Norges Fondsmeglerforbund
Norwegian Securities Dealers Association

Recommendation no. 9.

Recommended guidelines for the issuance of corporate bonds

Part I

The handling of information, etc, when preparing corporate bonds

Part II

The lead manager's investigations in the case of undocumented transactions

This recommendation was adopted by the board of the Norwegian Securities Dealers Association on 10 June 2013

Part I

The handling of information, etc, when preparing corporate bonds

1. Introduction

This recommendation codifies among other things the current industry practice for handling information when preparing a corporate bond issue. The recommendation is also intended to protect investors and market integrity.

The handling of information when preparing an issue of corporate bonds is slightly different to when preparing an issue of shares due, among other things, to these securities' different characteristics. The risk relating to shares is to a large extent linked to stock market fluctuations and/or the investors' assessment of the enterprise's value, while bonds have more risk linked to credit and liquidity. Unlike shares, bonds that are bought at around par will normally only have a limited upside since bond owners are never entitled to more than the nominal value plus interest. In the same way as shares, however, bonds can have a considerable downside if the enterprise does not do well and cannot service its debt.

2. The bonds covered by part I of the recommendation

Part I of the Recommendation is basically only applicable to corporate bonds issued by enterprises with a low credit rating. This type of bond has more in common with shares than other bonds as regards sensitivity in relation to company and market information. The Recommendation also applies to high-yield certificates, but these are issued very rarely.

A low credit rating means here bonds with a rating lower than BBB-. Rating means here the official rating from a recognised rating agency, such as Moody's, Fitch and/or Standard & Poor's, or a shadow rating from one or more Norwegian investment firms. If no shadow or official rating exists, it is the investment firm's own responsibility to conduct a qualified assessment of whether it is reasonable to assume that the credit rating would be lower than BBB-.

Investment grade (IG) bonds and IG certificates, including bonds issued by so-called frequent issuers - banks or energy/power enterprises that regularly issue bonds - are basically not covered by the Recommendation. This is because price-sensitive information rarely exists when IG bonds/certificates are issued or when bonds are issued regularly by frequent issuers. When IG and frequent issuer bonds are issued, both the preparations and sale often take place directly from the bond desk (the broker desk), since the bond desk knows most about investor

interest and pricing. Each case should nevertheless be considered in relation to inside information and whether such a solution can be used.

However, if the issuance of IG bonds/certificates does entail price-sensitive information, part I of the Recommendation should be complied with.

The Recommendation applies to both listed and unlisted corporate bonds. In practice, the majority of bonds covered by this recommendation will be unlisted since most of the bond loans issued in Norway are not listed or the subject of an application for listing until after the issue/preparations have taken place. Bonds admitted to the Oslo Stock Exchange's ABM (Alternative Bond Market) list are unlisted since the ABM list is not a regulated market.

3. Legal starting point

The Norwegian Securities Trading Act is applicable to preparations for all types of bond loans.

Chapter 3 of the Securities Trading Act applies to bonds which are listed on, or the subject of an application for listing to, a Norwegian regulated market, cf section 3-1 of the Securities Trading Act. New loans in the Norwegian bond market are never listed at the preparation stage and no application to have them listed is made until after the issue has been carried out. In exceptional cases, so-called loss issues may be listed during the preparation stage, since this is an extension of an existing listed loan. Normally, therefore, chapter 3 of the Securities Trading Act relating to insider trading and market manipulation, etc, will not be applicable to bonds that are not listed or for which no application to be listed has been made, but the following factors must be taken into consideration:

- Information on new loans being raised may be important for the pricing of existing listed bond loans (for example, this may reveal factors relating to the enterprise's need for refinancing)
- Factors linked to bond loans may be important for the pricing of a bond issuer's listed shares or other listed financial instruments

The issuance of unlisted bonds may thus mean that there is inside information relating to the issuer's existing listed financial instruments and must in such case be dealt with accordingly.

Section 3-9 of the Securities Trading Act, which prohibits the use of "unreasonable business methods", is applicable to unlisted loans/loans for which no application to be listed has been made, and this may mean that an investor cannot, for example, trade on the basis of price-sensitive information linked to the issuance of a bond loan.

Key provisions linked to investment firms' handling of information (in addition to the provisions stated in chapter 3 of the Securities Trading Act) are:

- the conduct of business rules in section 10-11 of the Securities Trading Act,

- the duty of confidentiality rules in section 10-9 of the Securities Trading Act

When carrying on its business activities, an investment firm must, according to section 10-11 of the Securities Trading Act, ensure that its clients' interests and the integrity of the market are safeguarded in the best possible manner by striving to avoid conflicts of interest through, among other things, ensuring that the client's interests take precedence over the firm's interests and that individual clients are not unfairly favoured at the expense of other clients.

In addition, all investment firm employees are subject to a general duty of confidentiality regarding information about the affairs of others that comes to their knowledge in the course of their work, cf section 10-9 of the Securities Trading Act. This duty of confidentiality includes the name of the firm's principal (the client). The duty of confidentiality does not distinguish between sensitive and neutral client information.

However, the duty of confidentiality must not prevent the exchange of information with persons who have a justifiable need for the information (such as other employees, contracting parties, advisors).

4. The procedure when preparing bond loans and handling information

Investment firms that prepare corporate bond loans should have a Debt Capital Market (DCM) department that operates behind Chinese walls in relation to the firm's other departments. This department may provide advice to companies on capital structures and capital requirements, etc, and help to prepare investor documentation, such as term sheets and a subscription agreement.

Normally, bond loans are prepared in the following phases (the order of these may vary):

- The pitch phase
- Negotiations on a mandate
- A possible legal and corporate review (due diligence)
- The possible preparation of insider lists - restrictions on information handling
- The preparation of a Term Sheet, Terms of Application (ToA), etc, including an assessment of stock exchange listing
- A pre-sounding
- The preparation of a company presentation/information material
- The sales phase
- If relevant, a listing prospectus

4.1 The pitch phase

During the pitch phase, one or several investment firms (the DCM departments) present their offer to the potential issuer concerning the preparation of the bond loan; based on assessments

of the enterprise and the enterprise's need to raise a loan. During this phase, there are often several investment firms which, independently of each other or jointly, present their ideas to the issuer. Normally there will not during this phase be any definite information on whether a loan will be raised and there will therefore also not be any information about who may possibly be given the assignment.

4.2 Negotiations on a mandate

After the pitch phase, the issuer starts to negotiate on a mandate agreement with one or several investment firms. During this phase, the likelihood of a loan being raised is sufficient for the investment firm to have to consider restrictions on information handling.

This applies to both inside information and price-sensitive information linked to bonds that are not listed or for which no application to be listed has been made. The issuance of a bond loan may comprise or contain inside information even if no application to list the bonds is to be made, refer to item 3.

4.3 Possible preparation of insider lists – restrictions on information handling

Below are some points that the project manager can use to assess whether the forthcoming planned bond issuance may affect the price of either the issuer's existing listed bonds or the issuer's equity instruments:

List of factors (not exhaustive):

- The planned bond issuance appears to be financing which can, in principle, be cancelled without having any effect on the pricing of any other outstanding bonds from the issuer or the issuer's shares or other equity instruments.
- The company has no need for additional financing but is considering utilising a possible window in order to explore the opportunities for better conditions and ensure long-term financing when the market is offering sensible conditions.
- The issuer has no liquidity risk linked to due dates for loans, delivery conditions or other factors.

In the abovementioned situations, it will normally take a lot to allege that information on the bond issuance will have the nature of being inside information.

However, it is important for lead managers to be aware that the nature of information may change along the way once it is clear that the company has, in the pre-sounding, seen sound interest in the book on good conditions - which may also affect the price of the issuer's equity instruments when it becomes clear that the company is going to continue with its financing activity.

- If the company requires financing and there is a real liquidity risk, the bond issuance should be treated as inside information. The lead managers must in such case make sure to keep insider lists in accordance with prevailing legislation and obtain the client's acceptance to be made an insider in the pre-sounding, etc. Alternatively, the issuing company may choose to go public by offsetting information through a stock exchange notice stating that the company is considering alternative financing solutions, including financing in the bond market.

4.4 Pre-sounding

In order to place an issue at the right price, the lead managers may need to conduct a so-called pre-sounding. During the pre-sounding phase, the investment firm contacts potential investors to determine the price of the bond loan, assess the interest in the bonds and obtain "advance subscriptions". The pre-sounding requires the DCM department to assess whether the information that potential investors will receive is inside information or price-sensitive information.

In some cases, investors will receive inside information during the pre-sounding. In such cases, the investor must be asked, before being given information on the transaction, whether he wishes to be put in an insider position - which means that the investor is subject to restrictions (a duty of confidentiality and restrictions on trading). The investment firm must be able to document the investor's confirmation of this either in writing or in a recording. The firm must arrange for a list to be kept as a result of investors being put in an insider position in connection with a pre-sounding. Clients that have become insiders are no longer insiders once the issue is in the public domain provided all the information provided during the pre-sounding has been offset in the market through the stock exchange notice.

If the issue is not carried out, a situation arises in which it must be decided whether or not the inside information given in the pre-sounding is still inside information. Investors that were originally put in an insider position because a specific event was to occur can argue that the disappearance of the planned activity/event in itself means that the information can no longer affect prices. On the other hand, the failure to carry out a planned bond issue can also reinforce the price-driving effect of the information because the funding requirement was not met, the capital structure was not changed, or some players know about discussions concerning conditions that the market did not approve. Such considerations will be situation-dependent and must be thoroughly assessed in each case.

If the issuer's financial instruments are not listed and the information is considered to be price-sensitive, the investor must be asked if he wishes to receive confidential information that may mean he is affected by the prohibition in section 3-9 of the Securities Trading Act concerning "unreasonable business methods" if he acts on the basis of the information and/or imparts the information.

4.5 Preparation of the Term Sheet, Terms of Application, etc

The term sheet stipulates the conditions for the loan, including the term and interest rate. Normally, the pre-sounding takes place at the same time as the preparation of the term sheet. The term sheet is adjusted along the way as regards the price, term and other borrowing conditions.

4.6 The sales phase

Information on the interest in subscribing may be inside information or price-sensitive information. Employees who accept subscriptions may not give information on the interest in subscribing to unauthorised third parties. In order to ensure the uniform treatment of this type of information, the DCM department or party keeping the book should have a routine in place that limits the opportunity to provide information on the interest in subscribing to the firm's brokers, and the information on the book's developments must not be spread to more people than is absolutely necessary; ie, only to those who keep the book and the DCM department. The firm should also have a routine which sets frameworks for providing such information to clients, taking into account the requirement of equal treatment.

In some cases, clients that take part in a pre-sounding may receive a higher allocation than clients that subscribe in the ordinary manner once invitations to subscribe for the bond loan have been sent out, or they may be given a discount. If such a discount exists, it should be stated in the subscription materials.

When invitations to subscribe for a bond loan are sent out, a subscription deadline is stated. Depending on the interest in subscribing, it is normal market practice to notify clients who have received subscription materials and possibly other interested parties of the date when the book will be closed; ie, if it will be closed earlier than on the expiry of the subscription deadline. The same applies if the deadline is extended.

The bonds are allocated to subscribers by the lead manager. The bond issuer is not entitled to know to whom bonds have been allocated. Two sets of duty of confidentiality rules apply here. The Norwegian Central Securities Depository (VPS) may not provide such information to an issuer. This follows from the duty of confidentiality rules stated in section 8-1 of the Securities Register Act. The investment firm has a duty of confidentiality in relation to the issuer, refer here to section 10-9 of the Securities Trading Act.

5. Organisational requirements and Chinese walls

According to section 9-11 of the Securities Trading Act, an investment firm must organise its business so that the firm is structured and organised in such a way as to minimise the risk of

conflicts of interest between the firm and its clients or between the firm's clients. In addition, the firm must have internal instructions regarding a duty of confidentiality, including for the exchange of information between different parts of the company.

Preparations for and the issuance of new corporate bonds will often mean that the investment firm has to deal with confidential information.

In order to ensure that confidential information is dealt with correctly and to avoid conflicts of interest, the following must be complied with:

- The DCM department must be physically separated via so-called Chinese walls from the department that carries out the day-to-day trading in bonds (the bond desk).
- Credit analysts must be organisationally and physically separated from the DCM department.

6. Credit analyses

Many of the bond issuers in Norway are rated. A credit rating is an assessment of the borrower's ability to service the loan (creditworthiness). The rating is on a scale. The scales for rating creditworthiness are usually stated in letters, for example AAA (which is the best), AA, etc. A credit rating is not intended to recommend or propose an investment or an investment strategy, it is an assessment of the bond issuer's creditworthiness.

Both official ratings and so-called "shadow ratings" are used. The official ratings are prepared by rating agencies such as Moody's, S&P and Fitch, among others. Shadow ratings are prepared by many investment firms in Norway. These are the investment firm's own assessments of an enterprise's creditworthiness. The shadow ratings are prepared by the investment firms' analysts, who use the same methods and models as rating agencies. Investors that have requirements as to the placement of risk accept these shadow ratings in the same way as official ratings in relation to their opportunity to invest.

<u>Distinction between a credit analysis and a credit recommendation</u>

A credit analysis is an assessment of a borrower's (bond issuer's) ability to service a loan. A credit recommendation, on the other hand, is a credit analysis that contains an investment recommendation. Credit recommendations are thus covered by section 3-10 of the Securities Trading Act concerning investment recommendations and must comply with this provision as well as with chapter 3, part II of the Securities Trading Regulations. Refer otherwise to the Association's industry standard no. 3, which among other things deals with "The handling of conflicts of interest and content requirements for recommendations, including analyses". The aforementioned standard is applicable to credit recommendations.

The investment recommendation rules stated in the Securities Trading Act and Securities Trading Regulations are an implementation of the EU Market Abuse Directive (MAD). According to the Commission Directive (2003/125/EC) adopted in connection with MAD,

credit rating agencies are not covered by the scope of the directive because an assessment of creditworthiness is not a recommendation.

In the Association's opinion, credit analyses, based on the objective and content of the credit analysis and the abovementioned Commission Directive, are not normally covered by section 3-10 of the Securities Trading Act or chapter 3 part II of the Securities Trading Regulations, or by the Association's standard no. 3. This also applies to so-called shadow ratings issued by investment firms.

Information in credit analyses that do not contain an investment recommendation

The following information is to be included in credit analyses that do not contain an investment recommendation:

- The total size of the analyst's or analyst's close associates', cf section 2-5 of the Securities Trading Act, portfolio of financial instruments issued by the enterprise to which the analysis refers.
- Information on the analyst's or analyst's close associates' possible directorships of and/or employment relationships with the enterprise to which the analysis refers on the date when the analysis is published.
- Whether the investment firm may have its own portfolio of financial instruments issued by the enterprise to which the analysis refers. This does not apply to a portfolio resulting from the firm's own-account trading as part of its investment service operations.
- Whether the investment firm has had corporate assignments for the enterprise during the past 12 months.
- Confirmation that the credit analyst does not receive any bonus linked to the specific assignment that the analysis may have been prepared in connection with.

7. The relationship between the DCM department and credit analyst

Credit analysts must not be subject to the guidance, supervision or control of employees of the DCM or corporate departments. Credit analysts may be subject to the sales department.

The credit analysts' bonuses or other fees must not be directly linked to specific assignments prepared by the DCM department.

In general, employees in and outside the DCM department may discuss topics with each other on a general basis (for example, economic developments, industry trends, company results, etc) without this entailing a need for restrictions.

During the work of preparing the bond loan in the DCM department, employees outside the DCM department may be "wall-crossed" over to the DCM department. This may, for

example, take place when the DCM department requires assistance from the bond desk and/or an analyst in order to propose a correct market price for a bond loan or when there is a need for a credit analysis (rating) from an analyst in connection with the preparation of a bond loan. Such wall-crossing is normal and is done in practice, but the investment firm must have routines in place for it.

Once the information on the transaction in question has been published or is no longer of any importance to the market, the person who has been wall-crossed may once again, in the normal manner, prepare analyses and/or resume his/her normal activities relating to the securities affected by the debt-capital activities in question.

Credit analysts will find it necessary to discuss/check the contents of draft credit analyses with the DCM department. This is to ensure that the analysis contains the correct facts and so that the analyst can obtain information on other factors. The Norwegian Securities Dealers Association believes that this procedure is appropriate in order for the market to obtain as correct information as possible in a credit analysis. For the same reason, the analysis may also be submitted to the issuing enterprise so that the facts can be checked. Once the facts have been checked, the credit analysis must state that the facts it contains have been checked by the issuing enterprise.

8. Recommendation

1. The firms should establish internal routines which ensure proper information handling that, among other things, takes into account the fact that lead managers may become aware of inside information before the mandate/commitment contracts are signed.
2. Before carrying out a pre-sounding, the nature of the information should be assessed. If there is inside information that will be forwarded to investors during the pre-sounding (the person concerned), the investor's acceptance must be obtained on a documentable medium in accordance with "the code of business conduct" before the information is forwarded. A Non-Disclosure Agreement (NDA) or Confidentiality Agreement (CA) must be entered into before the confidential information is forwarded.
3. Lead managers should discuss the issue relating to pre-sounding and the chance that investors may remain in an insider position in relation to the issuing company during the mandate phase – with regard to those cases when the transaction is not carried out as planned.
4. The firms should establish internal routines which limit the opportunity to provide information on the interest in subscribing, internally or externally, in connection with an ongoing DCM department sales process. Such information should only be given externally (to potential subscribers, etc) through notices published by the issuing company. This applies irrespective of whether or not the information is considered to be inside information.

5. Lead managers may update their clients and any other interested parties on changes during the subscription period, including the early closure or extension of the subscription period, provided the subscription materials show that the issuer/lead manager has reserved the right to change the stated length of the subscription period.
6. Clients who take part in a pre-sounding and undertake to subscribe during the pre-sounding phase may receive a higher allocation than clients who subscribe in the normal manner during the subscription period provided this is stated in the subscription materials. Alternatively, clients that subscribe during the pre-sounding may be given a specified subscription discount that correspondingly should be stated in the subscription materials.
7. Lead managers may prepare and distribute credit analyses relating to the issuer's credit quality in connection with the preparation of corporate bonds. The credit analysis (shadow rating) may not contain any investment recommendation (buy, sell or hold). The analysis must clearly state that it does not represent an independent investment analysis and the lead manager's role should be stated clearly on the front page of the credit analysis.
8. Credit analysts are not to be subject to the guidance, supervision or control of employees of the DCM or corporate departments. Credit analysts may be subject to the sales department. The credit analysts' bonuses or other fees may not be linked to specific assignments prepared by the DCM department.
9. During the work of preparing a bond loan in the DCM department, employees outside the DCM department may be wall-crossed to the DCM department. Such wall-crossing is normal and is done in practice but the investment firm must have good routines in place for it.
10. A draft credit analysis may be submitted to the DCM department so that it can check the facts.
11. A draft credit analysis may be submitted to the issuing enterprise so that it can check the facts. Once such a fact check has been conducted, the credit analysis must state that the facts it contains have been checked by the issuing enterprise.

PART II

The lead manager’s investigations in the case of undocumented transactions

Part II of the Recommendation applies to preparations for bond loans. Part II states the investigations it is expedient for a lead manager to conduct in order to protect both investors and market integrity.

“*Undocumented transactions*” are transactions that do not have to be stated in a prospectus according to the Securities Trading Act.

This recommendation is basically not applicable if the issuer is a so-called “frequent issuer”, which is a bank or energy or power company that issues bonds regularly.

“Documentation” refers to the term sheet, application form, company presentation, information memorandum and any credit analysis.

In addition to that stated in this recommendation, the lead manager must consider whether there is a need to initiate special investigations, provide information in addition to that normally provided by the market or make risks clear. This may, for example, be necessary if:

- The issuer has no duty to provide information to a regulated market since the enterprise has not issued listed financial instruments.
- The lead manager wishes to offer the transaction to non-professional investors/a wider investor universe.
- The issuer has financial problems or there are special events or challenges linked to the issuer.

1. **Conversation with the management**

   Introductory conversation:

   - The lead manager should *consider the need to hold* an introductory meeting with the issuer. Depending on the circumstances, a prior dialogue with the issuer may replace such an introductory meeting.
   - Company-specific risk factors should be one of the topics during the meeting/conversation.
   - The lead manager must specifically consider which of the members of the management should participate and whether there is a need for any legal advisors to attend.
   - The process should be documented.

   Summing-up conversation

   - Unless special circumstances so indicate, a summing-up conversation should be held.
   - All those who took part in the introductory conversation and external advisors should be present during this taped telephone conversation.

- An agenda should be prepared for the conversation, based on the introductory conversation, the assumptions on which the transaction and documentation are based and other factors that the lead managers wish to have confirmed.

2. Corporate presentation

- The lead manager's role in connection with the preparation should be stated (what the lead manager has done/not done).
- The presentation should be reviewed by the lead manager, possibly in collaboration with other advisors. Sufficient time should be set aside for the review.
- The corporate presentation should state risk factors that are specific to the issuer.

3. External investigations

- It should be considered whether other advisors are to look at any contracts or other documentation mentioned in the documentation or at any factors that have been revealed during the introductory conversation or which for other reasons appear to be relevant to the transaction.
- It should be considered whether there is a need for any other investigations, such as technical investigations.

4. A suitable declaration of completeness

- The lead manager should obtain a declaration of completeness that as a minimum is related to the information stated on the term sheet and in the corporate presentation and any other relevant documents delivered to the investor. The issuer should confirm that all the relevant information is available in the market.

5. Additional information

- The lead manager is advised to give an account of the lead manager's investigations relating to the placement.
- The lead manager should consider whether specific factors that have not been investigated any further are to be stated.
- Disclaimers of liability should be linked to the risk factors and, in so far as possible, to specific risk factors in the documentation.

6. Application form

- The application form should state the location of the specific risk factors in the documentation.