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CAPITAL MARKET

# Coronavirus: Impact on debt issuances

Some points to be considered when  
issuing bonds.

The public health emergency caused by the international COVID-19 pandemic (“COVID-19”) has made it necessary to adopt a range of measures to contain this disease and these measures are having profound economic and financial effects.

At a time when there is a huge reduction in their income, companies will have to cope with enormous pressures on their liquidity. In this context, bond issuances should continue to be a growing way for companies to obtain finance, in particular, in the case of assets eligible under the European Central Bank's (ECB) purchasing programmes.

This note examines specific issues relating to the issuance of bonds by companies that must be taken into account in the current context of the COVID-19 pandemic.

### 1. Market conditions

Despite the difficulties and demands of the current market conditions, we have noted the completion of some debt issuances placed by means of private offers. The continuing ability to issue bonds, mainly through private offerings, will be essential to ensuring many companies and industries can respond to the current context of enormous pressure on liquidity and survive it.

In this context, the ECB has announced the launch of the Pandemic Emergency Purchase Programme ([Pandemic Emergency Purchase Programme](#) or "PEPP") to purchase private and public sector securities in the secondary securities market with a total value of €750 billion. This programme is very important in terms of instilling confidence and it could make a significant contribution to the success of the private debt issuances that are eligible for the programme (according to the criteria of the current private debt acquisition programme, the Asset Purchase Programme)<sup>1</sup>. As a result, it should also help reduce the deterioration in debt issuance conditions for other issuers.

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### 2. Roadshows

In contrast with the normal market conditions, the promotion of issuances through roadshows will have to be done using conference calls with investors or via the Internet. This factor should be taken into account in the guidelines on the implementation of roadshows and interactions with investors.

### 3. Due Diligence

The implications of the international COVID-19 containment measures for the economy are profound and far-reaching, particularly in the sectors most exposed to these measures, such as tourism, aviation and transport, catering, and entertainment. As a result of this, some issues have taken on even greater importance during the completion of the due diligence processes, in particular:

- The impact of COVID-19 on the activity issuers in affected areas, including the current situation of the issuer's operations in these areas (e.g., if the operations are functioning fully or partially, or if they are suspended);
- Any measures taken or to be taken to cope with the impact of COVID-19;
- Significant limitations on supply and/or distribution chains and impact at the level of employees, as well as other factors that may hinder a return to the company's normal level of operation;

<sup>1</sup> Note that the assets eligible for the current ECB debt acquisition programme (Corporate Sector Purchase Programme or CSPP) have been extended to include the commercial paper of non-financial entities.

- o Estimated impact on the liquidity position of the issuer, financing commitments and investment plans;
- o Estimates of the impact on financial performance in the first and second quarters.

Furthermore, the conduct of the due diligence process itself will be affected by the measures already taken and it will be necessary to use alternative mechanisms and make greater use of virtual data rooms and other means of distance communication.

#### 4. Prospectus / information memorandum

Issuers will be required to disclose additional information regarding the impact of COVID-19 on their activities in the Risk Factors of the issuance and in the sections on “Information on Trends” in the prospectus or information memorandum.

Issuers must also consider making a reference to COVID-19, either as independent risk factor, or in terms of its economic impacts on the activities of the issuer. Under the new Prospectus Regulation, it will be necessary to ensure that these risks are specific and relevant to the issuer and its activity, and to indicate how the activity of the issuer will be affected.

**"The form and rules for the formalisation of documentation should be agreed in advance by the parties to ensure their effectiveness under the applicable law."**

#### 5. Force majeure clause

In face of current market conditions, one of the issues that deserves special attention is the force majeure clause in underwriting agreements and/or subscription agreements with financial intermediaries for the purposes of placing the offer. In this respect, issuers should consider whether or not these clauses cover changes resulting from the COVID-19 pandemic. As this is a risk that already exists, it would be difficult to consider that it is covered. However, it may be necessary to take into account the possible developments in this pandemic which might then be covered.

#### 6. Execution

With the restrictions currently in force, we have to expect delays in signing and formalisation of the required documentation, especially when this involves the delivery of physical documentation and originals. The form and rules for the formalisation of documentation should be agreed in advance by the parties to ensure their effectiveness under the applicable law, as should the rules for the documentation typically required for the closing of the operation.

- o Obtaining certificates that a company is not a party to any legal actions or is not subject to any applications for a declaration of insolvency may be difficult in the current situation. This will make it necessary to agree in advance other ways to confirm the situation of the company;
- o The definition of “business day” will have to be reviewed in order to protect any extraordinary measures in force now or in the future;
- o The process of physical and financial settlement of the issuance must be decided in advance with special attention being paid to the current conditions, in particular, when a central securities depository such as Interbolsa is being used. ■