



BULLETIN – 150123/32

ICMSA Bulletin with respect to closing mechanisms to be utilised in the international primary market

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With the continued globalisation of the international primary market and particularly on the back of the opening up of new regions and the addition of new players, the ICMSA has raised concerns around the development of inappropriate primary distribution methodologies being adopted within the international primary market.

In such situations, where it is suggested that closings might occur outside of the established frameworks and without appropriate documentation in place, the risk dynamics cannot always be controlled and liability can arise without the necessary contractual nexus providing recourse to all the parties involved in completing the closing arrangements.

As a reminder to market participants, there are two closing arrangements that are commonly adopted i.e. either a syndicated closing or a non-syndicated closing. Within the context of this paper it is assumed that a delivery against payment (DVP) will be adopted, although of course, delivery free of payment (FOP) can be chosen.

Syndicated closings should normally be adopted for standalone bond issues where a Lead Manager / Arranger is appointed by the Issuer to effect the placing of the issuance either directly or indirectly through a group of co-managers and to effect payment to the Issuer for the subscription price payable. In such cases, it is expected that the Lead Manager / Arranger will arrange the primary distribution through its' new issue syndication account with either Clearstream Banking or Euroclear Bank SA/NV, (the "ICSDs"), In these instances, the Lead Manager should be in contact with the ICSDs as soon as the initial draft of the terms & conditions of the security are available, in order to gain preliminary acceptance and ISIN / common code allocation. Information should also be provided to the Principal Paying Agent appointed by the Issuer (who would normally also be appointed as Common Depositary or Common Service Provider / Common Safekeeper by the ICSDs).

The draft closing memorandum used for syndicated closings should be prepared and circulated to all relevant parties in order to finalise the arrangements. The closing can then be processed on the basis of the contractual arrangements between the Issuer, the Lead Manager(s) / Arranger(s) and also between the ICSDs and the Common Depositary or Common Service Provider / Common Safekeeper.



A non-syndicated closing is normally adopted within the context of a Euro-medium term note programme (or a Commercial Paper / Certificate of Deposit Programme) where an Issuing & Paying Agency has been appointed. The Final Terms / Pricing Supplement should clearly confirm the closing methodology i.e. non-syndicated or syndicated as it is also quite common for a syndicated issuance to be made for an issuance off a debt MTN programme. In this case, the syndicated closing mechanism should be adopted as described before, with notice given to the ICSDs and the Issuing & Paying Agent as soon as possible.

Where the Lead Manager / Arranger does not have a new issue syndication account with one of the ICSDs the Lead Manager / Arranger should liaise with the ICSDs directly to agree of the relevant closing method that can be applied. For example, in instances of stand-alone issuances where the Lead Manager / Arranger does not have a new issue syndication account with one of the ICSDs, then subject to appropriate contractual arrangements being put in place, the Principal Paying Agent appointed may agree upon request from the Lead Manager / Arranger / Issuer to act as Settlement Agent, as this will provide all parties involved with the necessary protection while carrying out the primary distribution on behalf of the Lead Manager / Arranger / Issuer. The Principal Paying Agent should provide notice to the ICSDs as soon as possible regarding the closing mechanics. In such cases where the Principal Paying Agent acts as Settlement Agent, the ICSDs will not treat such closings under the syndicated method. The Principal Paying Agent will be responsible for the relevant issuance payment to the Issuer.