

Appendix A3a

Confidentiality Agreement

AFME (HY Division)/ICMA Confidentiality Agreement Template

Appendix A3a - Confidentiality Agreement

1. Important notice

October
2025

This template has been prepared by the Association for Financial Markets in Europe (AFME) and the International Capital Market Association (ICMA) with respect to high yield and leveraged finance transactions and investment grade and sub-investment grade bond offerings. However, some of the clauses contained herein are not solely limited to these types of offerings and therefore may be considered in the context of other capital markets transactions. In the context of investment grade and sub-investment grade bond transactions, this template may be considered appropriate and useful for debut, infrequent and/or emerging market issuers.

It is recognised that practices vary as to whether and when a confidentiality agreement is required depending on the facts and circumstances, and noting that some parties have a practice of using particular forms of agreement. The template is not intended to be mandatory or comprehensive, in part or in full, and we note that practices will vary depending on the company's sector, business practices, geographical location, output and other factors, and that parties will require some level of flexibility in following or applying these or any other such considerations. As such, users of the template should satisfy themselves of the implications of its use and that the template is appropriate to the terms of the commercial transaction. This template does not constitute legal advice and we encourage users to seek legal and other relevant advice, as appropriate.

Neither AFME nor ICMA is liable for any losses suffered by any person as a result of any contract made on the terms of this template or which may arise from the presence of any errors or omissions in this template and no proceedings shall be taken by any person in relation to such losses.

About AFME

[AFME](#) is the voice of the leading banks in Europe's financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent over 150 leading global and European banks and other significant market players. Our members play a vital role in Europe's financial ecosystem, underwriting around 90% of European corporate and sovereign debt, and 85% of European listed equity capital issuances. Importantly, AFME members are market makers, providing liquidity, which is essential for ensuring financial markets can function efficiently. We also represent law firms and other associate members which advise market participants and support AFME's legal and regulatory initiatives.

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About ICMA

[ICMA](#) promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. Its 620 members span 70 jurisdictions and include issuers, banks and securities dealers, asset and fund managers, insurance companies, law firms, capital market infrastructure providers and central banks. ICMA provides industry-driven standards and recommendations, prioritising three core fixed income market areas: primary, secondary and repo and collateral, with cross-cutting themes of sustainable finance and FinTech and digitalisation. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets.

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2. CONFIDENTIALITY AGREEMENT

October
2025

[Date]

[Name of Company]

[Address] [Address]

Attention:[]

Ladies and Gentlemen:

Pursuant to this confidentiality agreement (the "**Agreement**"), [[insert name of Client] and [insert name of bank entity]]'/'[[insert name of Client] (the "**Disclosing Party**") and [insert name of bank entity] (the "**Receiving Party**")]² have agreed to engage in discussions regarding [specify the transaction] or other engagement contemplated by a party (the "**Purpose**"), in connection with which certain Confidential Information (as defined below) may be [disclosed and used by the parties] [provided by the Disclosing Party to the Receiving Party]. This Agreement shall govern the treatment of such Confidential Information. [The party disclosing information shall be referred to herein as the "**Disclosing Party**" and the party receiving information shall be referred to as the "**Receiving Party**".]³

1. DEFINITIONS:

1.1

As used herein, "**Confidential Information**" means all confidential or proprietary information in whatever form related to the Purpose that is provided by the Disclosing Party to the Receiving Party or its Representatives (as defined below) on or after the date of this Agreement, including all portions of the analyses, compilations, studies or other documents prepared by the Receiving Party to the extent containing or otherwise reflecting such information, provided that Confidential Information shall not include information that:

- (a) was already lawfully in the possession of the Receiving Party or its Representatives or was otherwise available to the Receiving Party or its Representatives on a non-confidential basis before receipt thereof from the Disclosing Party;
- (b) is disclosed to the Receiving Party or its Representatives in good faith by, or becomes available to the public from, a third party who is not known by the Receiving Party to be bound by any obligation of confidentiality towards the Disclosing Party in relation to the same;

- (c) is in, or subsequently comes into, the public domain other than as a result of a breach of this Agreement by the Receiving Party, including in any prospectus, offering memorandum, offering circular (or similar document) relating to the Purpose (including in connection with pre-marketing));
- (d) is, or has been, independently developed by the Receiving Party or its Representatives without use or reference to the Confidential Information; or
- (e) the parties agree is not Confidential Information.

1.2 As used herein, “**Representatives**” means the Receiving Party’s affiliates, directors, officers, personnel, consultants, lawyers, accountants, and other professional advisers and agents (and each of the Receiving Party’s respective affiliates), and any other persons or entities engaged to act on the Receiving Party’s behalf, in each case, who has a need to know the Confidential Information in connection with the Purpose.

2. CONFIDENTIALITY UNDERTAKINGS:

2.1 The Receiving Party shall use Confidential Information only for the Purpose.

2.2 The Receiving Party agrees not to disclose Confidential Information, other than as provided in this Agreement. The Receiving Party may disclose Confidential Information:

- (a) to the Representatives, provided that the Receiving Party shall inform those Representatives of the confidential nature of the Confidential Information before it is disclosed and, unless (i) such person has entered into a separate confidentiality agreement with the Disclosing Party or (ii) has professional obligations of confidentiality, shall use reasonable [endeavours]/[efforts]⁴ to cause its Representatives and affiliates in possession of Confidential Information to keep such information confidential in accordance with the terms of this Agreement;
- (b) to persons or entities approved in writing by the Disclosing Party;

- (c) if the Receiving Party is requested or required by law, regulation, judicial or governmental order, subpoena or other legal process, or is requested or required by any governmental or regulatory authority, court of competent jurisdiction, tribunal, securities body or stock exchange, to disclose any Confidential Information; in such cases, the Receiving Party will provide the Disclosing Party with prompt notice (except in the case of regulatory inquiry or examination, and otherwise to the extent reasonably practical and permitted by law, regulation or regulatory authority) of such requirement or request so that the Disclosing Party may seek an appropriate protective order. The Receiving Party will upon written request, and at the expense of the Disclosing Party, use commercially reasonable efforts to cooperate with the Disclosing Party in its efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is being disclosed. Notwithstanding the foregoing, notice to the Disclosing Party shall not be required and disclosure of Confidential Information shall be permitted to the extent reasonably necessary in order to cooperate with a routine audit or examination by an auditor, regulatory or regulatory authority that is not targeted at the Purpose;
- (d) is in connection with any action or proceeding or exercise of remedies related to this Agreement or the contemplated transaction or engagement or the relationships referred to above;
- (e) for the purpose of presenting a “due diligence” defence in connection with or arising out of legal proceedings with a third party relating to the Purpose and, where legally permissible and reasonably practicable in the circumstances, the Receiving Party having notified the Disclosing Party in advance of such disclosure[.]; or]
- (f) [Insert any other provisions]⁵.

3. LIABILITY:

- 3.1** It is understood and agreed that money damages may not be a sufficient remedy for any breach of this Agreement and that the Disclosing Party may be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies available at law or equity to the Disclosing Party.

4. RETURN/DESTRUCTION OF THE CONFIDENTIAL INFORMATION:

- 4.1** All Confidential Information, together with any copies thereof, shall, upon the written request of the Disclosing Party, be returned to the extent technically practicable to the Disclosing Party or destroyed (at the option of the Receiving Party) provided, that only those portions of all analyses, compilations, studies or other documents prepared by the Receiving Party or its Representatives constituting part of the Confidential Information shall be destroyed; and provided, further, that the Receiving Party shall be permitted to retain all or any portion of the Confidential Information, in accordance with the confidentiality obligations specified in this Agreement for the term specified, to the extent required by applicable law or regulatory or authority or the Receiving Party's internal compliance, legal and audit requirements (including any internal documentation retention requirements); and provided, further, that the Receiving Party shall be entitled to retain copies of any computer records and files containing any Confidential Information which have been created pursuant to its automatic electronic archiving and back-up procedures.

5. NO OFFER, REPRESENTATION OR WARRANTY:

- 5.1** Nothing in this Agreement will constitute an agreement or commitment by either party to enter into any transaction or to create any partnership, joint venture or other business or fiduciary relationship of any kind between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.⁶
- 5.2** Except as otherwise agreed to in writing by the parties, none of the Confidential Information that may be disclosed shall constitute any representation, warranty, assurance, guarantee or inducement by either party to the other of any kind, including as to the accuracy or completeness of the Confidential Information (save as set out in legally binding documentation entered into by the parties in connection with the Purpose) and including with respect to the non-infringement of intellectual property or other rights of either party or of third parties. Neither party has any obligation to update any Confidential Information nor to correct any inaccuracies therein.
- 5.3** The parties acknowledge and agree that as between the Disclosing Party and the Receiving Party, the Disclosing Party is and shall remain the owner of all proprietary and intellectual property rights in and to the Confidential Information. No license or conveyance of any rights to the Receiving Party under any patent, copyright, trade secret or trademark, nor any other proprietary or intellectual property right, is granted or implied by any disclosure of the Disclosing Party's Confidential Information hereunder; provided, however, that the Receiving Party may use the Confidential Information received pursuant to this Agreement for the Purpose.

6. TERM:

- 6.1** The obligations of the Receiving Party under this Agreement shall terminate [one (1) year after the date hereof].⁷

7. GOVERNING LAW and JURISDICTIONAL REQUIREMENTS.⁸

- 7.1** In connection with any offering of securities by the "**Issuer**" or its affiliates in which [the Receiving Party]/[insert name of bank entity] or its affiliates are involved as an initial purchaser, underwriter, agent, dealer or similar participant, nothing in this Agreement shall restrict or prevent (i) any of [the Receiving Party]/[insert name of bank entity] and its Representatives, or the Issuer and any relevant stock exchange, from complying with all applicable disclosure laws, regulations and principles and/or the rules of any relevant stock exchange in connection with such offering, (ii) [the Receiving Party] / [insert name of bank entity] or its Representatives from considering information for due diligence purposes or sharing information with other initial purchasers, underwriters, agents or dealers participating in such offering, (iii) [the Receiving Party]/[insert name of bank entity] or its Representatives from retaining documents or other information in connection with due diligence, or (iv) [the Receiving Party]/[insert name of bank entity] or its Representatives from using any such documents or other information in investigating or defending itself against allegations or claims made or threatened by purchasers, regulatory authorities or others in connection with such offering.

8. [MISCELLANEOUS]

9. ENTIRE AGREEMENT:

- 9.1** This Agreement contains the sole and entire agreement between the parties with respect to the matters set forth herein and supersedes all other or prior agreements or understandings between the parties with respect to such subject matter, whether written or oral. No failure or delay by the parties in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any right hereunder. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in counterparts. Any provision of this Agreement which is or becomes invalid, illegal or unenforceable in any respect under the law of any applicable jurisdiction shall be ineffective to the extent of such invalidity, illegality or unenforceability without affecting or impairing the validity, legality or enforceability of the remaining provisions of this Agreement.

10. **BAIL-IN:**

10.1 [Notwithstanding and to the exclusion of any other term of this Agreement or any other agreements, arrangements, or understanding between the [Receiving Party] and the [Disclosing Party], the [Disclosing Party] acknowledges and accepts that a BRRD Liability arising under this Agreement may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledges, accepts, and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of the [Receiving Party] to the [Disclosing Party] under this agreement, that (without limitation) may include and result in any of the following, or some combination thereof:
 - (i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;
 - (ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of the [Receiving Party] or another person, and the issue to or conferral on the [Disclosing Party] of such shares, securities or obligations;
 - (iii) the cancellation of the BRRD Liability;
 - (iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;
- (b) the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

“Bail-in Legislation” means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

“Bail-in Powers” means any Write-down and Conversion Powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Bail-in Legislation.

“BRRD” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

“EU Bail-in Legislation Schedule” means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <<http://www.lma.eu.com/pages.aspx?p=499>>.

“BRRD Liability” means a liability in respect of which the relevant Write Down and Conversion Powers in the applicable Bail-in Legislation may be exercised.

“Relevant Resolution Authority” means the resolution authority with the ability to exercise any Bail-in Powers in relation to the [Receiving Party].⁹

Please confirm that the foregoing is in accordance with your understanding of our agreement by signing and returning to us a copy of this Agreement.

[SIGNATURE PAGES BELOW]

Yours faithfully,

[Name of Disclosing Party]

Name: _____

Title: _____

Date: _____

Accepted and agreed by:

[Name of Receiving Party]

Name: _____

Title: _____

Date: _____

Notes

- 1 Insert only in case of a mutual NDA.
- 2 Insert only in case of a one-way NDA.
- 3 Insert only in case of a mutual NDA.
- 4 For English law governed agreements, use “reasonable endeavours”. For New York law governed documents use “reasonable efforts”.
- 5 For disclosure to a ratings agency, include: “to ratings agencies in connection with the Purpose”.
- 6 If the bank is a Receiving Party, include: “For the avoidance of doubt, nothing contained herein shall restrict the Receiving Party and its affiliates from representing third parties, or otherwise acting in transactions that may involve [the Target,] the Disclosing Party or its affiliates, or from competing with the Disclosing Party or from independently developing, having developed, acquiring or marketing any materials, products or services, irrespective of their similarity to materials, products or services owned or marketed by the Disclosing Party, provided, in each case, that the Receiving Party does not disclose any Confidential Information in connection with such transaction.”
- 7 For securities offerings, include: “[two (2) years after the date hereof or upon any earlier closing of any securities offering by [the Disclosing Party]/[insert name of Client entity issuing the securities (“Issuer”)] or its affiliates by [the Receiving Party]/[insert name of bank entity] or its affiliates as contemplated by the parties hereto in connection with the Purpose].”
- 8 A. **For New York law, include:** This Agreement shall be governed and construed pursuant to the laws of the State of New York, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New York. Each party irrevocably and unconditionally agrees that any action or proceeding brought by either party in connection with this Agreement will be under the exclusive jurisdiction of the New York state and U.S. federal courts situated in the Borough of Manhattan in the City, County and State of New York, USA and each party hereto irrevocably and unconditionally waives, the fullest extent permitted by applicable law, and, and all rights to jury trial with respect thereto.

- B. **For English law, include:** This Agreement, its interpretation, and any non-contractual obligations arising from or connected with it are governed by English law. The parties irrevocably agree that the English courts are to have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement. The parties irrevocably submit to the jurisdiction of such court and waive any objection to proceedings in such court on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum. This clause is for the benefit of each party, its affiliates, their respective directors, officers, agents and employees and any person that controls such party, and shall not limit their rights to take proceedings in any other court of competent jurisdiction. The parties also waive any immunity (sovereign or otherwise) from jurisdiction of any court or from any legal process that it or its properties or assets has or may acquire.
- C. **For clients in MENA :** The parties agree that any and all disputes arising out of or in connection with (i) this Agreement (including any dispute as to its existence, validity or termination) and (ii) any non-contractual obligations arising out of or in connection with this Agreement shall, in each case, be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration (the “**Rules**”), which Rules are deemed to be incorporated by reference into this Agreement. The tribunal shall consist of three arbitrators (with the parties nominating one arbitrator each, and the third arbitrator being appointed under the Rules). Any requirement in the Rules to take account of the nationality of a person considered for appointment as an arbitrator shall be disappplied and a person shall be nominated or appointed as an arbitrator (including as Chairperson) regardless of his/her nationality. The seat of arbitration shall be London, England. The language of the arbitration shall be English.
- 9 To be added when the Receiving Party is a EEA-based bank entity and the governing law is non-EEA.