rated companies are often referred to as "high-yield debt" or "junk bonds"). Most investment grade bond investors are large institutional investors and mutual funds.

### *How quickly can I execute an investment grade note offering?*

Much of the preparation for investment grade note offerings can be executed relatively quickly – with as little as one to two weeks advance preparation, in part because investment grade issuers are generally well-known seasoned issuers, or "WKSIs", under applicable SEC rules, can rely entirely on incorporation by reference of their 34 Act reports to provide disclosure to investors and are eligible to file an automatically effective shelf registration statement with the SEC. The longest lead time item is often obtaining a rating from a ratings agency, particularly if the issuer is obtaining a corporate credit rating for the first time. Investment grade note offerings typically are launched around market open, price in the afternoon of the same day, and then close on the fourth day after pricing.

### *Who are the participants in an investment grade note offering?*

The major players in an investment grade note offering include the issuer, its legal counsel and accountants, and one or more investment banks and their counsel. An issuer will generally need internal personnel from finance and/or treasury and legal to devote a fair amount of time to the offering during the preparation period. Depending on the size of the issuer, that may mean heavy involvement from the Treasurer and securities counsel of the issuer, or, for companies with bigger finance and legal teams, involvement of one or two people from each of those groups with decision-making authority. The CFO can expect to spend time participating in due diligence sessions and investor calls, but is generally not otherwise directly involved in the process.

## *What are the structuring decisions I will have to make in connection with an investment grade note offering?*

The principal structuring decisions that an issuer will have to make in connection with an investment grade note offering include the size of the offering, the maturity date, and the terms of any covenants. Many investment grade notes include covenants that limit the issuer's ability to grant liens or enter into sale-leaseback transactions on principal properties of the issuer. Notes issued by very large and highly rated issuers may not include these covenants. Other structuring decisions may include the determination of whether, when and at what price the issuer can repurchase the notes at its option, either by paying a specified make-whole premium representing the discounted present value of remaining interest payments (a "make-whole call"), or at its face value after a specified date within a few months prior to maturity (a "par call at maturity"). Less commonly, the notes may provide that investors can require the issuer to repurchase their notes after a specified date at a specified price (a "put"). The underwriters generally provide advice and guidance on structuring of investment grade notes, and the market impact of those decisions. However, structuring decisions can have significant accounting, tax and legal implications, so issuers should coordinate carefully with their accountants, legal counsel and tax advisors regarding the structuring of their investment grade note transactions.

## *What events of default typically apply to investment grade notes?*

Typical events of default for investment notes include failure to pay interest or principal, failure to comply with covenants and events of bankruptcy or insolvency of the issuer. Some investment grade notes may include a "cross-default" provision, pursuant to which a default by the issuer on other indebtedness above a specified amount would also result in a default under the investment grade notes.

## *Are investment grade note offerings registered with the SEC?*

Investment grade note offerings can be conducted as registered offerings or as unregistered private offerings under Rule 144A under the Securities Act of 1934, as amended (the "Securities Act"). Most issuers elect to conduct investment note offerings as registered offering because issuers are generally WKSIs and can file an automatically effective registration statement with the SEC without the risk of delay resulting from SEC review. Many issuers maintain effective shelf registration statements so that they do not have to file a new registration statement at the time of a particular offering. A Rule 144A offering structure is typically used if the issuer is not eligible to use Form S-3.

## *What will I need to do to execute an investment grade note offering?*

**Due Diligence:** The underwriters and both issuer and underwriters' counsel will conduct due diligence on the issuer prior to launch of the offering. Typically this will involve one of two business/financial presentations from senior management of the issuer and legal due diligence. Legal due diligence generally involves review of board materials and minutes, material contracts, material litigation matters and other areas material to the issuer. Some topics may be covered by telephone calls with the relevant employees of the issuer rather than extensive document review (for example, intellectual property, environmental, compliance and tax matters are often covered by telephonic due diligence).

**Documentation:** Documentation for an investment grade note offering consists primarily of a registration statement (if the issuer does not yet have one on file), an offering document (either a prospectus supplement or a 144A offering memorandum), an underwriting agreement, an indenture, an accountant's comfort letter, opinions of legal counsel and officers' certificates. Generally the underwriters' counsel will prepare the first drafts of the description of notes to be included in the offering document, as well as the underwriting agreement and the indenture.

**Board Approvals:** An issuer of investment grade debt will generally obtain approval from its Board of Directors, either concurrently with the offering or pursuant to authority delegated to one or more officers. Many regular issuers of investment grade debt have standing delegations of authority from the Board of Directors to one or more officers at specified levels of debt. If the issuer is filing a registration statement in connection with the offering, board approval and signatures will also be required.

**Investor Presentation:** Issuers and their underwriters generally work with an existing investor presentation to create a deck for the offering. The CFO and Treasurer, or other appropriate person from senior management, will generally engage in calls with investors during the marketing period.

**Ratings Agency Presentation:** Issuers and their underwriters generally work with an existing investor presentation to create a presentation for the rating agencies. The CFO and Treasurer, or other appropriate person from senior management, will generally participate in a meeting with the rating agencies.

### *Are my communications limited during the offering period for convertible notes?*

Issuers can generally continue to communicate regarding their business in the ordinary course, but will need to take care regarding communications that may be considered to be part of the offering (for example, investor conferences). Issuers should discuss communications protocols with counsel in advance of the offering.

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