

ISIN allocation rules for debt instruments issued under Rule 144A and Regulation S

Objectives & Audience

This paper aims to clarify (i) the ISIN allocation rules for debt instruments issued under Rule 144A and Regulations S and (ii) the role of each of the National Numbering Agencies involved in this allocation process.

The document will be used to update the ISIN allocation guidelines of ISO-6166 and serves as such to other involved parties in the allocation process such as lead managers, dealers and issuing agents. This guideline should help all parties to easily select the responsible National Numbering Agency (NNA) in charge of the allocation of the ISIN code. Annex 1 of this document summarizes the responsibilities of the involved NNA.

For more detailed legal definitions of the Rule 144A and Regulation S, we refer to the relevant provisions of US law/regulation.

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Description of securities issued under rule 144A (sophisticated investors)

Safe harbor for private resale or restricted securities to "Qualified Institutional Buyers" (QIBs ¹) by persons other than the issuer of the securities.

- Securities issued under 144A are restricted securities with a 2-year "seasoning period"
 - securities may not be sold in the market for 2 years after issuance.
 - in the third year sales in public secondary market are subject to restrictions on volumes and the manner of sale.
 - often, after the seasoning period, 144A securities convert to unrestricted securities (i.e. registered).
- An offer or sale to a QIB is exempt from registration if the seller takes reasonable steps to ensure that the buyer is aware that the seller is relying on 144A.
- Notice to buyer that securities are restricted.
- Certification from buyer that it is a QIB and that it will resell the securities only to QIBs to whom it gives notice of the selling restrictions.
- Legend on securities or express language in the terms and conditions to the effect that the resale is restricted to the resale allowed under the safe harbor rules (exemptions).

General remark : Securities issued under rule 144A and deposited in DTC are to be in 'registered' form (SEC/IRS requirement) whereas for other places of deposit, the securities can be either in 'registered' or 'bearer' form.

¹ QIB means a person/entity that invest on a discretionary basis at least \$ 100 million in securities of issuers annually
Guideline Document

Description of securities issued under Regulation S (Offshore transactions)

- Any offer or sale of the security must be made in an "offshore transaction".
- Offshore transaction means :
 - no offer to persons in the US.
 - no "directed selling efforts" in the US.
 - no offers targeting US persons outside the US.

Regulation S : 3 categories

Category 1:

- non-US issuer & no SUSMI ²
- non-US governmental issuer
- single country offering (domestic offering)
- no 40-day distribution compliance period

Category 2:

- non-US issuer with reporting obligations
- other non-US issuer not meeting Category 1
- no sales to US persons during 40-day period
- distributors must inform buyers of restrictions

Category 3

- issuer not eligible for Categories 1 or 2 (US issuers)
- no sales to US persons during 40-day period
- certification of beneficial ownership required

General remark : Securities issued under rule Regulation S and deposited in DTC are to be in 'registered' form (SEC/IRS requirement) whereas for other places of deposit, the securities can be either in 'registered' or 'bearer' form.

² SUSMI (Substantial US Market Involvement)

For debt securities, SUSMI means: more than 300 US holders or more than 1 billion principal amount held by US persons or more than 20 % of outstanding amount held by US persons.

ISIN allocation rules for securities involving 144 A/RegS

Structure 1: 144A and REG S with a Common Depository structure

A. BIFURCATED Structure

- 2 separate global securities in registered form which are deposited with a “common depository” structure, held through Euroclear Bank and Clearstream Banking, one global note evidencing the Reg S portion and the other the 144A portion;
- The global securities are registered in the nominee name of the common depository;
- Exchange from one global to the other is restricted (usually possible upon certification of compliance).

2 distinct ISIN codes are allocated to the global notes:

- The **144A** receives a **XS-Common-x ISIN** (where x is the check digit),
- The **Reg S** receives a **XS-Common-x ISIN**.

B. UNITARY Structure.

- Single global security in registered form which is deposited with a “common depository” and held through Euroclear Bank and Clearstream Banking. The single global note evidences both the Reg S and the 144A portions;
- The global security is registered in the nominee name of the common depository;
- The same restrictions apply to the whole offering

One single ISIN code is allocated and the security receives an

- **XS-common-x ISIN** (where x is the check digit),

Structure 2: 144A in DTC and REG S with a Common Depositary structure

- 2 separate global securities in registered form
 - one form evidencing the Reg S portion which is deposited with a “common depositary” for Euroclear Bank and Clearstream Banking Luxembourg and is registered in the name of the nominee of the common depositary.
 - one form evidencing the 144A portion is deposited in DTC and is registered in the name of CEDE & Co as nominee for DTC;
- Exchange from one global to the other is restricted, usually possible upon certification;

Note that, notwithstanding exchanges from one form to the other are possible at any time, the 2 globals should not be considered as fungible.

2 distinct ISIN codes should be allocated to the global forms:

- The **144A** receives a **US-CUSIP-x ISIN** (where x is the check digit),
- The **Reg S** receives a **XS-COMMON-x ISIN**

Structure 3: Reg S and 144 A deposited in DTC

A. BIFURCATED Structure

- 2 separate global securities in registered form are deposited in DTC, one evidencing the RegS portion and the other the 144A portion;
- The global securities are registered in the name of CEDE & Co as nominee for DTC;
- Exchange from one global to the other is restricted (usually possible upon certification).

2 distinct ISIN codes are allocated to the global forms:

- The **144A** receives a **US-CUSIP-x ISIN** (where x is the check digit),
- The **Reg S** receives a **US-CINS-x ISIN**.

B. UNITARY Structure.

- Single global security in registered form deposited in DTC, evidencing both the Reg S and the 144A portions;
- The global security is registered in the name of CEDE & Co as nominee for DTC;
- The restrictions apply to the whole offering

single ISIN code is allocated to the global form and receives

- **US-CUSIP-x ISIN** (where x is the check digit),

Structure 4: 144A and REG S split note deposited in DTC and Common Depository.

- 4 separate global securities in registered form which are deposited with a “common depository” structure held through Euroclear Bank (EB)/Clearstream Banking (CBL) and DTC, one evidencing the RegS portion in both EB/CBL and DTC , the other evidencing the 144A portion in both EB/CBL and DTC.
- The global securities deposited in DTC are registered in the name of CEDE & CO as nominee for DTC. The global securities deposited with a common depository are registered in the nominee name of the common depository.
- Exchange from one global to the other is restricted (usually possible upon certification).

4 distinct ISIN codes are allocated to the global forms:

- The **144A** receives a **US-CUSIP-x ISIN** for the portion deposited in DTC.
- The **Reg S** receives a **US-CINS-x ISIN** for the portion deposited in DTC.

- The **144A** receives a **XS-COMMON-x ISIN** for the portion deposited with a common depository.
- The **Reg S** receives a **XS-COMMON-x ISIN** for the portion deposited with a common depository.

Annex 1 : Overview of allocation rules for 144A/RegS issues

The table below illustrates the following:

- Where the RegS and/or 144A portion of the security is/are safely deposited with a US Central Securities Depository (CSD), the ISIN will bear a US-prefix.
- Where the RegS and/or 144A portion of the security is/are safely deposited with a “Common Depository” Euroclear Bank/Clearstream Banking, the ISIN will bear an XS-prefix.

In case of bifurcated structure (scenario 1A and 3A) or split note (scenario 4), different unique ISIN codes on each portion (minimum 2 - maximum 4 portions) will be allocated in accordance with the place of depot of the security.

		OVERVIEW ISIN allocation (responsible Numbering Agency)			
Structure	# of globals	DTC Deposit ³		“Common Depository” Euroclear Bank/ Clearstream Banking	
		144A	Reg S	144A	Reg S
1A	2			XS-1	XS-2
1B	1			XS-1	
2	2	US-1	---	---	XS-1
3A	2	US-1	US-2	---	---
3B	1	US-1		---	---
4 ⁴	2	US-1	US-2	XS-1	XS-2

³ DTC deposit means ‘registered’ form only, other deposit structures allow both ‘registered’ and ‘bearer’ form.

⁴ No recent issues were identified but this scenario has been added for the sake of completeness. In the event such a scenario occurs, the relevant numbering agencies will co-operate to apply this rule appropriately.