

Insights

ISSUANCE OF REVERSE YANKEE BONDS REMAINS ACTIVE

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SUMMARY

The sale of Reverse Yankee bonds by prominent US issuers – often with higher credit ratings – has recently continued at a rapid pace. Reverse Yankee bonds are debt securities issued by US issuers that are denominated in a foreign currency, frequently in euros or sterling. The Reverse Yankee bond market offers US issuers additional ways of obtaining debt financing on favourable terms.

Prominent US companies that have tapped the Reverse Yankee bond market in 2023 and year-to-date 2024 include Honeywell International, Becton, Dickinson and Company, AT&T, Proctor & Gamble, Paccar, Caterpillar, insurance companies New York Life and Pacific Life and automobile makers Ford Motor, American Honda and Toyota Motor Credit Corp.

POTENTIAL BENEFITS TO US ISSUERS FROM THE ISSUANCE OF REVERSE YANKEE BONDS

US issuers may elect to issue Reverse Yankee bonds for a number of reasons. Of significant importance is likely to be favorable pricing and coupon rates that may be available (particularly for very large US issuers), which may result, in part, from the implementation of differing central bank monetary policies from the Fed, the ECB and the Bank of England, respectively, in response to global inflationary trends. In the first quarter of 2024, there was rising optimism about the state of the eurozone economy, allowing credit spreads in the region to tighten, against a backdrop of shifting expectations on which region is more likely to cut interest rates first.^[1] These market conditions create an opportunity in the Reverse Yankee bond market.

Companies may also have significant operations in Europe to finance, or need local currency financing for an acquisition, and may benefit from avoiding costs and potential exchange rate fluctuation in converting US dollars into local currency. Other benefits for issuers may involve diversifying funding sources, an increased amount of European investor appetite for exposure to US credit (without having to manage hedging risk) and raising the profile of an issuer in the international capital markets.

TRANSACTION PROCESS

US issuers that opt to issue Reverse Yankee bonds have several options to access the market, which are summarised at a high level below.

SEC Registered Debt - An issuer may elect to issue Reverse Yankee bonds under its existing shelf registration statement, with modifications in a prospectus supplement as necessary for non-US markets and investors, for example, inclusion of a wider range of selling restrictions and mechanical disclosure relating to clearing through Euroclear/Clearstream that differs from DTC clearing, as well as other generally insignificant changes. An issuance off a shelf registration statement will likely be more familiar for many US issuers seeking to access foreign markets for the first time, as opposed to the requirements of other debt issuance processes. Examples of US issuers that have issued SEC registered Reverse Yankee bonds include Honeywell International, Becton, Dickinson and Company, Procter & Gamble and AT&T.

The issuance will also involve customary due diligence and counsel delivery of negative assurance (Rule 10b-5) letters, consistent with US registered offerings in US dollars.

Euro Style Programme - If a US issuer intends to be a frequent issuer into the UK/euro markets – or wishes to maintain the flexibility to access such markets quickly – it may be cost effective and more efficient for an issuer to establish a Euro style programme (referred to as a Euro Medium Term Note Programme (**EMTN Programme**)). An EMTN Programme involves the issuance of a base prospectus or offering circular, supplemented each financial quarter to incorporate interim financial statements and other material business and financial developments from SEC disclosure, all consistent with the maintenance of a shelf registration statement.

A base prospectus will need to be approved by a UK/EU competent authority as compliant with the applicable prospectus regulation regime and admitted to trading on a European regulated market (for example, the Luxembourg Stock Exchange or Euronext Dublin) or the London Stock Exchange (as the UK's main market). The base prospectus is valid for 12 months from the date of approval; therefore, the base prospectus and EMTN Programme documentation (highlighted below) is updated annually.

Alternatively, an offering circular – prepared outside the relevant prospectus regulation regime – may also be admitted to trading on a UK/EU multilateral trading facility (for example, London's ISM, the Global Exchange Market and the Euro MTF).

Additional EMTN Programme contractual documentation also includes entry into a Dealer Agreement, Trust Deed or Fiscal Agency Agreement and Deed of Covenant (in each case customarily governed by English law) at the time of programme establishment and annual update (if there has been a material change of law or change to commercial terms of the bonds). For individual drawdowns, a subscription agreement and final terms are also entered into. Once

established, individual drawdowns under an EMTN Programme can be executed with greater speed – customarily on a T+5 settlement cycle.

Due diligence on an EMTN Programme will typically occur at establishment of the programme, annually at the time of update and, in most cases, there will be bring-down due diligence at the time of each drawdown under the programme (somewhat similar to a typical US medium-term note programme, where due diligence occurs at the time of initiation of the programme, with updates required at the time of sale of securities and in connection with filing quarterly and annual reports). If the debt securities will be sold solely offshore by the US issuer in compliance with Regulation S of the Securities Act 1933, then generally there will only be management due diligence, and no requirement for a negative assurance letter. However, if there will be sales into the US in a private placement transaction, then a negative assurance letter is likely to be required as a condition precedent to closing on a drawdown, with an increased level of due diligence necessary to allow counsel to issue such letter.

At the time of the signing of the annual update of an EMTN Programme that contemplates sales into the US, it is not customary for a negative assurance letter to be required.

Euro Style Standalone - A euro-style standalone transaction will involve the issuance of a standalone euro style prospectus or offering circular (depending on the listing forum), entry into a European style subscription agreement instead of an underwriting agreement, as well as entry into a Trust Deed or Fiscal Agency Agreement and Deed of Covenant, among other documents, in each case customarily governed by English law. Consistent with use of an EMTN Programme, it will be permissible for the prospectus or offering circular to incorporate existing SEC disclosure into the prospectus or offering circular by incorporating such SEC disclosure by reference.

Further, consistent with an offering pursuant to an EMTN Programme, management due diligence will generally suffice if there will only be offshore sales, but sales into the US will require that due diligence be conducted with additional thoroughness to allow counsel to issue a negative assurance letter.

CERTAIN OTHER DIFFERENCES FROM US DOLLAR OFFERINGS

Certain other noteworthy differences between Reverse Yankee bonds and US dollar bonds include:

- Interest on Reverse Yankee bonds denominated in euros is typically paid annually rather than semi-annually as is usually the case with bonds denominated in US dollars;
- Inclusion of a tax gross-up payment obligation in certain circumstances to account for withholding by any US taxing authority, as well as a tax redemption provision should the gross-up obligation apply during the term of the bonds;

- Pricing/Make-whole calculations for euro and sterling bonds are typically tied to German government (bunds) bonds and UK government (gilts) bond yields, respectively, as compared to US treasuries for US dollar bonds;
- When listed in the UK/EU, the market abuse regime will apply, which includes a range of ongoing disclosure obligations. The type of information to be disclosed to the market will be substantially familiar for many US issuers but the existing investor relations communication architecture may have to be tweaked to ensure engagement with UK/European investors; and
- The minimum denomination for Reverse Yankee bonds is frequently EUR100,000 or higher to avoid the risk of breaching UK and EU public offering rules under the relevant prospectus regimes, as opposed to significantly smaller US dollar minimum denominations for US registered debt.

More generally, looking forward, there is a global trend of introducing new sustainability reporting frameworks and standards to promote company disclosure on their business model and strategy, their (if existing) time-bound targets related to sustainability matters, including absolute greenhouse gas emission reduction targets and a description of their policies in relation to sustainability matters. The current (and evolving) climate risk disclosure regimes in the EU under the Corporate Sustainability Reporting Directive (and related legislation) and in the UK under its Sustainability Disclosure Standards will have to be closely analysed to consider whether a US issuer's UK/euro market activities bring it in-scope of such regulations.

The Reverse Yankee bond market remains an indispensable funding option for US issuers and there are multiple documentary options available to access UK and European markets. If you would like to know more, please contact any of your BCLP contacts.

[1] Ice BofA data published in the *Financial Times* on 14 March 2024

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MEET THE TEAM



Vishal Mawkin

London

vishal.mawkin@bcplaw.com

[+44 \(0\) 20 3400 4907](tel:+442034004907)



Andrew S. Rodman

New York

andrew.rodman@bcplaw.com

[+1 212 541 1197](tel:+12125411197)



Jonathan Stevens

London

jonathan.stevens@bcplaw.com

[+44 \(0\) 20 3400 4641](tel:+442034004641)

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