AFME Recommended Listing Practices for Non-Investment Grade Debt Securities

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The Association for Financial Markets in Europe recommends that the following practices are followed in connection with listing of non-investment grade debt securities to the extent practicable.

I. General

The Issuer should be reminded of the following:

(a) the purpose and necessity for listing the bonds (i.e., withholding tax purposes and/or to comply with certain investment related requirements of institutional investors); and
(b) that Listing Particulars are generally required and made publicly available.

II. Timing of Listing of Notes and Selection of Stock Exchange

- Decide early in the process the appropriate stock exchange for listing the notes.
- Issuer's counsel to confirm with stock exchange review timeline and list of ancillary documents to support the listing[1].
- If practicable, depending on transaction timeline, issuer's counsel should aim to submit an initial draft of the listing particulars in time to receive initial comments from the stock exchange prior to the launch of the offering (i.e., prior to printing the preliminary offering memorandum).
- Where timing considerations are such that obtaining comments prior to launch is not possible, reasonable effort should be made to obtain comments and complete the listing as soon as is reasonably practicable after closing.

III. Listing Particulars

If the listing is not completed at, or prior to, closing of the transaction, the names of the underwriters should not be included in the listing particulars (to the extent permitted by the listing rules of the relevant exchange) unless, on a case-by-case basis, the relevant parties agree otherwise.

IV. Purchase/Underwriting Agreement

If the listing particulars are completed at the date of the Purchase Agreement and the underwriters are named in the document, it might be appropriate to include a 10b-5 representation to cover the disclosure in the listing particulars.

The parties should also consider negotiating an appropriate representation and a corresponding covenant that the parties will complete the listing process as soon as reasonably practicable after closing of the offering.[2]:

[1] The structure of the offering and the nature of the issuer (or issuers) business should also be considered early in the process to allow sufficient time to address timing, levels of disclosure, as well as any interpretative guidance from the relevant exchange. The presence of guarantees, collateral and other credit enhancement mechanisms may require additional disclosure to satisfy specific rules of the exchange and/or materiality concerns. Of specific concern are situations where guarantees provided come from some but not all of the subsidiaries of the group or where guarantees come from holding companies. Financial information of the guarantor group compared to the non guarantor group may be required under relevant stock exchange rules. It is important to raise these issues early in the transaction as the exchange as a policy matter may take a more practical view of the policies concerning relief and guidance when the issues are raised early on rather than after the fact and once the issuer is committed to listing on the relevant exchange in terms of reputation and time invested.

[2] The form of representation and covenant should be determined on a case-by-case basis.

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V. Disclosure

Where practical, the disclosure in the offering memorandum and the listing particulars should be substantively the same. However, where the listing occurs after the closing of the offering, there will often be a range of differences owing to timing and to changes made in response to comments from the exchange. Therefore, best practice would be to complete the listing as soon as reasonably practicable following pricing of the offering to avoid or minimize differences between the offering memorandum and the listing particulars.