

Meetings and conference calls with issuers

R2.9 Dealers should be afforded sufficient time to prepare for meetings and conference calls with an issuer (and any guarantor), including time to review any relevant documents relating to such event. *September 2015*

Documentation content

R2.10 Programme documentation should include the forms of final terms/ pricing supplement and subscription agreement to be used for drawdowns. See also R10.1. *September 2015*

2.11 An issuer has a legal responsibility (for example under the Prospectus Regulation) to ensure that the information in the programme offer document is correct, complete and not misleading. See R2.12. *March 2020*

R2.12 In relation to a drawdown, the programme offer document should be updated and re-issued if dated more than a year prior to an intended issue's closing. See R2.19 and 3.5. *Drawdowns September 2015*

2.13 Possible language relating to offer document disclosure of credit ratings is set out at A4. *September 2015*

R2.14 Where possible the corporate authorisations at issuer/guarantor level for programme establishments/updates should also cover drawdowns under the programme. If additional authorisations are required for drawdowns this should be specified clearly, together with any appropriate conditions precedent, in the programme documents. *September 2015*

Conditions precedent

R2.15 On an establishment, an annual update and any material amendment of a programme, conditions to signing should include delivery to the arranger (on behalf of all the dealers) of: *September 2015*

- (a) appropriate comfort letter(s) from the issuer's auditor (and any guarantor's auditor); and
- (b) relevant opinion(s) from appropriate legal counsel (e.g. from the country of incorporation of the issuer and any guarantor and the country whose laws govern the bonds to be issued) confirming *inter alia* that: (i) the bonds to be issued under the programme will create valid and binding rights against the issuer (and any guarantor); and (ii) the contracts relating to the programme (including any annual update or material amendment) and the rights of the dealers under them are valid and binding,

dated the signing date and addressed to the dealers.

R2.16 The dealers' permission should be sought before conditions precedent are waived on their behalf by an arranger. *September 2015*

Updating of programme offer document

- 3.5** In the context of a drawdown, an issuer has a legal responsibility (for example under the Prospectus Regulation) 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
March 2020*

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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2017*

- (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.

*September
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Chapter 8 - Confirmation to Managers

Basis for commitment and timing

- R8.1** A Confirmation to Managers should be sent to managers as soon as practicable after pricing – except for syndicated issues involving joint lead managers only, where a short form allotment document may be sent instead, and except for global offers. *September 2015*
- R8.2** The Confirmation to Managers (or short form allotment document) should be considered as the basis of a manager's commitment, subject to the signed subscription agreement. *September 2015*

Confirmation content

- R8.3** The Confirmation to Managers, together with any annexed term sheet and the Initial Syndicate Communication, should contain such material terms of the issue and such other information as will allow the managers to confirm their participation in the transaction (including, when an issue follows a particular domestic market's customs, any key features which differ from those customary in international offerings – see R1.3, R4.1(h), R5.2 and A6). *September 2015*
- 8.4** As a guideline, the Confirmation to Managers could contain (this list is not exhaustive and the appropriate information to include should be considered carefully in the context of each issue): *March 2020*
- (a) **syndicate information** – e.g. the names of the managers in the syndicate, their respective underwriting commitments and allotments, distribution structure (e.g. pot/retention) details, the fees payable to the managers and arrangements for the payment of fees and expenses;
 - (b) the **commercial terms** – e.g. the name of the issuer and any guarantor, the currency and principal amount of the issue, the interest rate and interest payment dates, settlement and maturity dates, the form and denomination of the bonds, and an outline issue timetable;
 - (c) **documentation considerations** – e.g.
 - (i) whether the issue is under a programme or standalone (and, if under a programme, the date of the relevant offer document and any supplements);
 - (ii) how managers can obtain the programme documentation, if required, and how issue documentation will be distributed to the managers;
 - (iii) disclosure of any waiver of comfort letters, legal opinions or other significant conditions precedent; and

- (iv) confirmation of whether the ICMA Agreement Among Managers is to apply and, if so:
 - a) which version;
 - b) whether any amendments apply; and
 - c) that the execution of the subscription agreement by or on behalf of all parties will constitute a manager's acceptance of the relevant version of the ICMA Agreement Among Managers subject to any amendment notified to that manager in writing at any time prior to the earlier of:
 - 1) the receipt by the lead manager of the document appointing that manager's authorised signatory; and
 - 2) the execution of the subscription agreement;
- (d) **other significant terms** – e.g. any put or call options, negative pledge, cross default, taxation and any tax gross-up provisions, force majeure, status, ratings, stabilisation arrangements, any collective action clause, ISIN and common codes, governing law, and ranking;
- (e) **selling restrictions** – summary of relevant selling restrictions, including whether exempt under the Prospectus Regulation; in this regard, when indicating US sales restrictions, the following short form may be used, deleting as appropriate: “US: [Not/144A eligible], [Reg S Cat 1/2/3], [TEFRA C/D]” (see 4.9);
- (f) the **form of power of attorney** to be prepared by the managers, and details of the arrangements for signing documentation; and
- (g) details of the **arrangements for payment** by the managers for any retention bonds, if applicable.

R8.5 The Confirmation to Managers may cross-refer to a programme or preliminary offer document (e.g. “*Negative Pledge – As set out in [xxx]*”). Any material deviations from a programme should be disclosed in the Confirmation to Managers.

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Short form allotment document content

8.6 As a guideline, any short form allotment document (see R8.2) could contain: underwriting commitment details, manager allotments, managers' fees, fee payment arrangements, whether the ICMA Agreement Among Managers is to apply and, if so, the related additional information set out in 8.4(c)(iv), the form of power of attorney (if any) to be prepared by the other managers and documentation signing arrangements.

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No acceptance

8.7 It is not necessary for a manager to send an acceptance of its role pursuant to the Confirmation to Managers.

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Appendix A4 - Credit ratings in programme offer documents

- 1.1 Below is the credit rating language referred to in provision 2.13 in the ICMA Primary Market Handbook, for possible inclusion in programme offer documents.

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As at the date of this [Base Prospectus/Offering Circular/Prospectus], the [issuer/relevant guarantor detail] is rated [detail of ratings, senior/subordinated] and the Programme is rated [ratings] by [name of rating agency(ies)] [respectively]. [In the case of Prospectus Regulation-compliant prospectuses, insert the disclosure required under the CRA Regulation (the wording of which will depend on the registration status of the relevant credit rating agency)]. Tranches of notes issued under the Programme may be rated or unrated. Where a tranche of notes is rated, such rating will not necessarily be the same as the rating[s] assigned to the Programme. The rating(s), if any, of a certain series of notes to be issued under the Programme [may/will] be specified in the relevant [Final Terms/Pricing Supplement]. A rating is not a recommendation to buy, sell or hold securities and may be subject to suspension, reduction or withdrawal at any time by the assigning rating agency.

- 1.2 Information about credit ratings may also be included in the final terms/pricing supplement. See A8 in the ICMA Primary Market Handbook. It is worth noting that not all competent authorities in EEA jurisdictions or the UK allow the inclusion of CRA Regulation disclosure in the final terms.

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Appendix A12 - Pre-sounding, bookbuilding and allocations

Introduction

1. The purpose of this note is to provide some practical information on investor meeting, pre-sounding, bookbuilding and allocation processes (and related disclosure), as often used in the prevalent 'pot' context of the European cross-border syndicated institutional primary debt markets today. Market practice in this area is continually evolving and individual transactions are structured according to their specific circumstances, so this memorandum is not intended to prescribe or endorse particular structures or practices. Rather it is intended to be both a document designed to enhance transparency for, and serve as a helpful point of reference to bookrunners when explaining their working practices to, colleagues, issuers and investors. Some markets (notably in the US) may operate in ways different to those outlined here.

September 2015
2. Bookrunners of new bond issues seek to ensure transactions are executed as smoothly and as efficiently as possible, whilst meeting the issuer's size, pricing and distribution objectives (if any) and taking into account possible secondary market performance and an investor base willing to participate in this and subsequent transactions. Each bookrunner has internal procedures relating to the pre-sounding, bookbuilding and allocation process. These are applied to individual transactions, but may be tailored where appropriate to accommodate any issuer requirements, other bookrunner procedures and any specificities of the market segment concerned. In this respect, discussions with the issuer and between the individual bookrunners begin at an early stage and continue throughout the transaction.

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Investor meetings

3. Many issuers, particularly in volatile times, focus on ensuring investor familiarity with their businesses in order to maximise their ability to take advantage of short and unpredictable issuance windows. This may include holding a series of meetings with investors that, unlike transaction-specific or 'deal' roadshows, are not intended to market a specific immediate transaction (though one might follow if particularly encouraged by investor feedback). Whilst issuers should not communicate material non-public or inside information concerning their businesses in such meetings (focusing rather on outlining published financials, issuance programme prospectus, etc), notice of such meetings is generally publicly disseminated at the time participants are invited (including pursuant to ICMA Recommendation R3.6). This helps address any participant concerns that knowledge of the mere scheduling alone of such meetings might subsequently be characterised as constituting material non-public or inside information of forthcoming issuance under the EU's Market Abuse Regulation or similar regulatory regimes.

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dealer	a firm which is one of the named permanent dealers on a MTN or ECP programme or a temporary dealer for a day	<i>September 2015</i>
dealer for a day	a dealer who accedes to an MTN or ECP programme in relation to a specific drawdown only	<i>September 2015</i>
documentation lead manager	the lead manager with primary responsibility for co-ordinating the production and distribution of the documentation for a primary offer	<i>September 2015</i>
domestic offer	an offer that is made pursuant to the domestic laws and market practices of the issuer's home jurisdiction (for example, an offer which uses local law, local language or local settlement procedures). This contrasts with an international offer	<i>September 2015</i>
drawdown	a primary offer made under a programme	<i>September 2015</i>
euro commercial paper (ECP)	commercial paper that is the subject of an international offer	<i>September 2015</i>
final terms	the document that, together with the offer document, sets out the terms and conditions of a drawdown. This term is used when the Prospectus Regulation does apply. See also pricing supplement	<i>March 2020</i>
fixed price re-offer	the fixed price at which bonds are sold to investors prior to the time the managers are free to trade the bonds at any price	<i>September 2015</i>
free to trade	the point in time: (i) prior to which managers must sell bonds at the fixed re-offer price; and (ii) after which managers are free to sell bonds to investors at any price	<i>September 2015</i>
global form bond	a certificate constituting or evidencing an entire bond issue that is only capable of being held inside a clearing system	<i>September 2015</i>
global offer	an international offer of securities that is also capable of being made to investors in the US pursuant to either: (i) registration with the US Securities and Exchange Commission; or (ii) an exemption from such registration	<i>September 2015</i>
Initial Syndicate Communication	a communication sent by a lead manager to another firm inviting it to become a manager in a primary offer. See Chapter 4 of the ICMA Primary Market Handbook	<i>September 2015</i>
International Central Securities Depository (ICSD)	a clearing system that settles trades in bonds internationally. Usually taken to mean Euroclear in Belgium and Clearstream in Luxembourg	<i>September 2015</i>
international offer	an offer of securities that is made to investors located in more than one jurisdiction	<i>September 2015</i>

paying agent	a firm responsible to the issuer for various logistical aspects of a bond (notably distributing the issuer's payments of principal and interest against presentation of the bonds and/or any related coupons). This firm often acts separately for the ICSDs as common depository or common service provider. Depending on the context, this term tends to be used as a shorthand for the issuing and paying agent (generically), the principal paying agent (in a trustee structure) and the fiscal agent (in a fiscal agency structure)	September 2015
lead manager	a firm taking a lead role, solely or jointly, in managing and underwriting a primary offer. Lead-managing is construed accordingly	September 2015
manager	a firm taking an underwriting role in a primary offer	September 2015
offer document	a disclosure document relating to a primary offer. May also be referred to as a prospectus, base prospectus, offering circular, information memorandum, registration statement or, in connection solely with a listing application, listing particulars	September 2015
pot deal	a primary offer in which managers place investor orders into a common order book known as the 'pot'. The pot is managed by the bookrunners. The pot may apply to the whole of an issue or part only. This contrasts with a retention deal	September 2015
preliminary offer document	an offer document which is complete except for pricing information (e.g. a principal amount, coupon, maturity, issue price and issue date), and which is used for marketing purposes. Known colloquially as a 'red'	September 2015
pre-sounding	discussions prior to any public announcement of a primary offer with selected third parties to gauge market appetite for a potential transaction	September 2015
pricing supplement	the document that, together with the offer document, sets out the terms and conditions of a drawdown. This term is used when the Prospectus Regulation does not apply. See also final terms	March 2020
primary offer	an offer of new bonds by, or on behalf of, the issuer	September 2015
private placement	an issue of bonds sold to a limited number of investors (often on a reverse enquiry basis)	September 2015
programme agreement	a contract between the dealers and the issuer setting out provisions applicable to any drawdowns under a programme. Also known as a dealer agreement	September 2015
programme	a bond issuance platform, consisting of a base offer document and suite of master contracts, facilitating the issue of bonds through drawdowns	September 2015

prospectus	an offer document, notably one that is subject to the Prospectus Regulation regime	<i>March 2020</i>
Prospectus Regulation (PR)	Regulation (EU) 2017/1129, as amended, the European statute governing prospectuses	<i>March 2020</i>
retention deal	a primary offer in which managers are allotted a specified amount of securities to sell on to investors. This contrasts with a pot deal	<i>September 2015</i>
reverse enquiry	an unsolicited offer to purchase bonds, made by an investor to an issuer	<i>September 2015</i>
selling group	firms appointed by a lead manager to sell bonds in a primary offer on a non-underwritten basis	<i>September 2015</i>
settlement lead manager	the bookrunner with responsibility for paying the proceeds of the issue to the issuer and the fees to the underwriters or managers. This contrasts with the billing and delivery lead manager	<i>September 2015</i>
short form allotment document	a document used instead of a Confirmation to Managers on a primary offer involving joint lead managers only, that sets out the joint lead managers' underwriting commitments and allotments. See Chapter 8 of the ICMA Primary Market Handbook	<i>September 2015</i>
signing	the time when: (1) the subscription agreement is signed; (2) the agreement among managers (if any) takes effect; and (3) the offer document is published	<i>September 2015</i>
standalone issue	a primary offer not made under a programme	<i>September 2015</i>
stabilisation	the activity of buying bonds to support the market price of the issue after pricing	<i>September 2015</i>
subscription agreement	a contract between the managers and the issuer setting out their respective rights and obligations relating to the issue and distribution of the bonds. Sometimes referred to as an underwriting agreement	<i>September 2015</i>
tap issue	an issue of further bonds having the same terms and conditions as existing bonds except for their issue date and issue price and that are treated by the market as fungible with the existing bonds	<i>September 2015</i>
tax gross-up	a condition of a bond which obliges an issuer to gross up for any income tax on interest imposed by way of withholding due to a future change in the issuer's domestic tax laws. See A17 in the ICMA Primary Market Handbook	<i>September 2015</i>
underwriting commitment	the amount of bonds each manager agrees to underwrite. Underwriting may be on a joint and several basis or on a several basis only	<i>September 2015</i>