

RÉPUBLIQUE FRANÇAISE

Ministry of Finance and Public
Accounts

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Order of May 30, 2016

on the negotiable debt securities reform

NOR: *FCPT1609341A*

Are concerned : the issuers of negotiable debt securities referred to in article L. 213-3 of the French monetary and financial code.

Subject : reform of the negotiable debt securities in order to simplify the legal framework by merging the four existing orders governing many different groups of negotiable debt securities issuers.

Entry into force : the text comes into force the day after its publication.

Notice : the four existing orders should be merged to simplify the current legal framework and increase its clarity.

The Minister of Finance and Public Accounts,

Pursuant to the French monetary and financial code (*Code monétaire et financier*) ;

Pursuant to the Order of 22 February 2006 relating to investments, loans and borrowings of agricultural social mutual funds ;

Pursuant to the recommendation of April 14, 2016 issued by the Advisory Committee on Financial Legislation and Regulation (*Comité consultatif de la législation et de la réglementation financières*),

Has decided the following :

Article 1

I.- The nominal amount of commercial paper issued by the entities referred to in Article L. 213-3 of the French monetary and financial code must be at least 150,000 euros or the equivalent in any other currency.

II.- The nominal amount of medium-term note issued by the entities referred to in Article L. 213-3 of the French monetary and financial code, with the exception of those referred to in indent 12 of the said article, must be at least 150,000 euros or the equivalent in any other currency.

Article 2

In addition to the Caisse des Dépôts et Consignations, credit institutions, finance companies (“sociétés de financement”) and investment firms are empowered to issue negotiable debt securities if their equity capital is at least equal to the equivalent of 2.2 million euros.

Article 3

Negotiable debt securities issued by entities referred to in indents 1°, 1° bis, 2°, 3°, 4°, 6°, 7°, 9° and 11°, Article L. 213-3 of the French monetary and financial code may be guaranteed by a credit institution which is authorised by virtue of its status to grant such a guarantee.

Negotiable debt securities issued by entities referred to in indents 2°, 3°, 4° and 7°, Article L. 213-3 of the French monetary and financial code may also be guaranteed by an investment firm or an entity referred to in indents 2°, 3° and 4°, Article L. 213-3 of the French monetary and financial code, which is itself authorised to issue negotiable debt securities, when that firm or entity holds, directly or indirectly, at least 20% of the issuer’s equity capital, or when at least 20% of its own equity capital is held, directly or indirectly, by the issuer.

Article 4

The issuers of negotiable debt securities referred to in Article L. 213-3 of the French monetary and financial code shall domicile the securities issued under their programme, under the conditions laid down in the General Regulation of the *Autorité des Marchés Financiers* (French financial markets regulator), with one of the following entities :

- a) a credit institution whose head office is in France ;
- b) a branch referred to in Article L. 511-22 of the French monetary and financial code ;
- c) an investment firm authorised in France and empowered to hold cash accounts ;
- d) a branch referred to in Article L. 532-18 of the French monetary and financial code and authorised to hold cash accounts ;
- e) the Caisse des Dépôts et Consignations ;
- f) a legal entity established in France whose principal or sole purpose is the custody or administration of financial instruments specified in indent 5°, Article L. 542-1 of the French monetary and financial code.

Prior to accepting the domiciliation of the securities, the issuing and paying agents shall ensure that the issuer complies with the issuance conditions as set forth in Articles L. 213-1 A to L. 213-4-1 of the French monetary and financial code and their implementing regulations. Each issuing and paying agent shall provide to the Banque de France, in accordance with the terms laid down by the latter, information about the market evolutions regarding the issuer's securities.

Article 5

The issuer shall provide the Banque de France with the name(s) of the institution(s) it has appointed as issuing and paying agent(s) for its programme.

The issuer of negotiable debt securities shall, through its issuing and paying agent(s), release to the Banque de France information about each issuance features and on the daily outstanding amounts of the issued securities as well as on the outstanding amounts, for each issuance programme, of the securities purchased and held after their issuance and on early redeemed securities. The Banque de France shall determine the frequency with which this information shall be provided.

Article 6

The description of the issuance programme referred to in Article D. 213-9 of the French monetary and financial code includes the following information :

- 1° the maximum outstanding amount foreseen for the year, expressed in euros and, where applicable, with an "all currencies" indication added when the issuer intends to denominate its issuances in other currencies than the euro ;
- 2° the features of the securities that the issuer projects to issue, notably their maturity and the planned methods of remuneration ;
- 3° the planned placement method for the securities and, where applicable, details on the intermediaries in charge of the dealing ;
- 4° the name of at least one issuing and paying agent appointed to provide information to the Banque de France about the market evolutions regarding the issuer's securities ;
- 5° an indication of whether the programme has -or does not have- a rating by virtue of Article D. 213-3 of the French monetary and financial code, as well as the rating agency's name and contact details and, when available, an hyperlink to the rating agency website ;
- 6° when applicable, the legal name and status of the company which grants a guarantee to the whole securities issued under the issuance programme and a certified copy of the deed of guarantee ;
- 7° when applicable, a brief description of any other similar issuance programme implemented by the issuer.

Article 7

The description of the legal and financial situation referred to in indent 2°, Article D. 213-9 of the French monetary and financial code shall include the following information :

1° General information regarding the issuer :

- a) legal name of the issuer, head office and main administrative or business office if different from the head office ;
- b) date of incorporation ;
- c) summary of the incorporation object ;
- d) trade register (or the equivalent thereof) and registration number;
- e) legal status, laws applicable to the issuer and competent courts ;
- f) accounting standards applied to draw up the consolidated accounting statements or, if not available, social accounting statements ;
- g) composition of the Board (name of the main managers and organisational overview of the management), when this information is not recorded in the annual report regarding the last two financial years made available to the shareholders:

2° General information regarding the issuer's equity capital :

- a) amount of the subscribed and fully paid-up share capital as well as key features of the securities categories comprising this capital ;
- b) ownership of the equity capital, indicating the name of the shareholders holding at least 5% of it ;
- c) name of the regulated markets where the issuer's equities or debt instruments may be listed.

3° Information on the issuer's activity:

If not contained in the documents referred to in indent 3°, Article D. 213-9 of the French monetary and financial code, a description of the issuer's main areas of business activity for the last-two financial years must be provided, alongside with the turnover indicating the main categories of products groups or services as well as the geographical areas covered.

Article 8

If the issuer can justify that the information requested in a specific section is unsuitable to its particular situation, it may, with consent of the Banque de France, adapt the content of the information memorandum, while justifying that the foresaid adjustment is duly detailed.

Article 9

The Banque de France shall determine the content, format and positioning of the warning written in French by virtue of Article D. 213-11 of the French monetary and financial code, advising the investor to resort to a translation of the information memorandum.

If the information memorandum has been translated, the issuer shall indicate which of the two versions is binding and which is for information purposes only. The Banque de France shall carry out its mission pursuant to Article L. 213-4 of the French monetary and financial code on the basis of the sole binding version of the information memorandum.

The issuer may also draw up a summary of the information memorandum in French or in another customary language in the financial sphere. The summary shall be set out under the issuer's responsibility.

Article 10

The Banque de France shall determine the format of the information memorandum to be submitted to it in order to ensure that the dissemination of the said documentation in accordance with the provisions of Article D. 213-16 of the French monetary and financial code. The Banque de France shall determine the scope of the information memorandum to be disseminated depending on the issuer's activity.

Article 11

The specialised agencies referred to in Article D. 213-3 of the French monetary and financial code are the agencies ruled by Regulation N°1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies and registered with the European Securities and Markets Authority, and which apply methodologies covering the maturities and issuer categories within the negotiable debt securities market, and provide statistical data on their credit rating activity and performances, such as transition matrices and default rate based on three years of historical data, as indicated on the European Securities and Markets Authority's website as of the updating date of the information memorandum.

The statistical data pertaining to credit rating activity and performances can be available only on the website of each relevant agency for a transitional three-year period from the date of entry into force of the present order.

Article 12

The Banque de France shall take all measures required to implement the present order for the purpose of ensuring the proper exercise of its duties and responsibilities.

Article 13

Article 1 of the Order of 22 February 2006 relating to investments, loans and borrowings of agricultural social mutual funds is hereby amended :

1°- in indent 3°, section I. of the said article, the words: “certificates of deposit, commercial paper, notes issued by specialised financial institutions” are replaced by the words: “ commercial papers”;

2° - in indent 4°, section I. of the same article, the words: “negotiable medium-term notes” are replaced with the words: “negotiable medium-term notes ”.

Article 14

I.- The Order of 13 February 1992 implementing amended Decree N° 92-137 of 13 February 1992 and stating the mandatory specifications in the information memorandum drawn up by the issuers of negotiable debt securities is hereby repealed.

II.- The Order of 31 December 1998 relating to the requirements that the issuers of negotiable debt securities must comply with, as referred to in indents 2 to 10, Article L. 213-3 of the French monetary and financial code is hereby repealed.

III.- The Order of 16 February 2005 implementing Article 1, Section III of amended Decree N° 92-137 of 13 February 1992 relating to the terms and conditions for the issuance of negotiable debt securities by investment firms, credit institutions, financing companies and the Caisse des Dépôts et Consignations is hereby repealed.

IV.- The Order of 19 December 2006 setting forth the list referred to in Article D. 213-3 of the French monetary and financial code relating to negotiable debt securities is hereby repealed.

Article 15

Issuers which updated their information memorandum prior to the entry into force of the present order have up to one year from this updating date to comply with the provisions of indent 3°, Article 7 herein.

Article 16

The present order will be published in the Official Journal (*Journal officiel*) of the French Republic.

Signed on May 30, 2016.

Michel SAPIN