

BULLETIN – 170727/40

ICMSA Bulletin with respect to recommendations for the completion of the Conditions Precedent to Closing as early as possible in the international primary market

Issued by the International Capital Market Services Association www.icmsa.org

This bulletin updates BULLETIN – 140808/30 – recommendations for the completion of the Conditions Precedent to Closing as early as possible in the international primary market

In response to concerns raised around late closings and consequential delayed payments to issuers (causing liquidity problems), the ICMSA seeks to inform all participants in the international primary market of the ICMSA recommendations for the completion of the Conditions Precedent to Closing (CPs) as early as possible on the specified legal closing date.

These recommendations are applicable to syndicated closings through a Common Depository** taking place in European time zones and in relation to same day currencies. For next day currency closings, these will normally pre-close and therefore all conditions precedent will need to be in place prior to close of business the day prior to the defined closing date.

Since 2009, the closing flow has been ‘advanced’ successfully from 16:00 to 12:00 CET, with 95% of closings undertaken within the ICSDs (Clearstream Banking S.A. and Euroclear Bank S.A. / N.V.) real-time settlement process. Issuers however, particularly those located in the Asia Pacific region, continue to look to receive their cash earlier in the day, irrespective of the currency. Care should also be taken for large new issue transactions denominated in less liquid or ‘exotic’ currencies – particularly when the ICSDs and their clients have to adhere to a morning money transfer deadline in these currencies. Late notifications about the issuance by the Lead Manager to the ICSDs new issue teams e.g. afternoon of Closing Date-1 must be avoided to limit closing, distribution and settlement risks, and to ensure issue proceeds are received in a timely manner.

Following discussions between ICMSA members, the timing of receipt of the CPs were determined to be the starting point for the closing process on the issue date. Whilst some CPs can be collected and held in escrow prior to the closing date, others can only be effected on the legal closing day and the issuance of relevant legal opinions will often depend on such searches. In the UK for example, Companies House only opens to allow these checks to be done from 07:30 local time. However an English Court Winding Up Petitions Registry search is required for UK issuers and this can only be

**For the purpose of this document the term “Common Depository” will also include the Common Service Provider.



done starting from 10:00 local time. Naturally, the necessary checks and associated time requirements will differ between legal jurisdictions.

In addition, the Common Depository may not always have signed payment instructions for the start of business on the closing date and these should be received as soon as available during the closing process. The issuer's instructions can then be checked and validated thus ensuring both the release of the payment and the associated securities immediately after the "green light" (legal approval to close) has been received.

Closing Protocol Recommendations

- Syndicated new issue closings should be executed as soon as possible on the designated closing date with a target completion time of no later than 11:00 CET;
- Where possible, the CPs should be prepared and delivered the day prior to the legal closing date;
- Any CPs that cannot be prepared the day prior, should be executed as soon as possible after the start of the business day (value the closing date);
- Insolvency checks (where time zones and processes permit) should be done the day prior to the closing – to help streamline the linked processes;
- Signed payment instructions should be provided to the Common Depository by close of business the day prior to the closing date, along with any other documentation needed (including all instruction letters and incumbency certificates);
- The ICSDs irrevocable commitment to pay (CTP) instructions should be released as soon as possible on the morning of the closing date.