

ABS Debt Capital Market Practice Guidelines

With effect from 15 March 2013

The Association of Banks in Singapore (ABS) Debt Capital Market Practice Guidelines

Section 1 – RECOMMENDATIONS AND GUIDELINES FOR MEDIUM TERM NOTE PROGRAMMES

NOTES APPLICABLE TO RECOMMENDATIONS IN SECTION 1

- 1) These Recommendation and Guidance Notes may be applied to all medium term note (“MTN”) programmes and debt issuance programmes. Debt issuance programmes include asset backed programmes and any other programme where provision is made for debt instruments to be distributed or placed in the Singapore domestic capital markets.
- 2) The Recommendations and Guidance notes may be used by any ABS member acting as an arranger (the “Arranger”) for an MTN programme.
- 3) Any reference in the Recommendations and Guidance Notes to an “offering circular” includes registration documents, listing particulars, prospectuses, information memoranda or any similar documents.

DOCUMENTATION

Section 1 Recommendation 1

TIMELINES FOR REVIEW AND COMMENT

- 1) Each manager/dealer (the “Dealer”) must be given a reasonable period of time to review and comment on the offering circular and any documents to be executed by such Dealer. Arrangers (together with their legal counsel) should therefore abide by the following timelines:
 - a) In the case of a new programme, each Dealer must be given at least ten (10) business days to review and comment;
 - b) In the case of an amendment to or an annual update of an existing programme each Dealer must be given at least seven (7) business days to review and comment on the amendments and/or the update;
 - c) Where new products are added to an existing programme as part of an update each Dealer must be given at least ten (10) business days to review and comment on the amendments;
 - d) There should be at least five (5) business days between the deadline for comments to be received from the Dealers and the date fixed for signing.
- 2) The Dealers are entitled to review and comment on the offering circular and all material agreements, including but not limited to:
 - a) the dealer or programme agreement;

- b) trust deed;
 - c) fiscal agency agreement;
 - d) agency agreement;
 - e) arrangement and comfort letters;
 - f) legal opinions; and
 - g) any other documentary condition precedents that are available.
- 3) Drafts of other documentary conditions precedent should be made available by the Arranger to the Dealers upon request, within a reasonable period of time before their intended delivery date.
- 4) Forms of the pricing supplement and subscription agreement to be used for drawdowns must be included in the programme documentation.

Section 1 Recommendation 2

DISTRIBUTION OF PROGRAMME DOCUMENTATION

- 1) Whenever an MTN programme is established, updated or amended, the issuer (or its counsel on its behalf) or the Arranger(s) (if so directed by the issuer) shall promptly, or as soon as reasonably practicable, distribute conformed and/or original copies of the Programme Agreement or Dealer Agreement, (or supplement or update, as the case may be), and offering circular or any similar document or supplement, to the Dealers.
- 2) Before the issuer draws down from the MTN programme, the Arrangers are expected to deliver the condition precedent documents to the Dealers. The Arrangers should therefore deliver these conditions precedent documents promptly after the signing, annual update or amendment of the MTN programme, as the case may be. Should there be any delay in the delivery of the documents from the issuer to the Arranger, the Arranger s (or the legal counsel as applicable) should notify the Dealers of the delay and inform them of the expected delivery date.
- 3) A complete set of programme documentation should be prepared and delivered (in hard copy or electronic copy / CD-ROM) to the Dealers not later than two weeks after the MTN programme establishment, update or amendment, as the case may be.

Section 1 Recommendation 3

AMENDMENTS TO PROGRAMME DOCUMENTATION BY DEALERS OTHER THAN THE ARRANGER

Where a Dealer or Lead Manager of a new issue who is not the Arranger, updates an MTN programme, they must promptly notify the Arranger. It is to be expected that all amendments to the offering circular should be promptly given to the Arranger and programme Dealers.

Section 1 Recommendation 4

HIGHLIGHTING CHANGES IN MTN PROGRAMMES

- 1) The Arranger should ensure that all drafts of the programme documentation are marked up against the existing programme documents whenever there are updates or amendments to an existing MTN programme to reflect the changes made. All updated or amended documents should be marked up to reflect all cumulative changes from the most recent update.
- 2) All new drafts of programme documents (including comfort letters) should also be marked up against from the latest circulated draft.
- 3) If there are any significant changes to the terms and conditions of the securities as a result of the amendment or annual update, the Arranger (or its counsel on its behalf) is responsible for notifying the Dealers of such changes and provide an explanation for the change.

AUTHORISATIONS AND CONDITIONS PRECEDENT

Section 1 Recommendation 5

CONDITIONS PRECEDENT - LEGAL OPINIONS AND COMFORT LETTERS

- 1) When an MTN programme is established, legal opinions from appropriate legal counsel are required confirming (amongst other things) that the securities to be issued are (or will create) legal, valid and binding rights against the issuer, and that the contracts (including any contract relating to security issued in connection with the securities) relating to the programme and the rights of the Arranger(s) and the Dealers under them are legal, valid and binding. These legal opinions should be dated the signing date of the MTN programme and be addressed to the Arrangers, Dealers and if required, the trustee.
- 2) Legal counsel should be engaged to advise the entire manager / Dealer group, not just the Arranger, and all opinions should be addressed to the Dealers. Each legal opinion should include language that enables any future Dealer (whether on a permanent basis or in respect of a single issue of notes off the programme) to rely on that opinion as if the opinion has been addressed to them at the date that opinion was originally delivered.
- 3) The Arrangers should consider whether it is appropriate for a comfort letter or letters to be obtained from the auditor to the issuer (and any guarantor) addressed to the Arrangers and the Dealers. If possible, each comfort letter should include language that enables any (future) Dealer (whether on a permanent basis or in respect of a single issue of notes off the programme) to rely on that comfort letter as if the comfort letter has been addressed to them at the date that comfort letter was originally delivered. It is not current uniform practice in the Singapore market for comfort letters to be delivered, but ABS is of the view that the provision of comfort letters is desirable to improve the practices of the Singapore market.
- 4) Comfort letters from the auditor to the issuer (and any guarantor) and legal opinions from external counsel should also be provided whenever there is any update of the MTN programme or (only in case of legal opinions) any material amendment to be made to the MTN programme. These legal opinions should cover all relevant contracts, including those associated with the annual update or amendment and not just the original programme agreements.

Section 1 Recommendation 6

AUTHORISATION OF NOTES AND GUARANTEES ISSUED UNDER THE MEDIUM TERM NOTE PROGRAMMES

- 1) As far as possible, when an MTN programme is established, updated or amended, the issuer should try to avoid the need to obtain specific board (or equivalent) authorisation at the time of each individual tranche of notes and any related guarantees, as this may impact the timing of the issue.
- 2) In the event that board level authorisation is required for each individual tranche of notes or related guarantee, this requirement should be included in the offering circular. The form of pricing supplement for the programme should contain a section indicating that such authorisation for the notes and related guarantee is in place, for example:

Date [Board] Approval for issuance of Notes [and Guarantee] obtained: [] [and guarantee []]

Section 1 Recommendation 7

LEGAL OPINIONS FOR MEDIUM TERM NOTE PROGRAMMES

- 1) For issues and drawdowns made under an MTN programme, Lead Managers/Dealers should be aware and take note that legal opinion(s) delivered on the signing or update of the programme documentation may not cover specific issuances under the programme. For example, the subscription agreement, (if any), or the enforceability or validity of the particular issue of the securities.

RELATIONSHIPS BETWEEN PARTIES

Section 1 Recommendation 8

STATUS OF ARRANGER(S) AND DEALERS

- 1) The relationship between the issuer, the Arranger(s) and the Dealers in the establishment and maintenance of an MTN programme are set out in the programme documentation.
- 2) It is recommended that the following standard clause should be included in the programme documentation to address the relationship between the Arranger(s) and the Dealers:

"Each of the Dealers agrees that the Arranger has only acted in an administrative capacity to facilitate the establishment and/or maintenance of the MTN programme and has no responsibility to it for:

- (a) the adequacy, accuracy, completeness or reasonableness of any representation, warranty, undertaking, agreement, statement or information in the Offering Circular, any pricing supplement, this Agreement or any information provided in connection with the Programme; or*

(b) *the nature and suitability to it of all legal, tax and accounting matters and all documentation in connection with the MTN programme or any drawdown.*”

Notes

¹. Insert title of document as appropriate

- 3) It is recommended that the following standard form provision should be included in the programme documentation to address the relationship between the issuer and the Dealer group:

“The Issuer acknowledges and agrees that (i) the purchase and sale of Notes pursuant to the Programme is an arm's-length commercial transaction between the Issuer, on the one hand, and the Arranger(s) or the relevant Dealer(s), on the other hand, (ii) in connection with any offering of the Notes under the Programme (the “Offering”), each of the Arranger(s) and the relevant Dealer(s) is and has been acting solely as principal and is not the agent or fiduciary of the Issuer or any group, subsidiary, associate or affiliate or any other party, (iii) neither the Arranger(s) nor the relevant Dealer(s) has assumed or will assume an advisory or fiduciary responsibility in favour of the Issuer with respect to the Offering or the process leading thereto (irrespective of whether the relevant Arranger or the relevant Dealer(s) has advised or is currently advising any Issuer on other matters) and neither the Arranger(s) nor the relevant Dealer(s) has any obligation to any Issuer with respect to the Offering except the obligations expressly set forth in this Agreement, (iv) each of the Arrangers and the relevant Dealer(s) and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the issuer, (v) each of the Arranger(s) and the relevant Dealers may offer and sell Notes to or through any of their respective affiliates and that any such affiliate may offer and sell Notes purchased by it to or through any of the Arranger(s) and the relevant Dealers, (vi) each of the Arrangers and the relevant Dealers or any of their respective affiliates may purchase the Notes and be allocated the Notes for asset management and/or proprietary purposes and not with a view to distribution, and (vii) neither the Arranger(s) nor the relevant Dealer(s) has provided any legal, accounting, regulatory or tax advice with respect to the Offering and the Issuer has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate. This Agreement supersedes any prior agreement or understanding (whether written or oral) between the Issuer, the Arranger(s) and the relevant Dealer(s) with respect to the subject matter of this Clause”.

Section 1 Recommendation 9

RELATIONSHIP BETWEEN ARRANGERS AND DEALERS

If so instructed by the issuer, the Arranger should arrange to send documents to Dealers

- 1) The Arranger should liaise with the issuer on behalf of the Dealer group and should normally present comments as having come from the group as a whole. The relevant Dealer's consent must be given to the Arranger before the Arranger can disclose the name of the Dealer who gave a particular comment on the documentation to the issuer.
- 2) Should an Arranger seek to waive any condition precedent for programme updates on behalf of the Dealers, they must first obtain written permission from the Dealers.

Section 1 Recommendation 10

REVERSE ENQUIRES IN MEDIUM TERM NOTE PROGRAMMES

Issuers are advised to make arrangements to ensure that copies of programme documentation requested by banks and securities firms, which are not parties to the MTN programme, can be made available, and obtained by them so as to assist with any reverse enquiries. If the issuer has not made any such arrangements then requests for programme documentation should be addressed to the issuer.

OFFERING CIRCULARS AND DISCLOSURE

Section 1 Recommendation 11

DUE DILIGENCE, MEETINGS AND CONFERENCE CALLS WITH ISSUERS (AND GUARANTORS)

- 1) Dealers should be given sufficient time to prepare for meetings and conference calls with the issuer and any guarantor in which they are invited to participate, including time to review the draft offering circular.
- 2) The issuer and any guarantor should make themselves available for due diligence sessions with both the arranger and dealers. Dealers should be given reasonable time to review the due diligence questionnaire.
- 3) Should any verification meeting be held to verify the contents of an offering circular and Dealers are not invited to attend the meeting, the issuer should provide confirmation to the Dealers that such meeting has been held. To the extent verification notes have been prepared, a copy of such notes should also be provided to the Dealers.

Section 1 Recommendation 12

IMPORTANCE OF ACCURATE, COMPLETE AND CURRENT INFORMATION IN OFFERING CIRCULARS

- 1) Generally, the issuer is responsible for ensuring that the offering circular contains all relevant information which is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and of any guarantor and of the rights attaching to such securities.
- 2) A supplement to the offering circular should be issued to investors, in the event that there is a significant new factor, material mistake or inaccuracy relating to information in the offering circular which would affect the assessment of the securities arising between the time the offering circular is published and the final closing of the offer, or the time when trading begins.
- 3) It is desirable for the offering circular to be updated annually, unless the programme is inactive. If a drawdown is made more than a year after the date of the offering circular, it will usually be advisable to update the offering circular.
- 4) An issuer who wishes to issue securities based on the offering circular of an MTN programme should be aware that it has a legal responsibility to ensure that the information in such offering circular is correct and complete, not misleading and there is no information the omission of which would render any such

information in the offering circular to be interpreted as misleading. If the issuer is unable to so confirm, it should update the offering circular.

Section 1 Recommendation 13

DISCLOSURE OF RATINGS IN CONNECTION WITH MEDIUM TERM NOTE PROGRAMMES

- 1) It is not encouraged for ratings to be disclosed in the offering circular for an MTN programme as the offering circular would no longer be accurate if there was any change to an issuer's/guarantor's debt ratings and/or such ratings may not be accurate for a particular tranche of notes.
- 2) Where ratings are included in the offering circular:
 - a) the offering circular should accurately distinguish between the different types of debt (such as senior/subordinated debt, short term/long term debt) that may be issued under the MTN programme. It should also be disclosed in the offering circular that tranches of notes issued under the MTN programme and/or certain categories of debt of the issuer/guarantor may not be rated or may be given a different rating to that set out in the offering circular;
 - b) the offering circular should state that rating agencies usually assign individual ratings to a particular tranche of notes and that such ratings may differ from the ratings assigned to the MTN programme or notes as set out in the offering circular. It should also be disclosed in the offering circular that these agency ratings may be provisional and never formally assigned because the issuer fails to take certain action required by the rating agency;
 - c) market participants should consider with issuers on whether the offering circular should point out the potential inaccuracy of any such ratings for any particular tranche of notes, and if and how to disclose individual ratings for a particular tranche of notes based on relevant stock exchange requirements, legal and regulatory advice and market practice. However, the offering circular should not oblige market participants to do so; and
 - d) a change in such ratings (as they relate to the issuer's/guarantor's debt generally) should generally result in a supplemental or new offering circular in accordance with any relevant stock exchange or legal or regulatory requirements.
- 3) Where reference is to be made to ratings in the offering circular, it is suggested that the following reference or any other comparable reference may be used:

The MTN programme [or the notes [set out specific categories of debt] issued under the MTN programme] has [have] been rated xxx [include relevant [senior/subordinated, short term/long term] ratings] by [name(s) of rating agencies]. Tranches of notes issued under the MTN 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 [notes]. A security 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.

Section 2 – RECOMMENDATIONS FOR ALL ISSUES OF DEBT INSTRUMENTS INCLUDING SYNDICATED ISSUES UNDER MEDIUM TERM NOTE PROGRAMMES

DOCUMENTATION

Section 2 Recommendation 1

DISTRIBUTION OF DRAFT DOCUMENTATION AND EXECUTION OF AGREEMENTS

- 1) For each issue, the Lead Manager is responsible for sending to each of the managers / Dealers the latest draft of the offering circular (which would include any prospectus, information memorandum or any similar document)(if any), final version of the agreements and any auditors' arrangement letter required to be executed by them or on their behalf together for receipt not later than two (2) full business days prior to signing.
- 2) In the case of an issue under a Debt Programme, the documentation to be provided under this Recommendation includes the pricing supplement for the issue and, if one is being produced, any supplement to the offering circular for the programme.
- 3) If a preliminary prospectus is being produced for an issue, the Lead Manager is responsible for sending the latest draft to any manager whose name is to be printed on the preliminary prospectus together with the draft underwriting agreement, for receipt not later than two (2) full business days before the preliminary prospectus is published. If for any reason the draft underwriting agreement cannot be circulated together with the preliminary prospectus, the Lead Manager must notify the managers.
- 4) If the Lead Manager is unable to follow the above practices, the Lead Manager must ensure that such documentation shall be made available at least two (2) full business days prior to the signing in its offices in the place of signing or in the offices of its nominated representative in Singapore if the signing is outside Singapore.
- 5) Lead Managers who request managers to appoint authorised signatories to execute agreements on their behalf and managers in providing such appointments should use the following form:

We, [Name of your Institution], hereby appoint [Name of your signatory] or [Names of Lead Managers' signatories] acting alone with power to execute and deliver on our behalf the [Name of documents] in connection with the issue by [Name of issuer] of its [Description of securities being issued] and to take any other action necessary in connection with such issue.

By: Dated:

Authorised representative

Section 2 Recommendation 2

PRICING SUPPLEMENTS

If a syndicate of managers is involved in the proposed issue, this should be indicated and the pricing supplement should set out the names of each manager.

Section 2 Recommendation 3

CONDITIONS PRECEDENT

- 1) Programme documentation should contain the following conditions precedent to closing (unless managers have been notified, before they agreed to become managers, that these conditions will not be included):
 - a) legal opinions from legal counsel confirming that the securities to be issued are (or will create) legal, valid and binding rights and that the contracts relating to the issue and the rights of the managers under them are legal, valid and binding, should be delivered to the Lead Manager on behalf of all the managers;
 - b) in the case of a debt programme, a certificate, signed by a director (or other equivalent senior officer of the issuer or any guarantor) to the following effect:

[Insert reference to offering circular and any supplements] contain all material information relating to the assets and liabilities, financial position, profits and losses [name of Issuer and Guarantor, if there is one] and nothing has happened or is expected to happen which would require the attached documents to be supplemented or updated.

- c) comfort letter or letters to be obtained from the auditor to the issuer (and any guarantor). The auditor's first comfort letter should be dated the signing date for the issue and the legal opinions and/or auditors' second comfort letter should be dated the closing date of the issue. All comfort letters and legal opinions must be addressed to the managers and to the dealers as discussed under clause 3 of Section 1 Recommendation 5. Currently, it is not uniform practice in the Singapore market for comfort letters to be delivered, but ABS is of the opinion that the provision of comfort letters is desirable, particularly in relation to syndicated drawdowns. Accordingly, the provision of comfort letters should, whenever practicable, be included as a condition precedent in the programme documentation.

OFFERING CIRCULARS AND DISCLOSURE

Section 2 Recommendation 4

UPDATING OFFERING CIRCULAR

The Offering circular for an issue under an MTN programme should be updated if it is dated more than one year from the date of the signing of the issue.

Section 2 Recommendation 5

DUE DILIGENCE

- 1) Under the Securities and Futures Act, Chapter 289 of Singapore ("**SFA**"), managers and underwriters involved in an offer of debt securities to the public are subject to civil and criminal liabilities for any false or misleading statements in, or omission of material information from, the prospectus issued in connection with a retail offering (or similar offering document). The SFA also provides for a due diligence defence against prospectus liability. Accordingly, Lead Managers should carefully consider the appropriate level of due diligence to be performed in the context of each drawdown.
- 2) The appropriate level of due diligence to be performed will vary and should be assessed on a case by case basis. Given that the type of securities being issued or the rights attached to those securities or the nature of the issuer and its business (among other things) affect the due diligence procedures, these guidelines do not prescribe whether or what due diligence procedures are appropriate in the circumstances.

Section 2 Recommendation 6

INCLUDING THE DATE OF OFFERING CIRCULAR IN SCREEN ANNOUNCEMENTS

Where there is a screen or Bloomberg announcement for issues under an MTN programme, the Lead Manager should include the date of the offering circular (or supplement) that contains the terms and conditions of notes issued under the programme that apply to the issue being launched.

Section 2 Recommendation 7

AVAILABILITY OF DRAFT OFFERING DOCUMENTATION

Where there are institutional offerings of securities by issuers that have not previously issued in the Singapore market, the preliminary offering circular should be made available to market participants and investors for a reasonable period (example, three (3) (business) days) before pricing of the issue.

Section 2 Recommendation 8

AVAILABILITY OF THE FINAL OFFERING CIRCULAR

Where there is an institutional offering of securities, the final offering circular and/or final terms or pricing supplement should be made available by each member of the syndicate to each investor who had purchased such securities from it.

RELATIONSHIPS BETWEEN PARTIES

Section 2 Recommendation 9

RELATIONSHIP BETWEEN LEAD MANAGERS AND MANAGERS

Where a Joint Lead Manager or Manager has provided a particular comment on the documentation neither the Lead Manager nor the legal counsel to the Joint Lead Manager and Managers should disclose the name of the relevant Joint Lead Manager or Manager to the issuer unless the relevant Joint Lead Manager or Manager has given its consent.

Section 2 Recommendation 10

LEGAL COUNSEL TO MANAGER/DEALERS

A law firm that is appointed to represent the managers or the Dealers should not represent any other party to the transaction or any other transaction (other than the trustee or its equivalent) unless all parties consent to the arrangement. The law firm must represent either the entire syndicate of managers or the entire manager / Dealer group, and not just the Lead Manager or Arranger.

INTEREST RATES

Section 2 Recommendation 11

FIXING OF SWAP OFFER RATES OF 1 YEAR OR LONGER

Dealers and Issuers may consider these Recommendations and Guidance Notes for debt securities issued (whether pursuant to medium term note programmes, debt issuance programmes or on a standalone basis) with an interest rate which is referenced to a Swap Offer Rate of 1 year or longer and is reset periodically (“**LT-SOR**”). For debt securities where the rate is referenced to a LT-SOR, ABS recommends the following methods for determining the LT-SOR:

- 1) Where a rate published by a recognised industry body (where such rate is widely used) or a relevant authority for the relevant period is available, ABS recommends using such rate for determining the LT-SOR.
- 2) Where no such rate is published by a recognised industry body (where such rate is widely used) or a relevant authority, the LT-SOR should be determined by reference to rates appearing on an agreed screen page provided by an information service provider (e.g. a broker page) (“**Relevant Screen Page**”) (or such other replacement page).

Where an agreed screen page by an information service provider is used, Dealers can consider (unless inappropriate, e.g. if the payments under the debt securities are subject to a swap) using a method to determine the LT-SOR based on the arithmetic mean of the final/closing LT-SOR (or, if applicable, the LT-SOR to be obtained from the Relevant Screen Page at the prescribed time in accordance with the terms and conditions of the debt security) from the Relevant Screen Page over an agreed period (for example, 5 to 7 consecutive business days prior to and including the rate fixing day) (the “**Rate Determination Period**”). If the LT-SOR from the Relevant Screen Page is available for every business day in the Rate Determination Period, it is recommended that the highest and lowest LT-SOR in the Rate Determination Period be excluded from the calculation of the arithmetic mean. In the event that the LT-SOR from the Relevant Screen Page is available on only one business day in the Rate Determination Period, that rate shall be the LT-SOR.

- 3) In the event that there is no LT-SOR is available in the Rate Determination Period, the LT-SOR will be determined as the average of the quotes of the swap offer rates provided by an agreed number of reference banks. If only one reference bank provides a quote, the LT-SOR will be the swap offer rate quoted by such Reference Bank.

ABS observes that the prevailing market practice for determining the LT-SOR is as follows:

- a) two (2) business days prior to the commencement of an interest period; and
- b) at the close of business on the determination date.

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