



Sovereign Advisory

April 22, 2020

Sovereign Bond Issues During the Pandemic: Practical Considerations for Debt Management Offices

Arnold & Porter has been advising sovereign and corporate issuers on capital markets issues throughout the COVID-19 crisis. In this Advisory, we share some practical considerations for Sovereign Debt Management Offices (DMOs) that are considering issuing bonds during the pandemic.

Challenges Associated with Stay-at-Home Orders and Travel Bans

Many of the participants in a bond issuance are operating in a virtual operating status as a result of stay-at-home orders and travel bans. With most countries having declared national emergencies, the effects are felt by all participants: DMO personnel and other government officials, bankers, lawyers, rating agencies, printers and, of course, investors. For the most part, the transition to remote working has been smooth and reflects the investment in information technology infrastructure by all market participants over the years.¹

At the same time, issuers have faced unexpected impediments, many of which can be mitigated with advance planning. For example, issuers have experienced atypical delays with financial printers, as many issuers—including sovereigns and multilateral banks—have attempted to access the debt markets at the same time, requiring additional time to be built into the schedule to turn drafting changes or EDGAR-ize a filing.² We recommend that DMOs have access to the sovereign's EDGAR codes and the flexibility under their internal authorizations to hire, if necessary, an alternative financial printer.

Working remotely has also complicated the logistics of getting signatures for launch and closing documents. Forethought on how documents are to be printed and executed by relevant officials and transmitted back to legal counsel should be considered, especially as issuers look to close transactions in shorter settlement cycles than usual due to the volatility of the markets. Agreements—model and existing, domestic and foreign—should be reviewed and, if needed, updated to

¹ Note, however, that a recent [IMF blog post](#) warns that many sovereigns still have procedures in their treasury function that are dependent on manual processes, and discusses the need to reassess these procedures as part of their business continuity plans and in the light of long-term needs of working remotely.

² The SEC for its part has provided relief on several fronts as to certain filings. See: [SEC Staff Statement Regarding Manual Signatures in Light of Covid-19 Concerns](#) and [SEC Issues Exemptive Order Relating to Coronavirus](#).

allow for electronic signatures. Moreover, indenture trustees and fiscal agents may request that the original, executed bonds be kept by the issuer until the bank is able to receive them, adding additional safeguarding logistics.

New and infrequent sovereign issuers will face additional difficulties, as many parts of the issuance process for these issuers are typically done in-person, including due diligence and drafting sessions, as well as investor roadshow meetings. Much of this is impossible in the current environment, putting many sovereigns—particularly those that infrequent and less well-known issuers—at a significant disadvantage in accessing the capital markets.

SEC Guidance on COVID-19 Disclosure

In addition to providing exemptive relief for some reporting and other obligations, the SEC has also provided guidance on COVID-19 disclosure.³ Though largely focused on corporate issuers, the SEC's guidance provides helpful reminders regarding the applicable securities laws, such as:

- including tailored, not "boilerplate", disclosures, to provide the market with material information about the impact of COVID-19;
- that issuers can avail themselves of the safe harbors for "forward-looking statements" in describing such effects; and
- that the laws and SEC rules still require disclosure about the known or reasonably likely effects of, and the types of risks presented by, COVID-19.

In that guidance, the SEC also provided questions that corporate issuers should ask themselves when drafting disclosures for an offering document related to the COVID-19 crisis. While the context and the most significant questions are different for sovereign issuers, which have roles in both public health and domestic economic intervention, the SEC's COVID-19 guidance can be instructive to sovereigns as well. In their prospectus/offering circulars, sovereign issuers should add a tailored risk factor to cover the risk of COVID-19 and disclosure on both their government's response to the crisis and the crisis's expected effect on its national economy.

A statement on April 8th by SEC chair Jay Clayton and Corporation Finance Division Director William Hinman further highlighted the SEC's views on disclosure related to COVID-19. In their statement, they again emphasized the increased importance of forward-looking disclosures in the current environment and encouraged companies to avail themselves of applicable safe harbors. They also offered reassurance that they do not expect the SEC to second-guess good faith disclosures that are appropriately framed.⁴ While again the statement is more focused on corporate issuers, it can be instructive to sovereign issuers as well.

But issuers should be mindful that, notwithstanding the reassuring sentiments of the SEC, future enforcement and litigation are often seen with unforgiving hindsight.⁵

Re-opening an Existing Bond

When considering a new fundraising, one option for sovereign issuers often is to reopen (or re-tap) one or more existing bonds. However, in the economic turmoil caused by the COVID-19 pandemic, volatile bond markets have led to higher secondary market yields for the existing bonds of many issuers. As a result, issuing a reopener could be a practical

³ See our Advisory discussing this Guidance: [SEC Staff Expresses Its Views on COVID-19 Disclosures as Earnings Season Commences; Exemptive Relief Extended for Filings with Deadlines on or Before July 1, 2020](#).

⁴ See our Advisory discussing this Statement: [Today's Judgments, Tomorrow's Enforcement: Accounting and Business Judgments Most Vulnerable to Hindsight](#).

⁵ Id.

impossibility, as the discount on the issuer's existing bonds (and therefore the required yield on the reopener) could lead to original issue discount (OID) in excess of the de minimis permitted amount at issuance for the reopener to be deemed a "qualified reopening" under the U.S. tax laws.

Liability Management Transactions

With many sovereigns looking for new resources, we can expect to see fewer liability management transactions. Nevertheless, an issuer considering such an option should evaluate the impact of COVID-19 on its ability to launch a successful transaction. The market for liability management by sovereign issuers has recently focused on "switch tenders," with intraday settlement of the offer to coincide with the pricing of any bonds being sold. However, with many investor teams working at home, delayed responses may present practical challenges to the successful completion of an intraday transaction. The result might mark a temporary return to transactions in which the tender offer remains open for multiple days and settlement takes place directly via The Depository Trust Company, instead of with the dealer managers, as often occurs with a "switch tender."

Launch and Settlement

In the current volatile market environment, it may take longer to define the terms of potential transactions, with decisions about maturities, number of tranches, and whether to re-open existing bonds taking place late in the process — perhaps even on the morning of the launch. Some issuers have opted to prepare multiple versions of the offering documents, each containing different deal terms under consideration, with the enhanced flexibility on the launch date seen as outweighing higher transaction costs.

Volatility has also led some market participants to choose a shorter settlement cycle, given "market out" clauses in underwriting agreements, notwithstanding the practical difficulties presented by a work-at-home environment. And "market out" clauses in standard underwriting arrangements are being looked at again in the light of the pandemic.

Additionally, volatility will likely make investors even more mindful than usual of transaction settlement dates, in order to better align their investments with quarter- and month-ends.

Conclusion

The debt markets continue to function, and bond issues of well-prepared sovereign issuers continue to launch and close. That said, in the volatile environment brought on by the COVID-19 pandemic, DMOs should be mindful of the practical issues they can expect when accessing the international capital markets. While sovereign issuers can do little to avoid the unique combination of challenges that the pandemic presents — including volatile financial markets, public health concerns, and prudent government travel limitations — advanced preparation and flexibility (as always) are key to navigating a successful issue.

To help our clients navigate the coronavirus (COVID-19) crisis, Arnold & Porter has established a [Coronavirus Task Force](#) covering a wide range of issues and challenges. [Subscribe](#) to our "Coronavirus (COVID-19)" mailing list to receive our latest client Advisories and register for upcoming webinars.

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Arnold & Porter is a recognized leader in advising sovereigns in their international financial affairs, representing clients across a wide range of financial transactions from Africa, Asia, Europe, Latin America, and the Middle East. We have significant and ongoing engagement with the world's most prominent international financial institutions, including the International Monetary Fund (IMF); the World Bank, International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA); the Inter-American Development Bank (IADB); the European Bank for Reconstruction and Development (EBRD); the African Development Bank (AfDB); and the Bank for International Settlements (BIS), in significant financial transactions and other novel legal assignments.

We assist and advise our sovereign clients in numerous financial transactions, including:

- Private and public debt securities offerings
- Sovereign bond documentation
- Liability management transactions
- Project and syndicated loans
- Export credit agency financings
- Financings of multilateral financial institution loans
- Debt restructuring
- Privatization transactions
- Derivatives transactions
- Asset management operations for central banks

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