

- ECP (also simply referred to as commercial paper, or CP) is an unsecured debt security with a maturity of less than one year.
- ECP is typically issued by investment grade / higher rated companies and banks, who are often frequent capital market issuers, as a source of short-term liquidity.
- ECP provides a diversification of funding sources so that companies are not solely reliant on banks for short-term funds.
- Issued pursuant to a debt issuance programme (up to a programme limit), ECP is a bearer form security and uses an agency structure (no trustee involvement).
- ECP is typically English law governed.
- In the current COVID-19 pandemic and the resulting liquidity crisis for corporates, ECP is being used by the UK government and the Bank of England as one of the means to provide support to businesses that make a material contribution to the UK economy. The support is provided through the Covid Commercial Financing Facility (CCFF) and has seen many issuers who have not considered ECP previously establishing ECP programmes. For a discussion and description of the eligibility criteria for the CCFF, please see [our prior briefing](#).
- Unlike a standard bond issue, ECP is not typically listed and therefore there is no requirement to prepare a full disclosure document (prospectus), carry out due diligence or get auditor comfort. Instead, a short form "information memorandum" (or "information sheet") is prepared.
- Dealers (and investors) therefore rely on the credit rating of the issuer (short-term credit rating) and the issuer having disclosed to the dealers any material information under the material information covenant in the dealer agreement. Note that a different approach may be taken on CCFF programmes where the only purchaser is the Bank of England and no information other than a summary of the terms and conditions is contained on the Information Sheet.
- As maturities are so short term (one day up to a year) there are no events of default and no negative pledge.
- ECP is a short-term "money market" instrument, appealing to large institutional investors / funds / asset managers that need to "park" money on a short-term basis. For ECP issued pursuant to the CCFF, the purchaser is the Bank of England.
- ECP is settled and cleared through Euroclear and Clearstream (the two leading European international central securities depositories):
 - a global note representing the amount to be issued / borrowed is (a) signed by the issuer and (b) physically held by a depositary on behalf of the clearing system;
 - purchasers of ECP have their securities account (or that of their custodian) at the clearing system credited with the amount they hold;
 - payments made by an issuer are paid to a financial intermediary (called the issue and paying agent) which channels those payments to the clearing system which, in turn, credits the cash account of ECP holders (or their custodian) at the clearing system.
- The key transaction parties (in addition to the issuer and any guarantor(s)) are:
 - the arranger of the CP programme (who will act as a "dealer" to place the CP with purchasers or, for CCFF transactions, with the BoE; dealers must have agreed to the BoE's Counterparty Terms in order to act as a CCFF dealer). Technically, the dealer purchases the CP from an issuer and then on-sells to an investor. On standard ECP programmes, there is usually a panel of dealers whereas, on CCFF transactions, there is usually only one dealer;
 - the issue and paying agent (a bank which carries out an administrative role and channels payments under the CP from an issuer to the clearing systems).
- ECP issues are non-syndicated (i.e. they only involve one dealer, who may be a "dealer for the day" and not a permanent dealer on the programme).
- Legal counsel (usually separate counsel for the issuer and arranger on a CCFF programme, or sometimes just one international "transaction counsel" on a non-CCFF programme) will draft the following programme level documents: (i) a dealer agreement; (ii) issue and paying agency agreement (containing the form of Notes); (iii) information sheet / memorandum; (iv) deed of guarantee (where applicable); and (v) deed of covenant. Legal opinions are also provided on signing of the programme. Local counsel will be required if the issuer / guarantor(s) are not located in England and Wales. Legal counsel are not involved in individual commercial paper issuances under an ECP programme.
- There are additional documentation requirements to access the CCFF (including a standard form of Undertaking and Confidentiality Agreement; a letter regarding Restraint on Dividends and Senior Management Compensation, and an Issuer Eligibility Form).

Indicative ECP Documentation List and additional CCFF documentation

ECP Programme Documentation:		
Document:	Description:	Parties:
Information Memorandum / Information Sheet	Very short-form disclosure document containing brief outline of the terms of the ECP programme, disclaimers and (depending on documentation approach) a brief description of the issuer and any guarantor(s). Also may incorporate financials by reference (on an evergreen basis).	N/A – Disclosure document only
Dealer Agreement	<p>Agreement containing basic representations and warranties and covenants of the issuer and any guarantor(s) to the arranger / dealer(s), as well as an indemnity from the issuer / guarantor(s) in favour of the arranger / dealer(s).</p> <p>Note that market practice on ECP programmes in relation to appropriate representations and qualifications to representations for CCFF programmes is developing. The Bank of England has stated that events after the impact of COVID-19 (taken to be 1 March 2020 for the purposes of the CCFF) do not necessarily disqualify an issuer from the CCFF (for example, a ratings downgrade below the eligibility criteria). Accordingly, for CCFF programmes, there is a range of approaches adopted by various arranger / dealer(s) on how to qualify representations, and how to address the traditional representations on "all material disclosure", "no material adverse change" and "no default" representations, as well as the ongoing covenant on the issuer to continue to provide all material information. Please speak to the Dentons contacts listed below to discuss further.</p> <p>In addition, there will be Sanctions, Anti-Bribery and Anti-Money Laundering representations, often adapted from the relevant issuer's MTN programme or RCF, or, if the issuer has no MTN or RCF, from LMA provisions.</p> <p>For CCFF programmes, there will be additional representations related to the information and undertaking to provide certain information to the Bank of England pursuant to the relevant arranger / dealer(s) obligations to the Bank of England under the Counterparty Terms.</p>	Issuer / Guarantor(s) / Arranger / Dealer(s)
Issue and Paying Agency Agreement	Engagement of agent and confirmation of processes the agent will undertake to facilitate payments under the programme.	Issuer / Guarantor(s) / Agent
Deed of Covenant	Deed conferring direct rights on CP holders against the issuer for payment if the Global Note is declared void (i.e. if the clearing systems fail).	Issuer
Deed of Guarantee	Deed confirming that the guarantor(s) will take on the issuer's payment obligations, on a joint and several basis, if the issuer fails to pay. The CCFF requires that the ECP issued to the Bank of England will rank pari passu with all the other unsecured indebtedness of the issuer's group, and should benefit from a guarantee from the "primary entity" within the issuer's group.	Guarantor(s)
Global Note	Form of debt instrument (contained in the Issue and Paying Agency Agreement).	Issuer (Agent to authenticate)
Conditions Precedent:		
Legal Opinions	<p>Delivered on establishment of programme and any programme update.</p> <p>English law enforceability opinion.</p> <p>Capacity / authority opinions for issuer and guarantor.</p>	N/A

Rating Agency confirmation	Evidence of short-term investment grade rating for issuer (or, if relevant, guarantor(s)). Note that, for CCFF programmes, the rating confirmation need only reflect the rating as of 1 March 2020, and other forms of rating confirmation may be acceptable to the Bank of England if the issuer did not have a formal short-term credit rating at that time. See section "B: Ratings" of the BoE website .	N/A
Evidence of corporate authorisation	A pdf certified copy of the (i) constitutional documents and (ii) the relevant board authorisations of issuer and guarantor(s) will be required.	N/A
Evidence of signatory authorisation/specimen signatures – see also BoE requirements below.	A pdf certified copy of specimen signatures of authorised signatories for each issuer and guarantor, and confirmation of their authorisation.	N/A
Additional BoE documentation for CCFF:		
Document:	Description:	Parties:
Issuer eligibility form	Brief application form, available from the BoE website (see section "Key application documents for companies thinking of issuing commercial paper"). <u>Initial</u> version to be submitted with (where possible): <ul style="list-style-type: none"> • most recent Annual Report and Accounts for both the issuer and the issuer's group; • an organogram of the issuer's group, including all main holding companies and subsidiaries; • signed Undertaking and Confidentiality Agreement (see below); • signatory evidence required (see below). <u>Final</u> version to be completed and resubmitted with condition precedent documentation and signed programme documentation, once the ECP programme is established.	N/A
Undertaking and Confidentiality Agreement	BoE standard form, available from the BoE website (see section "Key application documents for companies thinking of issuing commercial paper"). Includes a number of undertakings, representations and warranties that the issuer makes directly to the BoE.	Issuer / BoE
Dividend and Senior Management Compensation Letter	BoE standard form, available from the BoE website (see section "A7: Are there any conditions on capital distributions and on senior pay placed on CCFF eligible issuers?"). The BoE reserves the right to make this public if it considers the letter has been breached. The letter must contain commitments by the issuer (or, if relevant, parent guarantor) to restrict dividends and senior management compensation during any periods where outstanding ECP of that issuer is held by the BoE pursuant to the CCFF.	Issuer
BoE signatory evidence form and second specimen signature	Form available here . Guidance available here .	N/A

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