

Chapter 3

Prior to transaction announcement

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Legal counsel to managers

R3.1 A law firm representing the managers should not have any conflicting interest in the transaction and, in particular, should not also represent the issuer, any guarantor or any other party to the transaction (other than the trustee or its equivalent). See also R2.1.

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Early issuer involvement

R3.1A The lead-manager responsible for billing and delivery should liaise with the issuer at the earliest opportunity to:

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- (a) flag that bookrunners each have their own allocation policies, which are likely to be broadly consistent, based on generic issuer interest (long accounts, early/clear transaction support etc.) and effectively merged into each allocation discussion between bookrunners;
- (b) note that this is subject to bookrunners' understanding of specific issuer priorities, whether from the issuer's general corporate dynamics, prior course of dealings or explicit discussion; and
- (c) in this last respect, encourage the issuer to advise any particular allocation or other priorities.

Invitation to join transactions

R3.2 The appointment of a bookrunner may happen earlier than the appointment of other joint lead managers, so, where possible, such other joint lead managers should be:

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- (a) notified of their appointment and provided with draft documentation at least 48 hours (two business days) prior to the announcement of the transaction to allow them to familiarise themselves with the proposed transaction and related documentation and allow any necessary internal approvals to be obtained; and
 - (b) invited to participate in any transaction due diligence calls.
- A bookrunner should explain the rationale for this to the issuer.

Due diligence

R3.3 The appropriate level of due diligence to be performed in the context of each issue should be considered carefully.

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3.4 It is impossible to prescribe whether or what due diligence procedures would be appropriate in the circumstances of each issue, and procedures will vary greatly from issue to issue (depending, for example, on the type of securities being issued, the rights attached to those securities and the nature of the issuer and its business).

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Updating of programme offer document

- 3.5** In the context of a drawdown, an issuer has a legal responsibility (for example under the Prospectus Directive) to ensure that, at the time of the drawdown, the information in the programme offer document remains correct, complete and not misleading. See 2.11.

Drawdowns
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Investor meetings

- R3.6** Any dissemination of the scheduling of investor meetings that might result in subsequent issuance should occur on a public basis, whether or not required under applicable law or regulation. See further A12.

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Pre-sounding

- R3.7** Prior to any pre-sounding, there should be a discussion, among the managers intending to participate in it, as to:

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- (a) what information is proposed to be disclosed in the course of such pre-sounding;
- (b) whether such pre-sounding is within the scope of the EU's Market Abuse Regulation;
- (c) whether such information is to be treated as 'inside information' under applicable market abuse rules (and why); and
- (d) what procedures will be applied in managing the disclosure of such information whether inside or not (notably as to any wallcrossing and potential subsequent 'cleansing' of information, including timing thereof) to ensure compliance with such rules.

US/non-US differences in global offers

- R3.8** Where significant US distribution is expected, there should be early determination as to whether normal international offer execution/distribution procedures need to be varied (since US market practice may differ from that customarily applicable to international offers outside the US).

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Such differences may include underwriting on a several basis (rather than joint and several) and DTC-specific closing arrangements (which can differ from ICSD closing arrangements).

Titles of bond issues

- R3.9** Careful consideration should be given as to whether there are any particularly unusual limitations on investor rights under the bonds that may, in addition to being disclosed prominently in the issue documentation, need to be included in the title of the issue.

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