THE INVESTMENT ASSOCIATION

BEST PRACTICE PRINCIPLES

FOR EXCHANGE AND TENDER OFFERS

June 2018

The Investment Association (IA) champions the interests of the UK-based asset management industry, helping savers access investment services, businesses secure the capital they need to grow, and infrastructure and social housing projects obtain the finance they need right across Europe.

Our 240 members range from small, boutique UK firms, to large global players with pan-European footprints. Our members employ 93,500 people and collectively manage £6.9 trillion of assets, £1.4 trillion of which is for European clients and funds.

Our members have £840 billion invested in shares, accounting for over one third of the UK market capitalisation. They hold £500 billion in corporate bonds, £160 billion in commercial property, and £29 billion in significant infrastructure.

BOND MARKETS ARE A CORNERSTONE OF THE GLOBAL ECONOMY, PROVIDING A CRITICAL SOURCE OF CAPITAL FOR ISSUERS AS WELL AS KEY INVESTMENT OPPORTUNITIES FOR A WIDE RANGE OF INVESTORS.

THE INVESTMENT ASSOCIATION'S MEMBERS, AS INVESTORS IN FIXED INCOME INSTRUMENTS, ARE KEEN TO ENSURE THAT BOND MARKETS FUNCTION WELL AND CONTINUE TO SERVE THE INTERESTS OF ISSUERS AND INVESTORS.

In recent years investors have raised a number of concerns regarding aspects of certain exchange and tender offer proposals. These concerns relate to:

- **A general lack of transparency as to the rationale, process and outcome of such transactions.**
- **The risk of investors who choose not to partake being left in an illiquid remnant of the instrument.**
- **Overly short timescales.**
- **Issues during the new issue process that potentially lead to unfair treatment of existing bondholders**
- **The presence of linked resolutions in the consent solicitation memorandum.**

Investors are concerned that these issues risk undermining bond market integrity to the detriment of issuers and investors.

In order to help address these issues, the Investment Association has produced these **Best Practice Principles for Exchange and Tender Offers** that aim to:

- **increase market participants' understanding of investor concerns; and**
- **provide guidelines for a well-conducted offer process.**

The Investment Association and its members remain committed to prompting good practice within fixed income markets and are keen to engage with other market participants to promote and discuss these Principles.

SUMMARY OF PRINCIPLES

GENERAL PRINCIPLES

- An exchange or tender offers should be constructed in as simple a manner as possible.
- Offer processes should be non-coercive and should never look to circumvent bondholder quorum and protections.
- Issuers and their advisers should pay due regard to the importance of maintaining good relationships with investors, particularly issuers that frequently seek access to bond markets.

TRANSPARENCY

- There should be clear visibility as to the offer process all the way through. In particular:
  - The commercial objective for an exchange or tender offer should be made clear. A bondholder call can be helpful for explaining the commercial rationale.
  - Issuers and their advisers should publish the results of the offer, including a breakdown per security where multiple securities were subject to the offer.
  - Tender results should be available before the books are closed on any new security being issued.

LOSS OF LIQUIDITY

- Issuers who have benefited from issuing in benchmark size should have regard to the impact on investors of subsequently reducing the issuance to below benchmark size.
- Whilst any material reduction in the outstanding amount can have a negative impact on investors, there is likely to be significant impairment of liquidity where Issuers redeem a majority of the original outstanding amount, or where outstanding amounts fall materially below £100m.
- As such, Issuers and their advisers should take into account the impact of the tender offer on the liquidity of the bonds. To ensure continued liquidity in the bonds, Issuers should consider:
  - For up-to-all tender offers, a clean-up put option for investors, in the event that they are left in an illiquid holding as a result of the tender. This option should be at the same price as the initial tender offer.
  - For specific tender amounts, Issuers should consider whether that tender size is likely to leave remaining investors with an illiquid holding. If so, they should consider reducing the size of the tender, or implementing a clean-up.

LINKED RESOLUTIONS

- Issuers and their advisers should ensure that participation in an offer should not be contingent on the passing of another resolution.

TIMESCALES

- Issuers and their advisers should ensure investors are given sufficient time to properly analyse the offer, taking account of time delays and early deadlines resulting from the custodial chain. Investors should have the documents in their possession for at least 48 hours and up to a week or more depending on the complexity of the offer before having to make a decision.
- To circumvent delays in the transmission of documents resulting from the custodial chain, issuers should ensure that ALL offer announcements are made via a RNS. These announcements must also be made available on the issuer website.

NEW ISSUANCE PRIORITY CODES

- Issuers and their advisers should ensure existing bondholders receive a priority code for the new issuance when tendering their existing holdings.

CONSENT FEES

- Issuers should take note of the Investment Association's position on consent fees, which states that such fees should paid to all noteholders who vote on the proposals, irrespective of whether they vote for or against the proposed modifications. The Investment Association accepts that fees should only be payable in the event that the resolution is passed, and only to those bondholders that vote.

GENERAL PRINCIPLES

IT IS IMPORTANT TO EMPHASISE THAT A POORLY CONDUCTED OFFER PROCESS CAN WORK AGAINST THE INTERESTS OF BOTH ISSUERS AND INVESTORS.

For investors, a poorly conducted process may

- leave them with insufficient information to allow them to reach a sound investment decision; or
- place them in a coercive position which forces them to make a decision they would otherwise not have made, as demonstrated in the examples below.

For issuers, a poorly conducted process can undermine investor confidence in them, resulting in a rejection of the proposals and potentially limiting their access to capital markets in future.

PRINCIPLES

- An exchange or tender offers should be constructed in as simple a manner as possible.
- Offer processes should be non-coercive and should never look to circumvent bondholder quorum and protections.
- Issuers and their advisers should pay due regard to the importance of maintaining good relationships with investors, particularly issuers that frequently seek access to bond markets.

TRANSPARENCY

INVESTORS ARE CONCERNED ABOUT THE LACK OF TRANSPARENCY DURING EXCHANGE AND TENDER OFFERS. IN SOME INSTANCES, THE COMMERCIAL RATIONALE BEHIND THE PROPOSALS IS NOT PROVIDED. THIS LEAVES INVESTORS UNCLEAR AS TO THE PURPOSE OF THE OFFER AND WHETHER IT REFLECTS A CHANGE IN THE ISSUER'S DEBT MANAGEMENT STRATEGY OR A CHANGE IN THE WIDER COMPANY STRATEGY.

In addition, the information provided to market participants has been sub-optimal in many cases. For example, there have been instances where an announcement following a tender offer for multiple securities provided the total value accepted without a breakdown by security. In other instances, holders have been asked to participate in a new issue without first knowing the results of the tender. This makes it impossible to make a value judgement between the existing security being tendered for and the new security. It also puts them at risk of breaching client mandates if the tendered amount is lower than expected and allocations on the new security result in an outsize holding.

PRINCIPLES

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- The commercial objective for an exchange or tender offer should be made clear. A bondholder call can be helpful for explaining the commercial rationale.
- Issuers and their advisers should publish the results of the offer, including a breakdown per security where multiple securities were subject to the offer.
- Tender results should be available before the books are closed on any new security being issued.

LOSS OF LIQUIDITY

THERE HAVE BEEN EXAMPLES WHERE BONDHOLDERS WHO HAVE OPTED NOT TO PARTICIPATE IN AN OFFER HAVE FOUND THEMSELVES LEFT IN AN ILLIQUID REMNANT (RUMP) OF A BOND THAT WAS LIQUID PRIOR TO THE CORPORATE ACTION.

This risk creates a negative incentive for portfolio managers to take part in the offer, even if they do not believe the offer to be in the best interests of their clients, for fear of being left with an illiquid holding. This coercive environment is not conducive to well-functioning bond markets. In some cases, the advisers to the Issuer have cited the size of the resulting rump as justification for bidding the security wide of pre-tender trading levels.

PRINCIPLES

→ Issuers who have benefited from issuing in benchmark size should have regard to the impact on investors of subsequently reducing the issuance to below benchmark size.

→ Whilst any material reduction in the outstanding amount can have a negative impact on investors, there is likely to be significant impairment of liquidity where Issuers redeem a majority of the original outstanding amount, or where outstanding amounts fall materially below £100m.

→ As such, Issuers and their advisers should take into account the impact of the tender offer on the liquidity of the bonds. To ensure continued liquidity in the bonds, Issuers should consider:

- For up-to-all tender offers, a clean-up put option for investors, in the event that they are left in an illiquid holding as a result of the tender. This option should be at the same price as the initial tender offer.
- For specific tender amounts, Issuers should consider whether that tender size is likely to leave remaining investors with an illiquid holding. If so, they should consider reducing the size of the tender, or implementing a clean-up.

LINKED RESOLUTIONS

LINKED RESOLUTIONS, WHEREBY THE PASSING OF ONE RESOLUTION IS CONTINGENT ON THE PASSING OF ANOTHER, ARE CONSIDERED TO BE EXTREMELY PROBLEMATIC AS THEY MAY PRESSURE INVESTORS TO SUPPORT ASPECTS OF PROPOSALS THEY WOULD NOT OTHERWISE SUPPORT.

For example, where an offer to purchase at 106 is linked to a resolution that would allow for the terms of the bond to be changed to allow mandatory redemption at 103, those who wish to take part in the tender would have to vote yes to both proposals in order to be redeemed at 106. This creates a perverse situation where those who are exiting the bond are able to change the future terms of the bond to the detriment of bondholders who do not. In turn, this forces portfolio managers to take part in the tender offer, where they would not otherwise have done so, for fear that the bonds would ultimately be redeemed anyway at 103 and to the detriment of their end investors.

Such proposals not only run counter to the interests of investors, they may also work against issuers, who may find entire proposals turned down because investors are opposed to one part of a linked resolution.

The IA and its members are strongly opposed to linked resolutions.

PRINCIPLES

- Issuers and their advisers should ensure that participation in an offer should not be contingent on the passing of another resolution.

TIMESCALES

OFFERS TEND TO LAST FOR FIVE TO SEVEN DAYS, AND SOMETIMES EVEN LESS. ISSUERS ARE KEEN FOR THE PROCESS TO BE RELATIVELY SHORT TO LIMIT THE MARKET RISK.

These timescales, on first glance, do not appear particularly short. However, inefficiencies in the custodial chain, which can often result in a delay of several days before an offer reaches the investor from the issuer. In addition, many bondholders will have custodian imposed deadlines that are several days before the final tender deadline. Together this can result in very short timescales which give investors very little time to conduct a thorough analysis of the offer. Notably, such short timescales will often prevent proper discussion with an issuer over any contentious aspects of the proposals.

As a result, investors may face being forced to vote on a proposal that they have not had sufficient time to properly consider and reach a sound investment decision on. This risks undermining the process as a whole.

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- To circumvent delays in the transmission of documents resulting from the custodial chain, issuers should ensure that ALL offer announcements are made via a RNS. These announcements must also be made available on the issuer website.

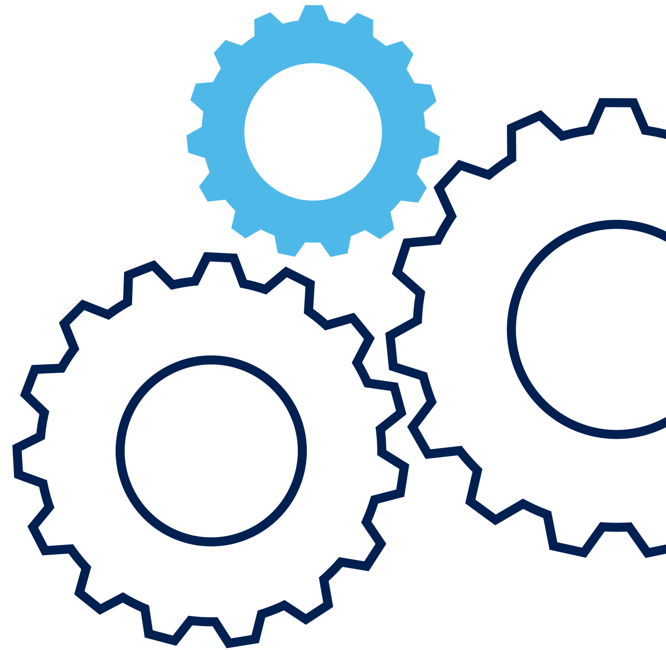
NEW ISSUANCE PRIORITY CODES

WHERE A TENDER OFFER IS IMMEDIATELY FOLLOWED BY NEW ISSUANCE IT IS IMPORTANT THAT THIS PROCESS RUNS SMOOTHLY, IN ORDER TO ENSURE THAT EXISTING BONDHOLDERS ARE FAIRLY TREATED.

In some instances, bondholders have tendered their existing bonds only to be pushed out during the new issuance process.

PRINCIPLES

- Issuers and their advisers should ensure existing bondholders receive a priority code for the new issuance when tendering their existing holdings.



CONSENT FEES

IT IS COMMON PRACTICE FOR EXCHANGE AND TENDER OFFERS, ALONG WITH OTHER FORMS OF CONSENT SOLICITATION, TO OFFER A CONSENT FEE TO BONDHOLDERS – SOMETIMES CHARACTERISED AS A 'WORK' OR 'WAIVER' FEE – IN EXCHANGE FOR VOTING ON THE PROPOSALS.

There have been concerns that, where such fees are only paid to those who vote in favour of the proposals, this risks breaking principles of fairness by failing to acknowledge the active stewardship role being played by investors who have engaged with the proposals and voted against them. This also may result in bondholders agreeing to proposals they do not support on principle, because to turn down the consent fee could potentially be to the detriment of client interests. This in turn risks entrenching poor market practice.

PRINCIPLES

- Issuers should take note of the Investment Association's position on consent fees, which states that such fees should paid to all noteholders who vote on the proposals, irrespective of whether they vote for or against the proposed modifications. The Investment Association accepts that fees should only be payable in the event that the resolution is passed, and only to those bondholders that vote.

CONTACT INFORMATION

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