



DEBT CAPITAL PRIMARY MARKET GUIDELINES

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Debt Capital Primary Market Guidelines

1. Purpose of Guidelines

These Debt Capital Market Primary Market Guidelines are directed to institutional debt syndication distributions. These guidelines are relevant to primary market issuance practice and should be read in conjunction with the Debt Capital Market Primary Market Conventions. The Debt Capital Market Primary Market Conventions are separate to the Credit Product Conventions, which relate to secondary market trading activity in credit products including those issued under these guidelines.

These industry Guidelines sit within the broader context of law and administrative rules and guidance provided by the Australian Securities and Investments Commission (ASIC). ASIC has published several guides providing their interpretation of the law relevant to debt capital market practices, including Regulatory Guide 181 on handling conflicts of interest by licensees and Report 668 Allocations in debt capital market transactions. These Guidelines are not intended to duplicate ASIC guidance and should be understood in conjunction with ASIC views and the law. In addition, competition law administered by the Australian Competition and Consumer Commission (ACCC) also has high importance when competitors come together in a syndicate to provide their services to an issuer and is an area to which careful attention should be paid.

2. AFMA Code of Conduct

AFMA promotes efficiency, integrity and professionalism in Australia's financial markets. The AFMA Code of Conduct (Code) clearly articulates the ethical principles for minimum acceptable standards of behaviour and supports responsible decision making by firms and individuals engaged in financial markets activities.

All AFMA Financial Markets Members and Partner Members¹ are expected to observe the Code and operate with integrity, professionalism and competence. The Code is designed to support behaviours that put the interests of clients, the firm and the wider community ahead of personal or individual interests and promotes confident participation by users in Australia's OTC markets.

The Code is presented in two parts – the [Ethical Principles](#) and the [Guidelines](#).

Market participants are reminded that they are generally expected to observe and adhere to the market standards and conventions as set out below when conducting market transactions.

3. Handling inside information and market soundings

This section sets out guidelines for members on:

- a) the handling of inside information; and
- b) how market soundings are conducted.

¹ As defined in the AFMA Constitution

3.1. Inside information

Inside information is information in relation to which the following circumstances arise:

- a) the information is not generally available; and
- b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of particular securities.

The fundamental characteristic of inside information is that it is price sensitive. Price sensitivity is determined by meeting the following criteria:

- a) where a reasonable person would be taken to expect information to have a material effect on the price or value of particular securities; and
- b) the information would influence (or would be likely to influence) persons who commonly acquire securities in deciding whether or not to acquire or dispose of the first-mentioned securities.

Accordingly, members should be aware that any price sensitive information that is not generally available may amount to inside information. The fact that information is confidential information does not, of itself, mean that the information is also inside information. The two terms should not be confused. In general terms, information is confidential if it is not generally available. For confidential information to also be inside information, it must possess the quality of price sensitivity.

3.2. Documented procedures

Members should have documented policies and procedures that address behaviours around the handling of inside information. These should:

- a) explain how to identify inside information in the context of a particular transaction;
- b) cover disclosure on a need-to-know basis; and
- c) have secure environments and information protection.

Staff of members should agree to comply with these policies and procedures in their terms of employment, and this should be reinforced in staff inductions and ongoing training.

These policies and procedures should describe and be supported by appropriate information management arrangements between “private-side” investment banking personnel and “public-side” sales and trading personnel, such as through physical and system information barriers. Members should have systems in place that record personnel with access to price sensitive information which lists transaction deal team by name. Other staff with likely access to inside information, but who may not necessarily access it, may be mentioned by class rather than listed individually. This includes staff involved in internal committees (or who are involved in senior oversight), or who have an administrative, support or risk management functions (including legal and compliance, conflict management, internal audit, risk, word processing, printing, photocopying and IT administrators).

3.3. Market Soundings

3.3.1. Definition of Market Soundings

Market soundings is the term given to discussions with potential investors, public-side sales or trading personnel, which take place prior to announcement of an actual or imminent debt capital markets transaction, to ascertain interest and/or preferences for a potential new debt capital markets transaction that may involve disclosure of inside information to potential investors, public-side sales or trading personnel.

Where the market sounding involves disclosure of inside information to a public-side employee of the member, the member's own wall crossing and information barrier policies and procedures must be followed.

3.3.2. Market Soundings and Inside Information

Consideration of whether to carry out a market sounding needs to involve the identification of whether the market sounding is likely to involve disclosure of inside information. Members may find it useful to record the reasons for carrying out a sounding. Appropriate steps should be taken to restrict trading or advising in securities of the issuer by transaction deal team members. In order to avoid tipping off public side sales, trading or research personnel, the security should not be listed on the firm's restricted trading list which is accessible to public side personnel.

3.3.3. Issuer's Approval for Market Soundings

Members should obtain approval from the issuer before conducting market soundings involving inside information for a proposed debt capital markets transaction by that issuer. Members should discuss with issuers about which, when, and how potential investors will be sounded and the reasons for doing so, in order for an issuer to make a decision on whether or not to approve the sounding. This restriction does not include a member engaging in general discussions as described in Section 2.1 prior to being mandated on a potential debt capital markets transaction by the relevant issuer.

3.3.4. Limit

Market soundings should be limited to as few potential investors, public-side sales or trading personnel or other interested parties as the member considers reasonably necessary to gauge the level of interest or commitment for the potential debt capital markets transaction. Market soundings should take place as close as reasonably practicable to the relevant proposed issue of debt market securities.

3.3.5. Wall crossing

Prior to disclosing any inside information involved with a market sounding, members should first confirm with a person from the potential investor institution at an appropriate role or level of seniority whether the potential investor is prepared to be sounded for a potential debt capital markets transaction.

Up to the point when a potential investor agrees to be sounded, they should be approached on a no names basis. The potential investor should confirm that they are prepared to be sounded and to

receive information that may amount to inside information. The potential investor should also confirm that they would be subject to, and must comply with, all laws and regulations applicable to inside information including the insider trading prohibition in Australia and, to the extent applicable, any corresponding insider trading laws in all relevant jurisdictions. This confirmation should be recorded or documented. Any potential investor who agrees to receive inside information, or information which may amount to inside information, in this way, and is subsequently provided such information, is described as having been 'wall crossed'.

The proposed market sounding should not proceed if the identified person at the potential investor institution does not agree to be wall crossed for a potential debt capital markets transaction.

If any potential investor agrees to be wall crossed for a potential debt capital markets transaction, members should make an appropriate record of such agreement in accordance with members' own internal wall crossing policies and procedures. For any wall crossing, members may consider having the potential investor's verbal agreement scripted, obtaining the potential investor's verbal agreement over a taped line or obtaining written acknowledgement from the potential investor by email or otherwise.

4. General Discussions and Investor Meetings

4.1. General discussions

In the ordinary course of business, Syndicate and/or Sales may have general discussions with potential investors or other interested parties using information which does not amount to inside information. For example, relating to trends, conditions and developments in the debt capital markets generally (sometimes described as "market colour"). These discussions may include general or routine discussions to gauge their level of interest in securities of an issuer in the absence of any knowledge or confirmation as to an actual or imminent debt capital markets transaction.

The general discussions are not market soundings and the guidelines in Section 1.3 in respect of such discussions do not apply.

4.2. Investor meetings

When conducting or participating in a periodic investor meeting and/or general marketing for any potential issuer, all information provided at such a meeting must be information which does not amount to inside information. No details of any actual or imminent debt capital markets transaction should be included in the investor meeting materials or discussions.

Members should be aware that in some circumstances the mere scheduling of investor meetings and/or marketing may have a material effect on the price or value of particular securities. To be considered 'generally available', information should be actively disseminated through a channel which can be readily accessed by investors, intermediaries and trading desks. Members should also be aware that an announcement of investor meetings may be necessary for some issuers in compliance with regulatory requirements in the relevant issuer's home jurisdiction and other relevant jurisdictions.

5. Market Communication

5.1. General objective

The integrity and growth of the market is underpinned by transparency and fairness. Primary market activity indicates the assessment of fair value prices for securities by investors and is an important indicator of prevailing market conditions.

Syndicate managers and issuers should give due consideration to the best interests of the marketplace and all its participants when managing communication on primary market activity and intentions.

5.2. Information to be made generally available

Consideration should be given to making information relating to primary issuance activity which is to be shared with public side market participants, other than under a formal wall crossing generally available to all market participants simultaneously and in a consistent form. To be considered 'generally available', information should be actively disseminated through a channel which can be readily accessed by investors, intermediaries and trading desks.

Information which may be made generally available includes:

- Roadshows, including specification of the roadshow as being deal related where relevant;
- Issuance intentions including:
 - The tenor of issuance contemplated;
 - Price guidance including revisions and the setting of pricing;
 - Book updates;
 - Final terms;
 - and
 - Amendment exercises.

Syndicate managers should actively consider whether information has been appropriately disseminated by asking these questions:

- Would market participants not in possession of the information consider themselves to be at a disadvantage with respect to their activities relative to those who are in possession of the information?
- Is this information being made available to a number of investors other than under a wall crossing?
- If information is being made available to many investors, why not all?

5.3. Market Communications should be factual and timely

Market announcements should be objective factual accounts which provide the marketplace information from which it can form its own judgement.

Participants should seek to ensure information is made generally available on a timely basis and where relevant, the source and basis for information presented should be clear.

In the event it becomes clear that a prior statement is no longer accurate, this should be clarified through a subsequent update as soon as possible.

Information should be sufficiently complete to be informative and to limit the risk that it may be misinterpreted.

Market announcements will by necessity include information in a summary form. Syndicate managers should make it clear that the information provided constitutes a summary and that the summary is accurate. Where information is sourced from supporting documentation and it is practical to do so announcements should reference the source document. Where supporting information is being made available on request it should also be distributed on request to market participants.

Announcements will need be customised according to the specifics of a transaction or process.

At the discretion of syndicate managers and issuers, a non-deal roadshow announcement might be contemplated for visibility but is not considered necessary. However, syndicate managers and issuers should consider whether a cooling off period is appropriate prior to a transaction following engagements which have not been flagged to the market by way of an announcement.

5.4. Transaction announcements

The principle of transparency to the market applies to transaction announcements. It is standard practice for all deal roadshow and transaction mandates, along with launched transactions to be announced to the market in a transparent manner. This is typically done through an announcement to financial media outlets.

The standard formats for these announcements are set out in the Debt Capital Market Primary Market Conventions.

5.5. Institutional Investor Communications

This section covers institutional investor interactions in the pricing and bookbuild phases. Reference should be made to Section 1 of these guidelines regarding pre-deal interactions

5.5.1. Split lists

Because of the relatively small size of the Australian market it may appropriate to use splits lists.

A 'split list' is a list of investors that is notionally allocated to each respective syndicate manager involved in the transaction. The respective syndicate managers will be responsible for primary communication and dealing in respect to their investor split list on the transaction. Split lists are used to avoid an investor being contacted with the same information by each syndicate manager involved in the transaction.

An equitable list is determined among the syndicate of target investors. Each syndicate member then chooses one list e.g. list A, B, C, or D.

Investors should be advised by a syndicate manager that they have been allocated on a transaction. If an investor does not want to be on a split list, they can make this election or alternatively choose another syndicate manager on the transaction to deal with.

Syndicate managers should work in a collaborative manner in relation to the operation of a split list, working in the best interest of the transaction.

5.5.2. Disclosure of Joint Lead Manager (JLM) orders

Investors often express an interest in knowing the proportion of debt securities bid for by trading desks associated with JLMs, as this can form part of the decision-making process around their potential participation in a transaction. To meet this need, book updates in the AUD market now either specify the amount bid for by JLM trading desks in aggregate across the syndicate or exclude such amounts from coverage levels.

5.5.3. Direct issuer access to eBooks

Issuers should be provided with access to the eBook in order to view the bookbuild in real time.

5.5.4. Investor timing for accepting and finalising hedges

Once allocations are communicated to investors, an investor must provide final hedge instructions prior to the transaction pricing. Hedges should be confirmed as quickly as possible so as not to delay pricing of the transaction.

See also Section [8](#) on Reference Price Transactions

6. Inflated orders

It is not the responsibility of the syndicate managers to identify inflated orders. Syndicates accept orders in good faith on the basis of real interest.

However, syndicate desks must not knowingly accept inflated orders and should communicate to sales, investors and trading that orders must not be inflated. To guard against inflated orders from investors the following steps should be followed:

- Consistent messaging across JLMs that inflated orders will not be accepted.
- Syndicate to communicate to sales that orders should not be inflated and that any inflated orders will not be accepted.
- Sales to communicate to investors that orders should not be inflated and that any inflated orders will not be accepted.

If a syndicate manager takes the view that an order is unusually large (either compared to an investors' typical order size, or in relation to the deal size), then this may be a factor taken into account in the allocation of such an order.

All hedges should be communicated at the time that the order is placed, and no later than immediately before books close. The hedge should be representative of the investor's intentions, although is not treated as an indication only at the time of books close.

6.1. Guidance on Price and Tenor

Broad and consistent dissemination of price and tenor guidance provides market participants the same access to disclosure regarding potential primary market trades once a mandate has been given.

A 'tap' is a process that allows issuers to sell debt securities from past issues. The debt securities are issued at their original face value, maturity and coupon rate, but sold at the current market price.

Price and tenor guidance should be given for:

- Any new issue or tap of an existing issue that is subject to a bookbuild; and
- Any new issue or tap of an existing issue that is offered to more than one investor.

In respect of private placements to a single investor, price and tenor guidance is not needed for a tap of an existing issue, but it should be announced quickly after it is dealt. Price and tenor guidance is not relevant for any new issue to a single investor.

In the case where an issuer has sanctioned price and tenor guidance, disclosure of price and tenor is to be made to the broad market through a media release before this information is shared other than under an official wall crossing. For example, a Bloomberg alert or other common debt market communication.

For the avoidance of doubt, the distribution to investors of readily available public information such as secondary pricing or comparable issuance pricing in markets can be done in conjunction with market standard mandate announcement language, which is illustrated in the Debt Capital Market Primary Market Conventions.

7. Allocations

7.1. ASIC Guidance

ASIC has provided guidance on allocations in debt capital market transactions in [Report 668](#). ASIC expects licensees to have policy and procedures setting out their process for managing allocation recommendations that:

- require issuers' allocation objectives and preferences to be the primary consideration and maintain records of transactions, including allocation recommendations and decisions
- avoid or manage potential conflicts of interest
- consider a range of factors to ensure a fair and efficient allocation process, and
- are discussed with issuers before the commencement of a mandate and are available to investors.

Issuers generally have very clear objectives for the amount they wish to borrow in advance of any deal announcement. These views are unlikely to be materially changed by the size of an order book even if orders on a new issue exceed the issuer's planned offering.

Once order books are 'closed', and prior to the pricing of the new issue security, orders cannot be retracted by investors. If investors are concerned about moves in underlying interest rate environment, then all orders submitted should have clear limits stated prior to books closing.

7.2. Potential Factors to Consider when Allocating Order Book

Allocations should not be made as an inducement for the payment of compensation in respect of unrelated services, in consideration of past or future awards of corporate finance business, or expressly or implicitly, conditional upon the receipt of other orders for investments or the purchase of other services.

The allocation preferences objectives and decisions of the issuer are primary considerations to be followed in the allocation of the order book by syndicate managers. Other potential factors which may be taken into consideration when allocating an order book include:

- Applicable target market for the debt securities.
- Total oversubscription of the order book versus the size of the deal to be allocated
- Selling restrictions in the jurisdiction(s) applicable to the investor
- Avoidance of allocations in inconvenient or uneconomic amounts
- Investor characteristics -
 - Specific investor preference of the Issuer
 - Investor type
 - Geographical preference of the Issuer
 - Mix of investors to aid secondary market liquidity
- Investor behaviour -
 - Pro-active expressions of interest in terms of price or quantity in the marketing and pre-marketing process
 - Size of investor interest
 - Participation in liability management exercise
 - Track record in investing in the Issuer's past debt securities
 - Track record in investing in sector/issue type
 - Timing of the investor's interest in the deal process
 - Price or spread limits given by the investor
 - Length of the investor's expected holding period for the securities
 - Geographical location of the investor
 - Level and timing of engagement in transaction process: pilot fishing; market sounding (on wall crossed basis or otherwise); pre-deal investor education; roadshow meetings; one-on one; group; and other such as reverse enquiry.

7.3. Issuers and Syndicate managers

Once an order book is closed, and prior to a pricing call being scheduled, the order book needs to be allocated. The common approaches for conducting the allocation are by:

- a) Syndicate managers² in conjunction with the issuer;
- b) Syndicate managers solely; or
- c) Issuer solely.

Before pricing, the syndicate managers must communicate the allocations to all customers who left orders – it is common practice to use electronic web-based systems to do so.

7.4. Investors

Investors are expected to make their investment decisions based on transaction fundamentals, such as the issuer's business, the proposed terms of the issue and the investor's portfolio needs, rather than anticipated demand from other investors. If the issuer or a syndicate manager has a reasonable

² Also commonly referred to as Joint Lead Managers (JLMs)

belief or an indication that the investor's demand level differs from the true extent of its interest, or observes behaviours which are not consistent with the objectives and expectations of the issuer, it is fair to other investors to take this factor into consideration during the allocation process.

It is considered good market practice that once an order book is made 'subject', investors are to refrain from retracting orders unless there is a material move in price guidance or underlying market conditions.

8. Reference Price Transactions

8.1. General nature

In conjunction with syndicated debt issues it is common for Reference Price Transactions (RPT) to be entered into, which includes transactions known as a closing price order, and end of day order. All terms (including financial instrument, buyer, seller, notional, settlement date) except the execution price, are agreed and specified at the outset of the transaction. A mechanism to determine the execution price is also agreed, through later market observation of a reference price. The risk manager will in most instances be hedging its exposure under the RPT from the time the transaction terms have been agreed, and this hedging may continue through and beyond the reference time.

Since the transaction entails a risk transfer, at its discretion the Syndicate Manager as liquidity provider of that risk will hedge that risk, and this hedging activity can take place before, during or after the reference time. Hedges executed before the reference time could exert market pressure on the price of the underlying instrument, and thus affect the reference price level. From a commercial perspective, the ability to hedge the RPT before the reference time means the Syndicate Manager may be able to offer the client a lower spread than would otherwise be the case.

8.2. Formation of the reference price

Syndicate managers should be aware of and manage the possible conflicts of interest related to the formation and observation of the reference price inherent in RPTs. Conflicts may be particularly acute if the reference price is produced by the syndicate manager with whom the client has executed an RPT.

8.3. Hedging

8.3.1. Handling hedging conflicts of interest

The possibility of market pressure arising from Syndicate Manager risk management activity, and the related potential conflict of interest between the Issuer and the Syndicate Manager, is the key characteristic of RPTs. Hedging is the management of the risk associated with an anticipated transaction, designed to assist the resulting transaction for the client.

To handle hedging conflicts of interest:

- Syndicate managers may hedge for such purposes and in a manner that is not intended to disadvantage the Issuer.

- Syndicate managers should communicate their hedging practices to the Issuer in a clear manner meant to enable clients to understand their intentions and actions in the market.
- Syndicate managers should ensure that the Issuer is aware of the key mechanics of RPTs, in particular the fact that hedging can take place before, during or after the reference time, by making clear in its terms of business or otherwise by disclosure to the Issuer that the syndicate manager observes these Guidelines and internal procedures.
- The control environment should manage individual traders with regard to which risk, and client flow they are handling, particularly if they are dealing with their own.

8.3.2. Sole intention is risk mitigation

Syndicate managers should ensure that the sole intention behind their hedging is risk mitigation.

Hedging is expected to be restrained and in keeping with the atmosphere of the market on the day. A syndicate manager should have regard to the effect its hedging of an RPT might have on the reference price and should balance the objectives of its hedging strategy against the possibility of putting undue pressure on the reference price, recognising that some price pressure is to be expected as risk is passed, particularly for large transactions or transactions in less liquid markets.

Specific factors to be considered in determining whether hedging practices are acceptable or not include:

- a) Hedging should generally be at a pace consistent with normal market volumes at that time of day in the relevant instrument (adjusted as necessary for the volume implicit in the RPT itself, and recognising that this may not be possible for illiquid instruments).
- b) Hedging should be designed to neutralise the risk of the syndicate manager portfolio (including all its RPTs) and should not be undertaken for the purpose of creating a new significant open risk position.
- c) Hedging activity can take place before, during or after the reference time and although volatility can be due to many factors, a reasonable hedging strategy would not be expected to induce materially higher volatility of the reference price around the reference time and may mean hedging after that time needs to occur to mitigate such volatility.
- d) Hedging should not result in undue pressure on pricing around the reference time.
- e) Over-hedging (i.e. hedging more than required to cover the syndicate manager's risk) should not take place other than where it is a necessary consequence of appropriate hedging activity, such as where the relevant hedging instrument is only available in a size greater than that required to hedge the RPT.

8.3.3. Management of aggregate position hedging

It is common for dealers to be handling other client transactions, or to be managing their own risk during the hedging time frame of an RPT, and all these activities are usually done on a portfolio basis.

Risk managers should manage their aggregate positions in a way which is consistent with these Guidelines. It can often be impractical to assign individual hedging transactions to individual RPTs so

in judging management of aggregate positions, the outcome should be there is no disadvantage to various individual clients.